

DEBATES
OF THE
CONVENTION

TO AMEND THE
CONSTITUTION OF PENNSYLVANIA:

CONVENED AT
HARRISBURG, NOVEMBER 12, 1872;

ADJOURNED NOVEMBER 27,

TO MEET AT
PHILADELPHIA, JANUARY 7, 1873.

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1873.



DEBATES

OF THE

Convention to Amend the Constitution.

ONE HUNDRED AND FORTY-THIRD DAY.

WEDNESDAY, *September 17, 1873.*

The Convention met at ten o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. Dr. Moore, of Columbus, Ohio.

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

MEREDITH MEMORIAL.

The PRESIDENT appointed as the committee on the memorial of the late Hon. William M. Meredith, under the resolution of yesterday, Messrs. Carey, Woodward, Darlington, Sharpe, John N. Purviance, Biddle, Guthrie, Stanton and Dallas.

INVITATION TO MONTGOMERY FAIR.

The PRESIDENT laid before the Convention the following communication, which was read :

MONTGOMERY COUNTY AGRICULTURAL SOCIETY,
Executive Rooms, Ambler Park,
September 13, 1873.

To the President and members of the Constitutional Convention of Penn'a.

GENTLEMEN :—I have the honor to extend a cordial invitation to the distinguished gentlemen composing the Constitutional Convention, to attend the annual fair of the Montgomery County Agricultural Society at Ambler Park, on Thursday, September 18th, inst.

Apart from the beauty of the scenery on the route from Philadelphia, and the attractions of the fair, the visit doubtless will prove interesting, as showing the material progress of agriculture, horticul-

ture and the domestic arts, as developed by our county institution.

The society would be especially honored by the presence of the wives and families of the members of the Convention.

Awaiting a favorable response, I have the honor to be, gentlemen,

Your obedient servant,

WM. G. AUDENRIED.

A special train will leave North Pennsylvania railroad depot at 1.45 P. M., arriving at the park at 2.15 P. M.

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

Mr. DARLINGTON. I move to amend by stating that the Convention return thanks for the invitation.

The PRESIDENT. It is moved to amend the motion by stating that the thanks of the Convention be tendered to the Agricultural Society for their polite invitation.

The amendment was agreed to.

The motion as amended was agreed to.

LEAVES OF ABSENCE.

Mr. HUNSICKER asked and obtained leave of absence for Mr. Mann from yesterday until Tuesday next.

Mr. PUGHE asked and obtained leave of absence for Mr. H. W. Palmer for a few days from to-day.

Mr. ANDREWS asked and obtained leave of absence for Mr. M'Murray for a few days from to-day.

Mr. DARLINGTON asked and obtained leave of absence for Mr. Hemphill for to-day.

PUBLICATION OF DEBATES.

Mr. J. N. PURVIANCE. I offer the following resolution :

Resolved, That there shall be no publication of the Debates in book form on and after the first day of October next.

On the question of ordering the resolution to a second reading there were twenty-seven yeas—less than a majority of a quorum.

Mr. J. N. PURVIANCE. I am satisfied the resolution is not understood by the Convention. The resolution proposes that there shall be no publication—

The PRESIDENT. It is not debatable. The Convention has decided the question.

Mr. J. N. PURVIANCE. I call for the yeas and nays.

SEVERAL DELEGATES. It is too late.

The PRESIDENT. The Convention having decided the question before the yeas and nays were called for, the Chair thinks the call is not now in order. The resolution can be offered again.

Mr. J. N. PURVIANCE. I hope the Chair will withdraw his decision, because I am satisfied that the resolution was not understood.

The PRESIDENT. The Chair will withdraw his decision, and the resolution will be read again for the information of the Convention.

The CLERK read the resolution.

Mr. J. N. PURVIANCE. I offered that resolution—

Mr. HUNSICKER. I object to any debate.

Mr. PRESIDENT. It is not debatable. The question is on ordering the resolution to a second reading.

Mr. J. N. PURVIANCE. On that I call for the yeas and nays.

The yeas and nays were ordered.

Mr. FELL. Before proceeding to the call of the roll, I rise to a question of privilege.

The PRESIDENT. The pending question must first be disposed of.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Achenbach, Andrews, Baer, Bailey, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Black, J. S., Brodhead, Broomall, Brown, Cochran, Davis, De France, Funck, Hay, Long, MacConnell, M'Culloch, Palmer, G. W., Purviance, John N., Purviance, Samuel A., Struthers, and Wetherill, John Price—24.

NAYS.

Messrs. Ainey, Alricks, Armstrong, Bardsley, Bartholomew, Beebe, Biddle,

Bowman, Boyd, Buckalew, Calvin, Carter, Corbett, Curry, Dallas, Darlington, Dodd, Dunning, Edwards, Ewing, Gibson, Guthrie, Hanna, Harvey, Howard, Hunsicker, Kaine, Knight, Lilly, MacVeagh, M'Camant, M'CLean, Minor, Parsons, Patton, Pughe, Reed, Andrew, Runk, Russell, Sharpe, Smith, H. G., Smith, Henry, W., Stanton, Stewart, Wetherill, J. M., White, David N., White, Harry, White, J. W. F., Woodward, Worrell, Wright and Walker, *President*—52.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks, Baker, Bigler, Black, Charles A., Bullitt, Campbell, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Cronmiller, Curtin, Cuyler, Elliott, Ellis, Fell, Finney, Fulton, Gilpin, Green, Hall, Hazzard, Hemphill, Heverin, Horton, Lamberton, Landis, Lawrence, Lear Littleton, M'Murry, Mann, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Read, John R., Reynolds, Rooke, Ross, Simpson, Smith, Wm. H., Temple, Turrell, Van Reed, and Wherry—56.

NEW MEMBER.

Mr. FELL. I am instructed by the delegates at large, to whom was referred the duty of filling the vacancy in this body occasioned by the death of Hon. Wm. M. Meredith, to submit a report.

The report was read as follows:

The undersigned, members at large of the Convention who were voted for by a majority of the same voters who voted for and elected the late Hon. Wm. M. Meredith, do hereby fill the vacancy occasioned by his death by the appointment of the Hon. Morton M'Michael, a citizen of the city of Philadelphia, to be a member of this Convention.

JNO. H. WALKER,
J. G. FELL,
WM. LILLY,
HARRY WHITE,
G. V. LAWRENCE,
LIN BARTHOLOMEW,
SAM'L CALVIN,
WM. DAVIS,
JAS. L. REYNOLDS,
WM. H. ARMSTRONG,
D. N. WHITE,
WM. H. AINEY.

Mr. M'MICHAEL appeared at the bar of the House, and the oath of office having

been administered to him by the President, he took his seat in the Convention.

SUBMISSION OF THE CONSTITUTION.

Mr. MACVEAGH. I offer the following resolution:

Resolved, That a committee of seven be appointed to report for the consideration of the Convention a time and method for the submission of the Constitution, when completed, to a vote of the people of the Commonwealth.

On the question of proceeding to the second reading and consideration of the resolution,

The yeas and nays were required by Mr. Newlin and Mr. Jos. Bailey, and were as follows, viz:

Y E A S.

Messrs. Achenbach, Addicks, Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Beebe, Black, J. S., Broomall, Buckalew, Calvin, Carey, Collins, Curry, Dallas, Davis, Dodd, Dunning, Edwards, Ewing, Fulton, Gibson, Hanna, Howard, Hunsicker, Kalne, Landis, Lawrence, Lilly, Littleton, Long, MacConnell, MacVeagh, Minor, Palmer, G. W., Purviance, John N., Runk, Sharpe, Smith, H. G., Stanton, Stewart, Turrell, Wetherill, J. M., White, David N., White, J. W. F., Woodward, Worrel, and Walker, *President*—50.

N A Y S.

Messrs. Ainey, Bailey, (Perry,) Barclay, Bardsley, Bartholomew, Bowman, Boyd, Brodhead, Brown, Cochran, Corbett, Curtin, Darlington, De France, Fell, Guthrie, Harvey, Hay, McClean, Newlin, Patton, Pughe, Reed, Andrew, Rooke, Smith, Henry W., Struthers, Wetherill, Jno. Price, White, Harry, and Wright—29.

So the resolution was ordered to a second reading.

ABSENT.—Messrs. Bannan, Biddle, Bigler, Black, Charles A., Bullitt, Campbell, Carter, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Cuyler, Elliott, Ellis, Finney, Funck, Gilpin, Green, Hall, Hazzard, Hemphill, Heverin, Horton, Knight, Lamberton, Lear, M'Camant, M'Culloch, M'Michael, M'Murray, Mann, Mantor, Metzger, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Sam'l A., Read, John R., Reynolds, Ross, Russell, Simpson, Smith, Wm. H., Temple, Van Reed and Wherry—54.

The resolution was read the second time and considered.

Mr. MACVEAGH. I learn from the delegate from the city of Philadelphia (Mr. J. Price Wetherill) that he furnished to the Convention before its adjournment, a plan for the holding of this election, which was referred to the Committee on Suffrage, Election and Representation. The object in offering this resolution was to have a committee to which could be referred the various plans of different members for this election, to have those plans properly digested, and a report made for the action of the Convention as a body, in order, if possible, to prevent amendments being offered of various plans which may be favorites with different members of the body. If the Committee on Suffrage, Election and Representation is to be the receptacle for those plans in case others are to be offered, there is no object in the creation of a special committee; and a plan having already been submitted, and having been referred to that committee, it has occurred to me, since the resolution was offered, that it might be as well to allow that committee to report a plan for the election as to constitute a new committee for the purpose. If that committee is here, and is willing to enter upon this work so as to have it out of our way and a digested report ready for our action when the Constitution is completed, then every object of this resolution is answered.

Mr. LILLY. Probably it is not my place to speak for the committee, but the Committee on Suffrage, Election and Representation have had this subject under consideration, and it was postponed on account of the adjournment. I presume we shall soon have another meeting, and then probably the subject will be taken up and acted on.

Mr. HARRY WHITE. I think it is entirely proper that a resolution of this kind should be passed. Certainly it should be considered by the Convention. I was going to suggest, however, that probably it was a day or two premature; and in order to allow members to converse on the subject and exchange views, and inasmuch as all the delegates are not here, I propose to make a motion to postpone the further consideration of the resolution until to-morrow.

The PRESIDENT. The question is on the motion of the gentleman from Indiana.

Mr. MACVEAGH. The delegate from Columbia (Mr Buckalew) and the delegate from Lycoming (Mr. Armstrong) suggest that that motion be changed to a motion to postpone for the present. That will be entirely acceptable to me, and we shall get rid of the difficulty.

Mr. HARRY WHITE. Very well; I will modify it in that way.

The PRESIDENT. That motion is before the Convention.

Mr. MACVEAGH. I trust it will be adopted.

To motion to postpone was agreed to.

Mr. AINEY. I offer the following resolution:

Resolved, That the Committee on Suffrage, Election and Representation be and are hereby instructed to prepare and report an ordinance for the submission of the new or amended Constitution to a vote of the people on the — day of — next, which ordinance shall, with the other necessary provisions, contain a proviso that but one ticket shall be voted on so much of the Constitution as shall be submitted as a whole, which ticket shall be headed "New or amended Constitution," and under this shall be printed consecutively the numerical designation of each section of each article in such convenient form that voters may readily cross or strike out with pen or pencil any section; and each and every section so marked shall be deemed, taken and held to be a vote against such section, and each remaining section not so marked out shall be deemed, taken and held to be a vote in favor of the same.

I offer this resolution simply to bring the thought before the Convention. I ask that it lie on the table for the present.

The PRESIDENT. The resolution will lie on the table.

COMMITTEE ON REVISION AND ADJUSTMENT.

Mr. BUCKALEW. I offer the following resolution:

Resolved, That four members be added by appointment of the Chair to the Committee on Revision and Adjustment.

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

Mr. BUCKALEW. This committee consists of five members only at present, and it happens at this moment that only one of the five is present in the Convention. By adding four new members, we could get a quorum of the committee together at once, and commence this afternoon or evening and have a report within a few

days. That is my motive in offering the present resolution.

Mr. HARRY WHITE. Mr. President; I rise to obtain information for myself and doubtless for the whole Convention in regard to the action of the Committee on Revision and Adjustment. I should be very glad to know what is the *status* of that committee's work, whether there is any report ready, or if not, how soon we may expect one, for the action of this Convention depends, as I understand, very much on the report of that committee. I should be glad through you, sir, to ask a member of that committee as to the position of their work and when they will be ready to report.

The PRESIDENT. Mr. Knight, I believe, is the only member of the committee present.

Mr. KNIGHT. Mr. President: The committee had several meetings previous to the adjournment of the Convention and they agreed to meet during the recess at Cape May, but they never did. Messrs. Clark, H. W. Palmer and Church may have had a meeting in the interior of the State somewhere. I have not heard from them on the subject. Mr. D. W. Patterson, one of the members of the committee, is here.

Mr. DARLINGTON. Mr. President: I should be glad to know whether the committee themselves desire to have their number increased. If they do, I should be willing to give it to them; if they do not, I should like to hear before we act on the resolution?

Mr. LILLY. I had considerable conversation with members of the Committee on Revision and Adjustment before the adjournment, and I understood from both Mr. Clark and Mr. H. W. Palmer, that their work was in a very forward condition; but, as the gentleman from Columbia said, the Convention was very unfortunate in not having a quorum of the committee here to-day, and we are not likely to have a quorum of that committee for some time. I understand the courts are in session in the western part of the State, where Mr. Clark resides, and he cannot be here for some days.

Mr. DARLINGTON. Let us hear from the members of the committee themselves.

Mr. LILLY. Mr. Church is absent, I presume from the same cause, and so is Mr. Palmer. To my mind it is important that we should go on, and in order to do so the committee ought to be able soon to report.

The PRESIDENT. The question is on the resolution.

The resolution was agreed to.

HOURS OF SITTING.

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

Resolved, That on and after to-morrow the daily sessions of this Convention shall be from ten A. M. till three P. M.

On the question of ordering the resolution to a second reading, a division was called for, which resulted ayes thirty-four, nays thirty-four.

So the question was determined in the negative.

WITHDRAWAL OF A RESIGNATION.

Mr. COLLINS. Mr. President: Previous to the adjournment of the Convention my health was so much impaired that I was compelled to ask the privilege of resigning my seat as a member of this Convention. The Convention, however, did me the honor to lay the resignation on the table. My health has improved considerably since, and I now ask the unanimous consent of 'the body to withdraw that resignation.

The PRESIDENT. The gentleman from Fayette desires leave to withdraw his letter of resignation. Shall he have leave? ["Yes." "Yes."]

Leave was unanimously granted, and the resignation was withdrawn.

DAILY SESSIONS.

Mr. J. N. PURVIANCE. I offer the following resolution:

Resolved, That the sessions of this Convention hereafter, until otherwise ordered, shall be from nine and a half o'clock A. M. to one P. M., and from three to seven o'clock P. M., on all days of the week excepting Sundays.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for.

Mr. J. N. PURVIANCE. I ask for the yeas and nays.

Mr. D. N. WHITE. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Addicks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bardsley, Beebe, Bowman, Carey, Carter, Corson, Davis, De France, Edwards, Fulton, Hay, Lawrence, Long, McCulloch, Metzger, Newlin, Palmer, G. W., Parsons, Pughe, Purviance, John N., Purviance, Samuel A., Smith, H. G., Smith, Wm. H., Struthers, Temple, White, David N., White, J. W. F., and Wright—32.

NAYS.

Messrs. Achenbach, Ainey, Armstrong, Baker, Bannan, Barclay, Biddle, Boyd, Brodhead, Broomall, Brown, Buckalew, Cochran, Collins, Corbett, Curtin, Dallas, Darlington, Dunning, Ewing, Fell, Funck, Gibson, Guthrie, Hanna, Harvey, Howard, Hunsicker, Kaine, Knight, Landis, Lilly, Littleton, MacConnell, MacVeagh, McCamant, M'Clean, M'Michael, Minor, Patton, Read, John R., Reed, Andrew, Rooke, Runk, Russell, Sharpe, Smith, Henry W., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, White, Harry, Woodward and Walker, *President*.

So the Convention refused to read the resolution a second time.

ABSENT.—Messrs. Alricks, Andrews, Bartholomew, Bigler, Black, Charles A., Black, J. S., Bullitt, Calvin, Campbell, Cassidy, Church, Clark, Craig, Cronmiller, Curry, Cuyler, Dodd, Elliott, Ellis, Finney, Gilpin, Green, Hall, Hazzard, Hemphill, Heverin, Horton Lamberton, Lear, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Reynolds, Ross, Simpson, Wherry and Worrell—45.

ELECTION ARTICLE.

Mr. KAINE. I ask leave to make a statement.

The PRESIDENT. Shall the gentleman have leave?

Leave was granted.

Mr. KAINE. On the 22d day of January last an article relative to the times of holding the elections of this Commonwealth was ordered to be transcribed for third reading. On the next day—the 23d day of January—it was finally passed on third reading. This does not seem to have been understood by the Convention generally. The article was not referred to the Committee on Revision and Adjustment. It must necessarily go there, and therefore I offer the following resolution:

Resolved, That the action of the Convention on the 22d day of January last, ordering the article fixing the time for holding the elections of this Commonwealth to be transcribed for third reading, and the passage of the same on the 23d day of January, on third reading, be and the same is hereby rescinded, and the said article as it passed second reading be referred to the Committee on Revision and Adjustment.

The resolution was read the second time and considered.

The resolution was agreed to, yeas sixty-one, noes not counted.

HOURS OF SESSION.

Mr. AINEY. I offer the following resolution:

Resolved, That on and after to-morrow the daily sessions of this Convention shall be from half-past nine o'clock A. M. to three o'clock P. M.

On the question of proceeding to the second reading and consideration of the resolution, Messrs. Ainey and Darlington called for the yeas and nays.

Mr. D. N. WHITE. I ask for information, what are the hours of meeting now?

The PRESIDENT: From ten A. M. to one P. M., and from three to six P. M.

Mr. MACVEAGH. I rise to a question of order. Has not that resolution been negatived? Was it not included in Mr. Purviance's resolution?

The PRESIDENT: In part only. That resolution proposed two sessions. The yeas and nays have been ordered, and the Clerk will call the roll, on proceeding to the second reading and consideration of the delegate from Lehigh (Mr. Ainey.)

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

Y E A S.

Messrs. Ainey, Alricks, Armstrong, Baer, Baker, Bartholomew, Biddle, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Bullitt, Calvin, Carey, Corbett, Corson, Curry, Curtin, Dallas, Darlington, Finney, Funk, Gibson, Guthrie, Harvey, Hunsicker, Knight, Lilly, M'Clean, M'Culloch, M'Michael, Minor, Newlin, Palmer, G. W., Pugh, Read, John R. Runk, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Van Reed, Wetherill, J. M. and Woodward—45.

N A Y S.

Messrs. Achenbach, Addicks, Baily, (Perry), Bailey, (Huntingdon), Bannan, Barclay, Bardsley, Beebe, Bowman, Brown, Buckalew, Campbell, Carter, Cochran, Collins, De France, Dodd, Edwards, Ewing, Fell, Hanna, Hay, Howard, Kaine, Landis, Lawrence, Littleton, Long, MacConnell, MacVeagh, Metzger, Parsons, Patterson, D. W., Patton, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Rooke, Russell, Stanton, Struthers, Turrell, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F., Wright and Walker, *President*—48.

So the Convention refused to order the resolution to a second reading.

ABSENT.—Messrs. Andrews, Black, Charles A., Cassidy, Church, Clark, Craig, Crommiller, Cuyler, Davis, Dunning, Elliott, Ellis, Fulton, Gilpin, Green, Hall, Hazzard, Hemphill, Heverin, Horton, Lamberton, Lear, M'Camant, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Reynolds, Ross, Simpson, Smith, H. G., Temple, Wherry and Worrell—40.

ORDER OF BUSINESS.

Mr. ANDREW REED. I move that the Convention now proceed to the consideration of the article on the Legislature.

The PRESIDENT. There are some reports yet to be made.

Mr. ANDREW REED. Then I withdraw the motion for the present.

The PRESIDENT. Resolutions are yet in order.

FORTY-THIRD RULE.

Mr. BUCKALEW. I offer the following resolution, to lie over one day under the rules:

Resolved, That the forty-third rule of the Convention be rescinded.

The PRESIDENT. The resolution will lie on the table.

Mr. S. A. PURVIANCE. I offer the following resolution:

Resolved, That the Convention will, when the order of the day has been called, proceed to the consideration on third reading of the several articles which have already passed through second reading in the order in which they appear in the pamphlet form now on the desks of members.

The PRESIDENT. What action will the Convention take on this resolution?

Mr. MACVEAGH. I move that it lie on the table.

SEVERAL DELEGATES. Let it proceed to second reading.

The PRESIDENT. Is the motion to lay on the table withdrawn.

Mr. MACVEAGH. I do not withdraw it, for the simple reason that there is one article which has never passed second reading, the article on the Legislature, which the gentleman from Midlin (Mr. A. Reed) suggested a moment ago should be taken up, and I think that ought to be passed through second reading before we go to the third reading of the other articles. We have not met that question for some time, and I hope we shall meet it now. I trust, therefore, that the gentleman will withdraw his resolution until we can get through with the article on the Legislature on second reading.

Mr. S. A. PURVIANCE. I will say, in answer to the gentleman from Dauphin, that we shall come to that in its order. It is, I believe, the second article in the pamphlet after the article on the Bill of Rights, and when we come to that of course we shall go through with it.

Mr. MACVEAGH. The Committee on Revision and Adjustment have not reported any of these articles yet, and they are not properly before us. The legislative article is properly before us, and I must insist on my motion to lay the gentleman's resolution on the table, and I trust the Convention will stand by me.

The PRESIDENT. The question is on the motion of the gentleman from Dauphin (Mr MacVeagh.)

The motion was agreed to.

PRINTER'S ACCOUNTS.

Mr. HAY. I present a report from the Committee on Accounts and Expenditures.

The CLERK proceeded to read the report, but before concluding was interrupted by—

Mr. HAY I suggest, as the report is somewhat lengthy, that its further reading be dispensed with.

Mr. BUCKALEW and OTHERS. No; let it be read.

Mr. HAY. I merely make the suggestion to save time.

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 during the recess of the Convention it met at Harrisburg for the consideration of such accounts as had been submitted in accordance with the resolution of the Convention requiring them to be promptly rendered to the committee for all claims up to the time of the adjournment; and that the second account of the Printer to the Convention, covering the period from the 15th of May to the 1st of July, and the third account covering the period from the 1st to the 15th of July, and also including some items charged subsequently thereto, have been carefully examined. In the second account the Printer claims the sum of \$11,934 14, after the deduction of the discount of forty-one and one-fourth per cent. from the amount of such items as he admits to be subject to discount; and in the third account he claims the sum of \$5,797 23 after making similar deductions, making a total claim of the net sum of \$17,731 37 for the period from May 15th

(the date to which the first account was rendered) to the 15th day of July (the date of the adjournment of the Convention.)

In the examination of these accounts the committee has strictly adhered to the principles of the report upon the first account, made to the Convention on the 14th of July last; and has, as in the settlement of that account, allowed only the prices mentioned in the schedule to the act of March 27, 1871, wherever, in the opinion of the committee, those prices were applicable. The printing acts clearly contemplate that the prices mentioned in this schedule are those which are to be, exclusively, allowed to the Public Printer wherever the price or value of work done by him is fixed by or otherwise ascertainable under them.

The Printer has continued to claim in these accounts, as in his first accounts, for plain composition seventy-five cents per thousand ems, and for press-work forty cents per token, without any deduction or discount in either case. These rates are considerably in excess of the prices to which he would be entitled under his contract with the Convention. The printing acts, as heretofore reported, fix the following rates: For plain composition, sixty cents per thousand ems, and for press work, fifty cents per token; both subject, as are all other rates in the schedule, to the discount of forty-one and one-quarter per cent., at which the public printing and binding was allotted to Benjamin Singlerly; leaving the net rates, which the Printer would be entitled to receive under his contract, for plain composition, thirty-five and one-quarter cents per one thousand ems, and for press-work, twenty-nine and thirty-eight hundredths cents per token. The difference caused by this variance between the claim of the State Printer and the rates established by law, and due him under his contract, amounts to many thousands of dollars.

The State Printer alleges that the work done by him is work "the price or value of which is not fixed by or ascertainable under the printing acts," for the reason that, as he also alleges, the composition on the work he is doing for the Convention is much more solid than that on the work he usually does for the State; that it is of an unusual character, not so profitable as the ordinary State printing, and that some portion of the composition and press-work must be done at night to enable him to comply with the requirement of the Convention, that the Journal for

the files on the desks of the members should be furnished the day after its approval, and the Debates the day after their delivery; and that he is therefore entitled to be paid the special rates charged by him regardless of the schedule of rates fixed by the act of March 27, 1871.

His claim is based upon the provisions of the sixth division of the first section of this act, which is in these words: "Any work done by said Printer for the Commonwealth, and any supplies or publications furnished by him to any department or public officer, the price or value of which may not be fixed by or be otherwise ascertainable under the printing act of 1856 or this act, shall be paid for at rates of compensation to be fixed in the manner provided for in the fourth division of this section, subject, however, to the control and authority of the Auditor General, over the accounts therefor." That part of the fourth division of the same section here referred to, is as follows: "And whenever it shall happen that the price or cost of the same shall not be fixed by or be ascertainable under the laws relating to the public printing and binding, then the price or cost of the same shall be fixed and determined between the said Superintendent (of Public Printing) and the Public Printer, before the same shall be furnished or supplied, and shall not exceed the lowest rate at which such articles or supplies of like quantity and quality can be obtained elsewhere."

There does not appear to be any force or merit in this claim. The price, both of composition and presswork, is "fixed by and clearly ascertainable under the printing acts," as was shown in the committee's first report upon this subject, on the 14th day of July last; and as to composition, the law further and most emphatically provides that upon no pretense whatever should any composition be fixed at rates other than those therein prescribed. There can therefore be no doubt, it would seem, that the prices to be allowed to the State Printer under his contract with the Convention are those which are provided in the schedule, and no other. Indeed, in the printed memorial which was addressed by Mr. Singerly to the members of the Convention, shortly after their assembling in Philadelphia, and just before the contract for the printing was made, he represented that during the session of the Legislature of 1871, while a revision of the printing laws of

the State (which resulted in the passage of the act of March 27, 1871) was under consideration in that body, some of its members conversed with him about the Convention printing, leaving the idea on his mind that the printing of every description for the State was embraced in that act; that a majority of the printers who bid for the public printing on the 4th of April, 1871, would testify that they understood that the Convention printing was included in the public printing at that time; and that the public printing, under the revised law, was awarded to him after the bill to call the Convention had passed both houses; and, therefore, finally claimed that he had a right to do the printing of the Convention, and was prepared to do it, in whatever form the Convention might designate, according to the revised printing laws, passed March 27, 1871. Apart, therefore, from the mere legal construction of the contract entered into by him with the Convention, this representation and claim of the Printer, made at the time and under the circumstances it was, shows what impression was conveyed to the minds of the members before the vote upon the printing contract was taken, as to the law (which was that embracing the schedule of rates) under which the prices for the printing and binding of the Convention were to be ascertained.

The committee has reported with such degree of fulness upon this matter, not only because it was one of some importance to the Convention and the people of the Commonwealth generally, but also that the grounds of its action upon these accounts and of the State Printer's claims might be thoroughly understood.

For the reasons given in the previous report, the charges made for "extra lettering" or labeling the backs of the remainder of Volume 1 of the Debates, and of Volumes 2, 3 and 4, together amounting to the sum of \$877 50; and the charge for correcting a member's speech, \$9 28, have not been allowed. For trimming and packing Debates and Journals for files there is a charge made of \$230, which has not been allowed, for the reason that the "packing" is simply putting into a bundle the copies sent each day to the Convention, and is merely an incident in the convenient transmission by the Printer of that which it is necessary for him to deliver in good condition; and the "trimming" charged for it is believed is fully covered by the allowances otherwise made, and for which no separate charge

can justly and fairly be presented. Any claim based upon the allegation that the trimming of the Debates had to be specially done at night in order that the matter might be placed on the files of the members the day after the occurrence of the debate is shown to be not well founded by the fact, well known to every member, that the Debates have been from a week to a month behindhand from the commencement of the session, and were never at any time delivered to the Convention within less than five or six days from their date.

The committee has held over for further examination charges for the paper on which reports and articles in bill form were printed, amounting to \$241 50; for boxes for packing the Debates sent by express to the members and officers, amounting to \$401 00, and for folding fly-leaves for volumes 1, 2, 3 and 4 of the Debates, amounting to \$72 00, and will report hereafter upon these items in the accounts.

In addition to the reduction of the prices charged, to the regular rates established by the printing acts, wherever those rates were applicable, the committee has also, as in the audit of the first account, and for the reasons there mentioned, reduced the charge for "files for desks" from \$25 00 to \$15 00 per hundred, and the charge for wrapping and mailing the Debates to newspapers, &c., from five dollars and ninety-one cents per day to two dollars per day.

The charge made for packing, directing and cooperage of the boxes of Debates for members and officers, amounting to eighty-three dollars and seventy cents for the first four volumes, might without explanation be considered a charge merely for delivery, for which the Convention would not be liable. It has been allowed by the committee because of the fact that instead of having all the Debates delivered in one mass as they were printed, at one place, the Convention directed them to be boxed up, and a certain number of copies sent to the residence of each member, to carry out which direction for delivery in this particular manner involved some expenditure of time, care and labor, and the additional expenses of a different address upon each package. The sum charged is certainly full compensation for the service rendered.

The committee has re-stated the second and third accounts in the same manner in which the first account was re-stated, showing on the one side Mr. Singerly's

claims, and on the other side the amounts to which he is considered to be entitled under his contract with the Convention. These are attached to and made a part of this report and are marked respectively A and B.

The second account, from May 15th to July 1st, as rendered, is for a total sum of \$14,331 54, of which amount it is claimed that only the sum of \$5,811 90 is subject to the discount of 41¼ per cent., and that the sum of \$8,519 64 is not subject to any deduction, leaving the net amount claimed in this account, \$11,934 14.

The third account, from July 1st to July 15th, as rendered, is for a total sum of \$7,001 04, of which amount it is claimed that only the sum of \$2,918 34 is subject to discount, and that the sum of \$4,082 70 is not subject to any deduction, leaving the net amount claimed in this account, \$5,797 23.

In both the second and third accounts together, therefore the net amount claimed is \$17,731 37.

The second account has been reduced, by the corrections of the committee, from \$11,934 14 to the sum of \$3,368 13, leaving still to be audited an item of \$241 50; and the third account has been reduced, by similar corrections, from \$5,797 13 to the sum of \$3,920 22, leaving yet to be audited two items, together amounting to \$473. Or, taking the two accounts together, they have been reduced by the corrections from \$17,731 37 to the sum of \$11,288 35, exclusive of the items above referred to, omitted from the present settlement and together amounting to the sum of \$714 50, the whole or the greater portion of which may be eventually allowed upon further and fuller examination. The said sum of \$11,288 35 is accordingly found to be due the Printer, Benjamin Singerly, and the following resolution 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 15th day of July, 1873, (exclusive of the items in the above mentioned accounts yet to be fully audited, together amounting to the sum of \$714 50, and also exclusive of the items excepted from the audit of the first account, together amounting to the sum of \$2,060 45,) the sum of \$11,288 35; and that a copy of the above report and of the action of the Convention thereon, be forthwith certified by the Chief Clerk to the Auditor General of the Commonwealth.

[A.] STATEMENT showing the differences between the claims of Benjamin 15, 1873, to July 1, 1873,) and the allowances of the Com

	CLAIMS OF BENJAMIN SINGERLY.			
Debates, Vol. 4, from page 348, to conclusion.	Extra title and lettering on 4,050 copies Debates, Vol. 1.....			\$202 50
	Marbling 4,050 copies Debates, Vol. 1.....			202 50
	Binding 4,500 copies Debates, Vol. 2.....		\$2,250 00	
	Extra title and lettering Debates, Vol. 2.....			225 00
	Marbling 4,500 copies Debates, Vol. 2.....			225 00
	Making out index Debates, Vol. 3, Binding 4,500 copies Debates, Vol. 3.....			200 00
	Extra title and lettering on Vol. 3, Marbling 4,500 copies Debates, Vol. 3.....		2,250 00	235 00
	5,236 copies—27 forms.			225 00
	1,482,624 ems, minion, at seventy- five cents.....	\$1,111 96		
	594 tokens, at forty cents.....	237 60		
	Folding.....	\$286 20		1,349 53
	Dry pressing.....	28 62		
	Cancelling 1 form, sig. 40, by or- der of Committee on Printing, 54,912 ems, minion, at seventy- five cents.....		314 82	
	Twenty-two tokens, at forty cts...	41 18 8 80		9 28
Debates, Vol. 5.....	Folding.....	\$10 60		
	Dry pressing.....	1 06		
	Making index for same.....		11 66	200 00
	Four hours correcting member's speech.....			49 98
	5,266 copies—50 forms.			
Debates, Vol. 6.....	2,745,600 ems, minion, at seventy- five cents.....	2,059 20		
	1,100 tokens, at forty cents.....	440 00		2,499 20
	Folding.....	\$530 00		
	Dry pressing.....	53 00		
	150 files with labels.....		583 00	37 50
Journal from May 15 to June 30, both inclusive.	5,266 copies—17 forms.			
	333,504 ems, minion, at seventy- five cents.....	700 12		
	374 tokens, at forty cents.....	149 60		849 72
	Folding.....	\$180 20		
	Dry pressing.....	18 02		
	150 files, with labels.....		198 22	37 50
	1,500 copies—34 forms.			
	1,523,200 ems, brevier, at seventy- five cents.....	1,142 40		
	204 tokens, at forty cents.....	81 60		1,224 00
	Folding.....	\$102 00		
	Dry pressing.....	10 20	112 20	

Singerly, printer for the Convention, (in his second account from May nittee on Accounts and Expenditures of the Convention.

ALLOWANCES OF THE COMMITTEE.			
	Marbling 4,050 copies Debates, Vol. 1.....		\$202 50
	Binding 4,500 copies Debates, Vol. 2.....	\$2,250 00	
	Marbling 4,500 copies Debates, Vol. 2.....		225 00
	Making out index debates, Vol. 3, Binding 4,500 copies Debates, Vol. 3.....	2,250 00	200 00
	Marbling 4,500 copies Debates, Vol. 3.....		225 00
Debates, Vol. 4, in- cluding index...	5,254 copies—30 forms. 1,556,544 ems, minion, at sixty cts., 660 tokens, at fifty cents..... Folding..... Dry pressing and cutting.....	933 92 330 00 318 00 31 80	
	Cancelled form, by order of Com- mittee on Printing, 54,208 ems, , minion, at sixty cents.....	32 52	
	Twenty-two tokens, at fifty cents,	11 00	
	Folding.....	10 60	
	Dry pressing and cutting.....	1 06	
	Making index for same.....		200 00
Debates, Vol. 5.....	5,254 copies—49 forms, without index. 2,649,416 ems, minion, at sixty cts., 1,078 tokens, at fifty cents.....	1,539 65 539 00	
	Folding.....	519 40	
	Dry pressing and cutting	51 94	
	150 files with labels, at fifteen cts.,		22 50
Debates, Vol. 5.....	5,254 copies—17 forms. 921,536 ems, minion, at sixty cts.,	552 92	
	374 tokens, at fifty cents.....	187 00	
	Folding.....	180 20	
	Dry pressing and cutting.....	18 02	
Journal.....	150 files, with labels.....		22 40
	1,500 copies—34 forms. 828,000 ems, brevier, at sixty cts.,	496 80	
	142 tokens, at fifty cents.....	71 00	
	Folding.....	64 00	
	Dry pressing and cutting	6 40	

DEBATES OF THE

[A.] STATEMENT—Continued.

	CLAIMS OF BENJAMIN SINGERLY.		
Reports of committees and articles as passed second reading.....	92 pages, 300 copies each.....	\$92 00	
	28¾ reams double cap paper, 28 pounds.....		\$241 60
	Folding, packing and mailing 591 copies Debates, forty days.....		236 40
	Trimming and packing Debates and Journals for files, 140 days..		280 00
Discount of 41¼ per cent. from first column		5,811 90	8,519 64
		2,397 40	
Claimed to be not subject to deduction		3,414 50	
		8,519 64	
		11,934 14	

CONSTITUTIONAL CONVENTION.

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[A.] STATEMENT—Continued.

	ALLOWANCES OF THE COMMITTEE.			
Reports of committees, and articles as passed second reading.	92 pages.....		\$92 00	
	[Passed over for the present for want of sufficient vouchers, information and means for estimating the quantity of paper actually used in printing these reports and articles.] Folding, packing and mailing Debates, 40 days.....			\$80 00
Discount of 41¼ per cent. off.....			10,537 23 4,346 60	1,177 59
Not subject to discount.....			6,190 63 1,177 50	
			7,368 13	
Not yet finally audited, marked passed over for the present.....				<u>\$241 50</u>

[B.] STATEMENT showing the differences between the claims of Benjamin to July 15, 1873) and the allowances of the Committee

	CLAIMS OF BENJAMIN SINGERLY.			
Index, Vol. 4.....	5,266 copies—3 forms.			
	164,736 ems, minion, at 75 cents...	\$123 55		
	66 tokens, at 40 cents	26 40		
				\$149 95
	Folding	31 80		
	Dry pressing	3 18		
			\$34 98	
	Binding 4,500 copies Vol. 4.....		2,250 00	
	Marbling.....			225 00
	Extra title and lettering.....			225 00
Index, Vol. 5.....	Making index to Vol. 5.....			200 00
	5,266 copies—3 forms.			
	164,736 ems, minion, at 75 cents...	123 55		
	66 tokens, at 40 cents.....	26 40		
				149 95
	Folding.....	31 80		
	Dry pressing.....	3 18		
			34 98	
	Debat's, Vol. 6, July 1 to 15th.			
	5,266 copies—29 forms.			
Journal, July 1 to July 14th, both inclusive.	1,592,448 ems, minion, at 75 cents,	1,194 34		
	638 tokens, at 40 cents	255 20		
				1,449 54
	Folding.....	307 40		
	Dry pressing.....	30 74		
			338 14	
	1,500 copies—10 forms.			
	448,000 ems, brevier, at 75 cents...	336 00		
	60 tokens, at 40 cents.....	24 00		
				360 00
Articles as they passed 2d reading.	Folding.....	30 00		
	Dry pressing.....	3 00		
			33 00	
	Folding, packing and mailing 591 copies Debates, 10 days			59 10
	Report of committees, in bill form, 20 pages			
			20 00	
	3,000 copies—4 forms.			
	86,400 ems, small pica, at 60 cents,	51 84		
	48 tokens, at 50 cents.....	24 00		
	Folding.....	24 00		
	Dry pressing.....	2 40		
	Printed covers	30 00		
			132 24	
	31 quires cover paper for same....			10 86
	Folding, packing and delivering to post office 21 copies each for members and officers, 136 packages			
				4 08
	Postage on 133 packages			46 55
	500 yeas and nays		3 00	
	Paper for same			5 88
	Packing, directing and coopeage of 133 boxes of Debates for members, Vol. 1.....	19 95		
	Packing, directing and coopeage of 133 boxes of Debates for members, Vol. 2	19 95		
	Packing, directing and coopeage of 133 boxes of Debates for members, Vol. 3	19 95		
	Packing, directing and coopeage of 133 boxes of Debates for members, Vol. 4	19 95		

Singerly, printer for the Convention, (in his third account from July 1, on Accounts and Expenditures of the Convention.

	ALLOWANCES OF THE COMMITTEE.			
Index, Vol. 4.....	[This was included by the Committee in their estimate of Vol. 4, heretofore audited in the printer's second account.]			
	Binding 4,500 copies, Vol. 4.....	\$2,250 00		
	Marbling Vol. 4.....			\$225 00
Index, Vol. 5.....	Making index to Vol. 5.....			200 60
	5,254 copies—3 forms.....			
	149,072 ems minion, at 60 cents.....	89 44		
	66 tokens, at 50 cents.....	33 00		
	Folding.....	31 80		
	Dry pressing and cutting.....	3 18		
Debates, Vol. 6....	5,254 copies—30 forms.....			
	1,633,236 ems, at 60 cents.....	979 94		
	660 tokens, at 50 cents.....	330 00		
	Folding.....	318 00		
	Dry pressing and cutting.....	31 80		
Journal, July 4 to 14th, both inclusive.....	1,500 copies—10 forms.....			
	259,440 ems, brevier, at 60 cents.....	155 66		
	70 tokens, at 50 cents.....	35 00		
	Folding.....	30 00		
	Dry pressing and cutting.....	3 00		
	Folding, packing and mailing Debates, 10 days.....			20 00
	Reports of committees, in bill form, 20 pages.....	20 00		
Articles as they passed 2d reading.....	3,000 copies—1 forms.....			
	86,400 ems, small pica, at 60 cents.....	51 84		
	48 tokens, at 50 cents.....	24 00		
	Folding.....	24 00		
	Dry pressing and cutting.....	2 40		
	Printed covers.....	30 00		
	31 quires cover paper for same.....			10 85
	Folding, packing and delivering to post office, 21 copies each for members and officers, 136 packages.....			4 06
	Postage on 133 packages.....			46 55
	500 yeas and nays.....	3 00		
	Paper for same.....			5 88
	Packing, directing and cooperage of Debates for members, 133 boxes of Vol. 1.....	\$19 95		
	Packing, directing and cooperage of Debates for members, 133 boxes of Vol. 2.....	19 95		
	Packing, directing and cooperage of Debates for members, 133 boxes of Vol. 3.....	19 95		
	Packing, directing and cooperage of Debates for members, 133 boxes of Vol. 4.....	19 95		

DEBATES OF THE

[B.] STATEMENT—*Continued.*

CLAIMS OF BENJAMIN SINGERLY.		
Packing and directing 13 packages for officers, Vols. 1 and 2.....	\$1 95	
Packing and directing 13 packages for officers, Vols. 3 and 4.....	1 95	\$83 70
S. Boyd Martin's bill of boxes for packing Debates, to July 5th		401 00
P. & R. R. R. Express Co.'s bill of charges, Vol. 1, June 9th.....		175 00
P. & R. R. R. Express Co.'s bill of charges, Vol. 2, June 25th.....		175 00
P. & R. R. R. Express Co.'s bill of charges, Vol. 3, July 10th.....		187 10
P. & R. R. R. Express Co.'s bill of charges, Vol. 4, Aug. 26th.....		175 00
Folding fly-leaves for Vols. 1, 2, 3, and 4 of the Debates, 4,500 copies each.....	\$72 00	
41¼ per cent. discount from first column.....	2,918 34 1,203 81	4,082 70
Claimed to be not subject to deduction	1,714 53 4,082 70	
	5,797 23	

CONSTITUTIONAL CONVENTION.

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[B.] STATEMENT—Continued.

ALLOWANCES OF THE COMMITTEE.			
Packing and directing 13 packages for officers, Vols. 1 and 2.....	\$1 95		
Packing and directing 13 packages for officers, Vols 3 and 4.....	1 95		
[Passed over until the correctness of the charge made could be more fully ascertained by inquiry and investigation.]			\$83 70
Express Co's charges, for Vol-1...			175 00
“ “ for Vol. 2...			175 00
“ “ for Vol. 3...			187 10
“ “ for Vol. 4...			175 00
[Passed over for the present for further information and investigation.]			
Discount of 41¼ per cent. off.....		\$4,446 06 1,834 00	1,308 16
Not subject to deduction.....		2,612 06 1,308 16	
		3,920 22	
Not yet finally audited, (marked above as passed over for the present,) items to amount to.....			\$473 00

Mr. HAY. Mr. President: I ask leave to make a statement at this time.

The PRESIDENT. The resolution reported by the committee is not yet before the Convention. After the resolution is before the Convention the gentlemen will be in order.

Mr. HAY. I move, then, to proceed with the second reading of the resolution.

The motion was agreed to and the resolution was read the second time, as follows:

Resolved, That there is due to Benjamin Singlerly, Printer for the Convention, in full of all claims to the 15th day of July, 1873, (exclusive of the items in the above mentioned accounts yet to be fully audited, together amounting to the sum of \$714 50, and also exclusive of the items excepted from the audit of the first account, together amounting to the sum of \$2,060 45) the sum of 11,288 35; and that a copy of the above report, and of the action of the Convention thereon, be forthwith certified by the Chief Clerk to the Auditor General of the Commonwealth.

Mr. HAY. I do not propose, unless it is the will of the Convention, to ask for the passage of this resolution at this time, for the reason that it may be possible that in consequence of the necessary length of this report, the members of the Convention have not fully heard and understood its purport. It may, therefore, be desirable that the report should be printed for their information. I have no wish, however, to express on that subject, and have therefore made the motion to proceed to the second reading, and if no member desires that the report shall be printed. I shall press that motion, and ask that the resolution reported be adopted.

Mr. J. W. F. WHITE. I tried to listen to the report as it was read by the Clerk. I found it impossible to hear the whole of it, and I know that many members of the Convention could not hear what was before the body. I, however, gathered enough from the report to see that there was a large difference between the Committee on Accounts and Expenditures and the Printer. It is only just and fair to him and to all the members of the Convention that the matter should lie over until the report be printed, and we have an opportunity of reading it and understanding it. I, therefore, move that the further consideration of this resolution be postponed for the present, and that the report be printed.

Mr. LILLY. I move to amend by striking out "for the present," and inserting "until next Monday at ten o'clock." ["Oh, no!"] My idea is that this question ought to be settled as soon as possible, and therefore I wish a definite time fixed for its consideration, so that we can get through with it.

The amendment was rejected.

Mr. HAY. I would ask the mover of the motion to postpone and print, to indicate the number of copies he desires to have printed.

Mr. J. W. F. WHITE. One hundred and fifty copies.

Mr. EWING. Will not the report go into the Journal?

The PRESIDENT. It will.

Mr. EWING. What then is the necessity of printing in bill form what will be included in the Journal?

Mr. J. W. F. WHITE. That was my own judgment upon the subject; if this report goes into the Journal, it ought not to be printed separately. I added that one hundred and fifty copies should be printed, at the instance of a friend before me, and several others, but I think that printing in the Journal is enough, and therefore I withdraw the motion to print one hundred and fifty copies.

Mr. J. PRICE WETHERILL. Just a word here. There is a very important difference, as I understand, between the Printer and the Committee on Accounts and Expenditures—a difference of some \$18,000. My impression is that if we have printed slips laid on the desks of the members, the attention of every delegate will be attracted to the report, and he will look into the cause of this difference, and justice will be done to the Printer as well as to the Committee on Accounts and Expenditures. Therefore I hope that a report of so much importance as this will not be put into the Journal where it will be overlooked, but that we shall have at least one hundred and fifty slip copies printed, and each member of the Convention furnished with one. I renew the motion to print one hundred and fifty slip copies.

The motion was agreed to.

The PRESIDENT. The question recurs on the motion to postpone.

The motion was agreed to.

THE LEGISLATURE.

Mr. ANDREW REED. I now renew the motion to proceed with the consideration of the article on the Legislature.

Mr. HARRY WHITE. I move to amend that the Convention resolve itself into committee of the whole on the nineteenth and twentieth sections of the report of the Committee on the Legislature. We have not agreed upon those sections; and that, I suppose, would be the regular order of proceeding.

The PRESIDENT. The article itself is now on second reading.

Mr. HARRY WHITE. There were several amendments offered and ordered to be printed and laid on the desks of members. I move therefore that the Convention resolve itself into committee of the whole on the amendments printed to the nineteenth and twentieth sections of the report of the Committee on the Legislature.

Mr. MACVEAGH. I trust that the motion of the gentleman from Mifflin (Mr. Andrew Reed) will prevail, and not the motion of the gentleman from Indiana (Mr. Harry White.) Do not let us throw this whole article back again into committee of the whole.

Mr. HARRY WHITE. It would not do so.

Mr. MACVEAGH. Yes, sir. The article on Legislature was reported to the Convention by the committee of the whole, and upon second reading these amendments were offered and voted upon without completing the second reading. The article was continued and postponed, and now the gentleman asks us to further continue it by moving to go into committee of the whole again.

The PRESIDENT. The order of proceeding with the subject as it now stands, is upon second reading.

Mr. MACVEAGH. Certainly, sir. The motion of the gentleman from Indiana is out of order; but without referring to that, I trust that the motion of the gentleman from Mifflin will prevail, and that we shall at once go on with the second reading of the article and complete it.

The PRESIDENT. The Chair understood that the motion of the delegate from Indiana was to amend the motion of the delegate from Mifflin. The gentleman from Mifflin moved to proceed with the second reading of the article on the Legislature. The delegate from Indiana then moved to amend, by proceeding in committee of the whole to consider the same article. Therefore the Chair recognized the motion to amend as in order. It is in order thus to amend.

Mr. HARRY WHITE. I made a motion to go into committee of the whole for the purpose of general amendments. It seems that the status of the case is this, and I state it so that we may understand where we are: The proposition offered by the gentleman from Allegheny (Mr. D. N. White) fixing a certain manner of apportionment was adopted in committee of the whole; that proposition came out of the committee of the whole, and was voted down in Convention upon second reading, and Mr. Meredith, the then honored President of the Convention, decided that although the motion prevailed to vote down the report, yet it brought the whole article up on second reading. I presume that is the status of the case before the Convention now, and recognizing that decision, I propose to meet the question in this way: I withdraw my motion to go into committee of the whole for the purpose of general amendments, and I move to amend the motion of the delegate from Mifflin as follows:

That the Convention resolve itself into committee of the whole for special amendments, and I indicate the following as the amendment I wish to offer:

"The House of Representatives shall consist of not less than one hundred and fifty-two members, to be apportioned and distributed to the counties of the State severally in proportion to the population on a ratio of twenty-five thousand inhabitants to each member, except that each county shall be entitled to at least one member; and no county shall be attached to another in the formation of a district. And the city of Philadelphia, and any county having an excess of three-fifths of said ratio over one or more ratios, shall be entitled to an additional member. In case the number of one hundred and fifty-two members is not reached by the above apportionment, counties having the largest surplus over one or more ratios shall be entitled to one additional member until the number of one hundred and fifty-two members is made up. The city of Philadelphia and counties entitled to more than three members shall be divided into single districts of compact and contiguous territory as nearly equal in population as possible; but no township or election precinct shall be divided in the formation of a district: *Provided*, That in making said apportionment in the year 1881, and every ten years thereafter, there shall be added to the ratio five hun-

dred for each increase of seventy-five thousand inhabitants."

Mr. BIGLER. Proceeding with the subject in order will bring up this question without entering again into committee of the whole. I have a very distinct recollection that the article was gone through with, except so far as relates to the apportionment, upon which subject all the propositions were voted down. Then the delegate from Philadelphia (Mr. J. Price Wetherill) offered as an amendment a new section, to which I offered an amendment. A motion was made to print the amendments and it prevailed, when the further consideration of the article was postponed to allow the printing of the amendments, and there the subject has remained ever since.

This article is before the body, and it is perfectly competent for us to consider it on second reading. It would be somewhat peculiar for us to proceed to consider in committee of the whole an article that in truth had been almost finished on second reading. I think the object which the delegate from Indiana may have in view can be accomplished by simply taking up this article on second reading, where we left it, and proceeding to complete it.

Mr. MACVEAGH. Why should we adopt an amendment to transpose the orders of the day and remit the article again out of its order to the committee of the whole?

The PRESIDENT. The Chair held that the motion to amend was in order. The motion of the gentleman from Mifflin was to proceed with the second reading and consideration of the article. The motion of the gentleman from Indiana was to go into committee of the whole on the subject, and it would be in order to move that.

Mr. MACVEAGH. I beg to suggest to the Chair that under the rules of order we have prescribed, it seems to me that a suspension of those rules would be indispensable before we can take an article on second reading out of the hands of the Convention and re-transfer it to the committee of the whole.

Mr. HARRY WHITE. Will my friend from Dauphin give way for a moment?

Mr. MACVEAGH. Certainly.

Mr. HARRY WHITE. Then, if the delegate will allow me, I propose to withdraw my motion to go into committee of the whole for the purpose of special amendments, as I do not want the Convention

to get into confusion. This will allow the motion of the gentleman from Mifflin to prevail, and when that is done I will offer my amendment.

Mr. MACVEAGH. That is right.

The PRESIDENT. Then the question is on the motion of the gentleman from Mifflin (Mr. Andrew Reed.)

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

The PRESIDENT. When this article was last before the Convention, the question was upon an amendment moved by the gentleman from Philadelphia, (Mr. J. Price Wetherill,) as section 19, which will be read.

The CLERK read as follows:

"The General Assembly shall apportion the State every ten years, beginning at its first session after the adoption of this Constitution, by dividing the population of the State, as ascertained by the last preceding census of the United States, by the number of one hundred and fifty, and the quotient shall be the ratio of representation in the House of Representatives. Every county shall be entitled to one Representative unless its population is less than three-fifths of the ratio. Every county having a population not less than the ratio and three-fifths shall be entitled to two Representatives, and for each additional number of inhabitants equal to the ratio, one Representative. Counties containing less than three-fifths of the ratio shall be formed into single districts of compact and contiguous territory, bounded by county lines, and contain as nearly as possible an equal number of inhabitants; or where there is not sufficient population in counties having less than three-fifths of a ratio which are adjacent to each other to form a single district, such counties shall be annexed to any one adjoining county, and the district so formed shall be entitled to the same number of members as if it consisted of a single county."

Mr. HARRY WHITE. I move to amend the amendment by striking out all after the word "the," in the first line, and inserting the following:

"House of Representatives shall consist of not less than one hundred and fifty-two members, to be apportioned and distributed to the counties of the State severally in proportion to the population on a ratio of twenty-five thousand inhabitants to each member, except that each county

shall be entitled to at least one member; and no county shall be attached to another in the formation of a district. And the city of Philadelphia and any county having an excess of three-fifths of said ratio over one or more ratios shall be entitled to an additional member. In case the number of one hundred and fifty-two members is not reached by the above apportionment, counties having the largest surplus over one or more ratios shall be entitled to one additional member until the number of one hundred and fifty-two members is made up. The city of Philadelphia and counties entitled to more than three members shall be divided into single districts of compact and contiguous territory as nearly equal in population as possible; but no township or election precinct shall be divided in the formation of a district: *Provided*, That in making said apportionment in the year 1881 and every ten years thereafter there shall be added to the ratio five hundred for each increase of seventy-five thousand inhabitants."

The PRESIDENT. The question is on the amendment of the delegate from Indiana.

Mr. BUCKALEW. Now, Mr. President, I call for the reading of the nineteenth section.

Mr. LILLY. I think that the proposition of the gentleman from Philadelphia (Mr. J. Price Wetherill) itself is the nineteenth section under consideration. It is to be in the place of the nineteenth section.

Mr. J. PRICE WETHERILL. I hope I may be pardoned for saying one word to give my recollection of this matter to the Convention. When the article was upon second reading we had under consideration a variety of amendments, and they were all voted down and the section itself was voted down, and in order to introduce a section into the article upon the subject of apportionment, I offered this as a new section. It was not an amendment. The last amendment that was acted upon and voted down was the amendment of the gentleman from Allegheny, (Mr. D. N. White,) and when the Convention was left in that dilemma, with an important article on the Legislature without a section for apportionment in it, it seemed to me that it was essential that a section of that sort should be introduced, and I offered this as a new section. Therefore it is section nineteen not acted upon on second reading, and in my opinion clearly in order and before the Convention.

The CLERK. The nineteenth section, or the section that was reported from the committee of the whole, was left with the Printer, and I made arrangements with the Printer to have that printed in the pamphlet. The Printer submitted the matter to Mr. Lamberton, Mr. Kaine and Mr. Alricks, and several gentlemen at Bedford Springs, and they said that it should be left out. I stated over the section in italics that it had not passed second reading. That manuscript section is now in the hands of the Printer at Harrisburg, I suppose. In the original bill form I have the report of the committee as submitted by Mr. MacVeagh.

Mr. BUCKALEW. Before we commence considering these amendments, I desire to ascertain the general situation of this subject. I understand now that we are in this predicament: We have no more than two propositions before us at any one time. The proposition of the gentleman from Philadelphia is an amendment; it ranks as such. Although we have no original text in the place where it is proposed, yet it is an amendment to the article. It has the characteristics of an amendment merely, and it is only possible for an amendment to his amendment to be proposed to the Convention. We are therefore in the situation instead of having three propositions before us, as we ordinarily have in a case of this kind, to wit, the original text, an amendment, and an amendment to the amendment, that we really have but two, and at present we shall be obliged to vote in the first instance between the amendment of the gentleman from Philadelphia and the amendment to the amendment, proposed by the gentleman from Indiana. The choice is between those two. If we take neither of them we have nothing left.

Mr. J. PRICE WETHERILL. Just a word here. The Convention will find in volume five of the Debates, p. 715, the following:

"Mr. J. PRICE WETHERILL. I offer the following as a new section at this place, to be numbered nineteen."

Certainly, I think that makes the matter entirely clear.

Mr. HARRY WHITE. Now, Mr. President, I am satisfied that we all understand the matter; at least I hope I understand the exact situation of the proposition before the Convention. If I am correctly informed, I understand the situation to be this. The committee of the whole rose, having agreed upon a certain propo-

sition which was to be the nineteenth section. When it came up on second reading that proposition was voted down. That left us without any nineteenth section at all. The honorable delegate from Philadelphia (Mr. J. Price Wetherill) then offered an amendment, which was read in your hearing. I had the honor then to rise in my place and offer an amendment to his amendment, and that amendment to the amendment of the delegate from Philadelphia is the question before the Convention at this time. I understand, then, if the amendment I have offered prevails, the next question will be upon adopting the amendment thus amended and making it the nineteenth section; with this understanding let me say a word in explanation.

At the outset I must congratulate the Convention upon having before them this morning an entirely novel question. We are not acquainted at all in this Convention with the matter of apportionment, and we may congratulate ourselves that we have inaugurated the opening hours of the Convention by so new a proposition.

Now, Mr. President, the principles of the amendment I have offered are to be found in a slip which I hold in my hand which was printed by the order of the Convention. Delegates will understand that it contemplates constituting the House of Representatives of one hundred and fifty-two members. It recognizes the principle of separate county representation and allows an additional member for three-fifths of the ratio, which is fixed at twenty-five thousand population, and then provides, after the apportionment of 1881, there shall be added five hundred to the ratio for an increase of every seventy-five thousand population, thus preventing that unnatural and inordinate increase which might result in the future.

MR. LILLY. I should like to ask the gentleman a question. My question is, in what particular does his proposition vary from the proposition of the gentleman from Allegheny (Mr. D. N. White?) It appears to me to be precisely the same thing that we voted down.

MR. HARRY WHITE. In no material particular does it differ from the proposition offered by the delegate from Allegheny, (Mr. D. N. White;) but it is the same in principle. There are some differences of detail. It recognizes the principle of separate county representation; it recognizes the principle of single dis-

tricts, and it provides that where any county is entitled to more than three members they shall be elected from single districts, formed as shall be regulated by law.

This, Mr. President, is the entire purpose and purport of this amendment. It is a complete system in itself. It recognizes separate representation for counties, regulates the manner of forming districts when they are entitled to additional representatives, and for the manner of apportionment. Pass this section and it is complete in itself. I apprehend there is no gentleman who is in favor of separate county representation but will accept cordially the proposition as it is now before the Convention.

And why should it not be accepted? Why should we not accept separate county representation? If any gentleman here complains of the principle, let me call attention to the fact that practically it but slightly affects the number of our Legislature. There are but few counties in this Commonwealth which would not be entitled to separate representation upon any number which may be agreed upon by this Convention for a ratio. I assume and take it for granted that we agree the number of members of the House of Representatives shall be one hundred and fifty or thereabout. Time and again the sense of this Convention has been indicated accordingly. Of course hereafter the ratio of representation will be diminished; that is to say, the number of population or taxables, if you adopt that principle hereafter, will be decreased in number from that which is now recognized upon the basis of one hundred members. Cast your eye over the Commonwealth. Look at the population of the several counties, and there are but five or six counties in the Commonwealth which would be so small as not to be entitled to a separate representation. The county of Cameron, the county of Elk, the county of Forest, the county of Sullivan, the county of Fulton and the county of Pike, six counties in all, practically cover the political communities which are so small that it would seem to be unnatural to allow them separate representation. If, then, any gentleman complains of the principle, let us be practical and realize that any surrender of conviction about the number of members makes in the end practically little difference.

I hold, however, that this Convention should adopt the principle of separate

county representation. Why not? The Legislature in the exercise of its power since the amended Constitution of 1838 has seen fit to form certain large territories sparsely populated into separate counties, giving them the power of separate political communities, clothing them with the great authority of organizing courts, administering justice, and levying taxes. I submit then that under any system of legislation which may control the law-making power, those separate communities should have a voice on the floor of your Legislature.

I recollect reading years ago the speech of John Adams, in eulogy of the great Commonwealth of Massachusetts. He pointed with pride to her history; he pointed with pride to her prosperity. The great reasons he assigned for that prosperity were her common school system, the morality of her people, and her *separate town* representation.

Gentlemen on this floor have argued in favor of a large increase of the number of members of our Legislature for the purpose of increasing the purity of that body, and they have pointed with pride to New Hampshire, Vermont, Massachusetts and some of the smaller Commonwealths which have more numerous members in their Legislatures than we of Pennsylvania. Let me remind those delegates that the fundamental principles which those small Commonwealths have recognized has been separate county representation.

One word more before I take my seat. I apprehend that we should have some political philosophy in enunciating the manner of apportionment, and if we do not recognize the principle of separate county representation I submit we have no philosophy whatever in our plan of representation. You take your Senate and you make your apportionment there upon the basis of population. We have passed a section which authorizes the Legislature to apportion the State into senatorial districts to the number of fifty every ten years. That is upon the basis entirely of population. I submit then that the more popular branch of the Legislature should blend and combine these two elementary principles. We should recognize the principle of separate county representation, and after we have secured that, as we do by the selection of sixty-six members from the different counties, then distribute the additional representatives to the different communities according to the ratio of population.

I hope, sir, that we shall settle this vexed question by the adoption of this proposition.

Mr. J. PRICE WETHERILL. Mr. President: I do not intend to occupy the time of the Convention with any lengthy speech in reply to the one just made by the gentleman from Indiana. We have heard pretty much the same thing all winter. There has been a conflict in this Convention as to whether we shall act upon principle on this subject or whether we shall concede to each county a representative, and it seems to me the Convention very wisely concluded at one of its sessions that we would act upon principle, that representation should be based upon population, and that we would not, because it would be pleasing to some and very likely unjust to others, give nine or ten counties a representative when they were not entitled to it by their population. That thing is well understood. Not a single word could be added by the gentleman from Indiana or any one else upon that subject which would enlighten the minds of the members of this body.

One word as to my amendment, so that I may remind members of what it proposes. It will give 23,000 population one representative, 14,000 one representative, and 37,000 two representatives, thus giving a representative for a full ratio, a representative for three-fifths of a ratio, 14,000, and an additional representative for one and three-fifths ratio. It gives twenty-six counties one representative; it gives to fifteen counties two representatives; to eight counties three; to one, four; to two, Schuylkill and Lancaster, five; to one, Luzerne, seven; to Allegheny, eleven, and to Philadelphia twenty-nine, thus in a fair equitable manner giving a representation to each county of over 14,000 population.

In regard to the small counties, by uniting Fulton with Bedford, Fulton will get her share, although having a population of but 9,000. By uniting Sullivan to Bradford, Sullivan will get her share, although having a population of only 6,000, by having one representative, while Bradford will still be entitled to her full share. Wayne would get her member losing nothing, but by uniting Pike thereto, with a population of 8,500, Wayne and Pike would have two. Thus every county in the State would have a representative with the exception of Cameron, Forest and Elk, having a united population of 16,000, and M'Kean and Potter,

with a joint population of 20,000, and each of these groupings of counties would have one member.

Mr. BOYD. How many do you give Montgomery?

Mr. J. PRICE WETHERILL. We give Montgomery her full share. She has a population of 86,000 or 87,000, and would be entitled to not less than three members certainly, perhaps four. Thus the representation throughout the State would be fair and equal according to population, and the section could be carried out upon a correct principle. What more need I say? Its defects I clearly and frankly laid before the Convention in the remarks I made on a former occasion on this subject, which can be found in our Debates, and which I will not repeat. At the same time I attempted to show as clearly as I could its advantages. I placed its defects and advantages side by side, and I believe the advantages are greater than the defects; as no proposition can be perfect, we can only make a near approach thereto.

With this explanation and these few remarks, I submit the amendment to the judgment of the Convention.

Mr. MACVEAGH obtained the floor.

Mr. BIGLER. I ask the gentleman from Dauphin to allow me to make an explanation before he proceeds.

Mr. MACVEAGH. Certainly.

Mr. BIGLER. Mr. President: I stated some minutes ago what my recollection was about the condition of the question. I knew that the delegate from the city (Mr. J. Price Wetherill) had offered an amendment as a new section, and my recollection was clear that I had offered an amendment to strike out that section and insert another. By some means or other the section was mislaid, but the amendment appears upon the Journal. Therefore the order of business at present is not exactly correct. There was an amendment pending at the time—the amendment which I had offered. I do not care to interrupt the proceedings, but I should be very glad to offer that amendment as an amendment to the amendment of the delegate from Indiana. As these propositions all differ in some measure, the Convention would thus have a fair opportunity of judging between them.

The PRESIDENT. The Chair will state that we all have become somewhat confused in this matter. On referring to the Journal, the Clerk informs me that the amendment pending when we adjourned was on the amendment of the delegate

from Clearfield (Mr. Bigler) to the amendment of the delegate from the city (Mr. J. Price Wetherill.) The Journal shows that to have been the condition of the question when we adjourned. The original section was voted down. Mr. J. P. Wetherill offered an amendment as a substitute for the section, and Mr. Bigler offered his amendment to that, and on that we adjourned. Perhaps we had better come back to the *status* we were in when we adjourned.

Mr. BIGLER. Then, Mr. President, unless the delegate from Indiana sees proper to withdraw his amendment—

The PRESIDENT. The Chair will suggest that the delegate from Indiana can withdraw his amendment for the present and offer it hereafter.

Mr. LILLY. If that is the state of the case, I suppose it is out of order without withdrawing it.

The PRESIDENT. The Chair would prefer that the delegate should withdraw his amendment.

Mr. HARRY WHITE. Of course if it is out of order I shall have to withdraw it; but I should like to fix the matter up with the gentleman from Clearfield. [Laughter.]

Mr. BIGLER. The right way to do that would be to vote for my amendment. [Laughter.]

The PRESIDENT. The Journal is correct, and the pending question is on the amendment of the delegate from Clearfield (Mr. Bigler) to the amendment of the delegate from the city, (Mr. J. Price Wetherill,) which will be read.

The CLERK read the amendment to the amendment, as follows:

“The ratio for a member of the House of Representatives shall be the one hundred and fiftieth part of the entire population of the State, according to the enumeration thereof by the last Federal census. Counties containing each a population of five ratios or less, shall be districts and entitled to representation, according to population, except that no district shall have less than one member. Any district having an excess of population exceeding one-half of a ratio over one or more ratios shall be entitled to an additional member. Counties or cities having a population exceeding five ratios shall be divided into compact districts as nearly equal in population as practicable, and such districts be entitled to not more than three members each. Counties hereafter

erected shall be entitled to one member each."

Mr. BIGLER. I avail myself of the courtesy of the delegate from Dauphin (Mr. MacVeagh) to say a word or two about this amendment. It is very simple and very plain, and the distinction between the two propositions will be seen in a moment. The delegate from the city (Mr. J. Price Wetherill) proposes to impose the duty of apportionment upon the Legislature. The amendment which I have submitted has no reference to that question whatever. I intended, however, to offer another proposition entirely different from that of the delegate from the city, on that subject. But the strong point of difference is that my proposition concedes at least one member to every county, while that of the delegate from the city clusters the small counties. In short, the proposition which I submit as an amendment sets out by declaring that each county shall be a legislative district entitled to representation according to population, except that no county shall have less than one member, and that an excess of the ratio shall also be entitled to representation. With reference to the three large counties of Luzerne, Allegheny and Philadelphia, it provides that they shall be districted. These are the points of difference. The proposition which was under consideration a moment ago has this distinctive difference from the other two, that it proposes single legislative districts, each having one member.

These are the points of consideration, and it is just as well to consider the value of the proposition of the delegate from Indiana in this connection, and therefore I allude to it now.

Mr. MACVEAGH. Mr. President: I belong to that small minority of this body whose members have not any particular project for the organization of the House of Representatives, and I desire to speak to that minority rather than to the majority of the Convention, who, when we were last assembled, seemed possessed with the determination either to secure each for himself his own particular project or to assist in voting down any project that was not entirely acceptable to him.

Now I desire to call the attention of the Convention to certain points that we ought either to regard as already settled in this matter or to take test votes and settle them. One is whether each county is to have a member. The argument upon

that question has certainly been exhausted. We have taken innumerable votes upon it, but our votes were wavering for the reason that men who were in favor of separate county representation, when the proposition came for a final vote where offended at some other provision in the proposed section, and they assisted in voting it down. Then those who were opposed to separate county representation, like the gentleman from Philadelphia, (Mr. Wetherill,) thought at once that the majority of the Convention was opposed to separate county representation. The moment a proposition in that sense was introduced it also was voted down, and the result was that we spent day after day, not in settling any single proposition on which a majority was agreed, but in voting down every proposition that was offered.

Mr. S. A. PURVIANCE. Will the gentleman from Dauphin allow me to interrupt him?

Mr. MACVEAGH. Yes, sir.

Mr. S. A. PURVIANCE. My distinct recollection is that the question was brought separately and distinctly before this body as to whether each and every county in the Commonwealth should have a representative, irrespective of population, and it was decided in the affirmative.

Mr. MACVEAGH. I was just going to state that I was myself opposed to the separate representation of counties until a test vote, not once but I think three times, was taken. Certainly once a clear test vote was taken, and a decisive majority of this body pronounced in favor of separate county representation. From that time forward I ceased my opposition utterly, but when the proposition came forward embracing a provision for separate county representation, gentlemen who were in favor of it voted "no" because of other provisions in the article, and other gentlemen voted "no" who were in favor of every other provision in the article because it contained that provision. Now, I submit that in that method of voting, with that tenacity of purpose to over-ride the mature judgment of a majority of this body, it is impossible to reach any satisfactory result, and that when the body takes a clear responsibility upon a test vote disincumbered of every other consideration, and says "aye, we will have separate county representation," then for one, I understand that henceforward, without submitting any rule for the gov-

ornment of anybody else, I will accept that principal as the principal of that majority of this body and endeavor to perfect the article in other respects.

We had accepted the proposition of the gentleman from Allegheny, (Mr. D. N. White,) and it was finally defeated, in my judgment simply because members of the Convention who were in favor of it in every other respect were opposed to separate county representation, and assisted, therefore, to vote it down.

- Now, I trust that we shall take test votes again, if that be desired; that as often as it is desired we shall take them—the freest liberty of discussion and of voting being allowed; but when the Convention does solemnly decide upon a principal that then we shall accept that decision in good faith and go on to perfect the article.

The differences between the pending propositions are not very important. The first is the question of separate county representation; the second is whether the ratio shall be a quotient that is the result of taking the population and dividing by a fixed number, as the gentleman from Philadelphia (Mr. J. Price Wetherill) proposes, and which I confess seems to my mind an unexceptionably fair proposition, or whether it shall be a fixed number of 25,000 as contemplated by the gentleman from Allegheny, (Mr. D. N. White,) and the third is as to the method of using the fractions. I think this Convention would do wisely to consider that we fixed the number after a great deal of skirmishing and voting one way and another at 152. I think the Convention would do wisely to consider that we decided the question of separate county representation, but if not, let us reconsider it, debate it as long as gentlemen think it wise and then decide it, and if the principle is accepted let us go forward and perfect the article. It is simply in the interest not of a hasty discharge of this duty, but of a discharge of it that will reach a practical result, acceptable not in every detail to a majority of the whole body, but acceptable in its general purport and in the main scope of its provisions to a majority of the Convention, that I have felt at liberty to urge these considerations at this time.

Mr. LILLY. Mr. President: I am opposed to a separate county representation when it is mixed up with a proposition for representation on population, and can only support it when you separate it in such a way that it becomes a principle,

and then I am ready to take that as a compromise between my opinion and the opinions of others who go for separate county representation upon the principle of the plan offered by the gentleman from Allegheny, (Mr. D. N. White,) and re-offered by the gentleman from Indiana (Mr. Harry White) to-day. Now, I take it that giving each county a representative because it is a county is the most delusive thing that has been offered in this Convention. It overturns all principle upon which representation in the lower House or popular branch of the Legislature should be founded, in my opinion. In the first place, I take it that the reason why we send representatives to the Legislature at all is because it is impracticable or impossible for the people all to go to the Capital of the State to make laws, and the consequence is that we send representatives. Representatives of what sir? Representatives of the people, not of court-houses and jails, but representatives of the people.

The plan which is proposed by the gentleman from Indiana and the gentleman from Allegheny, and which was voted for by a majority of this Convention at one time, contains that principle to such an extent that it never can receive my assent. The counties of Cameron and Elk have a very small fraction, about 4,000 people each. The gentleman from Susquehanna (Mr. Turrell) says we have had that all over, but it has been so long ago that some of us have forgotten it.

Mr. TURRELL. Oh, no.

Mr. LILLY. On that plan, counties containing over twenty-five thousand people are only one-seventh as much represented as these small counties. Now the only way I am willing to see this county representation is, first, to have a county represented because it is a county, and then to apportion if you please one hundred and fifty members among all the counties according to population strictly, making them into single legislative districts, if you please, not dividing any township or election precinct, but dividing the State up in any other way. That is the only basis on which I can see myself at liberty to support county representation. It is the greatest fallacy in the world for us to be talking about it because they are political divisions. You can carry that down to townships. The gentleman of Indiana says because they assess taxes they ought to be separately represented. Every township in

the State of Pennsylvania assesses taxes, and consequently the townships ought to be separately represented!

Mr. BUCKALEW. And every borough.

Mr. LILLY. Yes, and every borough should be represented separately, according to the gentleman from Indiana. The gentleman from Indiana takes that position, which I think is altogether wrong, and he goes further and rather carries out the idea that because they are not separately represented they are not represented at all! Well, I take it that if two counties lying side by side send one man to the Legislature, that man is bound to represent the two counties as much as one, and he does it, and it is a delusive thing to say that a county should have a representative because it is a county!

I feel very strongly on this subject, and did before the Convention adjourned. I have had no new light thrown on the subject since, and my conversation with the people has led me to no different conclusion. On the contrary, every man I have conversed with on this subject away from this body is strongly opposed to this separate representation, or the mere representation of a county because it is a county. Every one that I have spoken to on this subject is opposed to it and says it is entirely wrong. Men from the most populous counties of the State said to me, men from Berks county said to me: "If you adopt that thing we will give the largest majority against your Constitution that we ever polled in Berks county." How much they spoke for the people of Berks county I do not pretend to say; but people from other counties have talked in the same way to me because they say (which is the truth) that it is doing those people a great wrong to give counties that have no population or only four or five thousand population seven times as much representation as they have. It is certainly doing a great wrong to the larger counties.

I hope that the amendment of the gentleman from Clearfield (Mr. Bigler) will not be adopted, and I hope if we can get to the proposition of the gentleman from Philadelphia (Mr. J. Price Wetherill) it will be adopted. But if the great champions for county representation will agree in the first place that each county shall have a representation because it is a county, lay that down as a principle, not because it has any population in it at all, but because it is a county, and then divide the population without any reference whatever to counties into districts ac-

cording to the number of members we shall fix on, then I probably shall vote for it.

The PRESIDENT. The question is on the amendment proposed by the delegate from Clearfield (Mr. Bigler) to the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

Mr. BIGLER. Let us have the yeas and nays on that.

Mr. HUNSICKER. I second the call.

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

Y E A S .

Messrs. Achenbach, Baer, Bailey, (Huntingdon,) Bigler, Bowman, Brodhead, Buckalew, Bullitt, Dunning, Fulton Funck, Gibson, Guthrie, Harvey, Hay, Hunsicker, Kaine, Landis, Long, Metzgar, Palmer, G. W., Parsons, Patton, Purviance, Samuel A., Read, John R., Reed, Andrew, Sharp, Smith, H. G., Smith Wm. H., Stewart, Van Reed and Wright—32.

N A Y S .

Messrs. Ainey, Alricks, Baily, (Perry,) Bannan, Bartholomew, Boyd, Broomall, Calvin, Campbell, Carey, Carter, Cochran, Collins, Corbett, Corson, Curry, Darlington, Davis, De France, Edwards, Ewing, Finney, Green, Hanna, Hazzard, Lawrence, Lilly, MacConnell, MacVeagh, M'Camant, M'CLean, M'Culloch, Minor, Newlin, Patterson, D. W., Pughe, Rooke, Runk, Russell, Smith, Henry W., Stanton, Struthers, Turrell, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F., Woodward, Worrell and Walker, President—51.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Baker, Barclay, Bardsley, Beebe, Biddle, Black, Charles A., Black, J. C., Brown, Cassidy, Church, Clark, Craig, Cronmiller, Curtin, Cuyley, Dallas, Dodd, Elliott, Ellis, Fell, Gilpin, Hall, Hemphill, Heverin, Horton, Howard, Knight, Lamberton, Lear, Littleton, M'Michael, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Reynolds, Ross, Simpson, Temple and Wherry—50.

Mr. HARRY WHITE. I now renew the amendment which lies on the Clerk's desk.

The PRESIDENT. The gentleman from Indiana renews his amendment. It will be read.

The Clerk read as follows: Strike out all after the word "the," in the first line, and insert:

"House of Representatives shall consist of not less than one hundred and fifty-two members, to be apportioned and distributed to the counties of the State severally in proportion to the population, on a ratio of 25,000 inhabitants to each member, except that each county shall be entitled to at least one member; and no county shall be attached to another in the formation of a district. And the city of Philadelphia, and any county having an excess of three-fifths of said ratio over one or more ratios, shall be entitled to an additional member. In case the number of one hundred and fifty-two members is not reached by the above apportionment, counties having the largest surplus over one or more ratios shall be entitled to one additional member, until the number of one hundred and fifty-two members is made up. The city of Philadelphia and counties entitled to more than three members, shall be divided into single districts of compact and contiguous territory, as nearly equal in population as possible, but no township or election precinct shall be divided in the formation of a district: *Provided*, That in making said apportionment in the year 1881, and every ten years thereafter, there shall be added to the ratio of 500 for each increase of 75,000 inhabitants."

MR. BUCKALEW. It is not at all likely that any considerable number of the members of this Convention will be entirely suited with any section which may be proposed with reference to the subject of representation in the House of Representatives, for so many considerations are involved in this question that we cannot expect the solution of all of them in an amendment, will accord with the views of any considerable number of members. We shall, therefore, be obliged in voting upon the question to select between the different propositions presented to us, and take that one which, upon the whole, is most, although not entirely, acceptable to our individual judgments.

Now, the amendment proposed by the member from Indiana might be accepted in some of its features, probably by each member of the Convention, for it comprises some half dozen different points. I shall, for one, be obliged to vote against

it, however, because there are, in my judgment, several strong objections to it, objections which I cannot overlook or ignore. The amendment of the gentleman provides largely for single districts. A large part of the membership of the House under his amendment would be chosen by single districts. Now, my judgment is strongly and immovably set against single districts in representation, and if I needed any illustration of the mischiefs of this plan, it would be afforded me by the example of the city of Philadelphia ever since the year 1864. We all know that from the time when single districts were introduced into our representation for Philadelphia, under an amendment to the Constitution which was drawn by me, the character of the delegation from this city has degenerated both in regard to moral and intellectual quality. Nothing is more certain than that the city ever since this change has been represented in the Legislature of this State, speaking in the main, by inferior men. There are, of course, some exceptions, and I do not in what I say on this subject intend to reflect upon individuals. I am speaking of a plan and of a general result which has come from it. Upon this point you have had the emphatic and powerful appeal of the late President of this Convention. He told you, and he told you truly, what was the inevitable result of breaking up the municipal divisions of the State into small districts for the purpose of selecting representatives in the Legislature. He told you that it degraded and lowered the tone and character of representation in legislative bodies, and he spoke, I suppose, not only with reference to his observation in his own city of Philadelphia, but from a larger observation directed to other States and to other countries.

In the first place, then, I am opposed to this amendment because it proposes that every city and county entitled to more than three representatives, shall be divided and elect its representatives from single districts. I think it would be a change greatly injurious to the character of the Legislature, and to the interests of the Commonwealth.

I am opposed also to the amendment of the gentleman from Indiana, because he has adopted an incorrect principle for the representation of fractions. As I spoke on this point before, I shall not enlarge upon it now. He provides for a single fraction to be represented, and he would

represent that equally in large and small districts; so that a county with a fraction of two-thirds upon one member shall be entitled to a second; that a county entitled to seven members, say Luzerne, or Philadelphia, entitled to say thirty members, shall likewise have a representation for the same fraction.

Now, sir, there is no equality in representation of this sort. In the case of a county with one member, it may have 49 per cent. for a second member and will not get it. There may be half a dozen counties contiguous in the same situation, which may lose two or three representatives upon what, aggregated together, would be a population entitled to that number. Whereas, in the large district, the district with twenty or thirty representatives, it is impossible that there should ever be a loss of more than one fraction. In the one case, in short, in those portions of the State which are divided into counties of small size, there may be enormous losses, and necessarily would be in some cases, whereas in the heavy districts there never could be a loss of more than one fraction in each.

The Committee on Suffrage, Election and Representation proposed a scale of fractional representation upon one member, upon two members, and upon three or more, and fractions of different magnitude, adjusting this subject on a proper basis. This amendment, however, makes no provision of that kind. I am opposed also to this amendment because it represents very small and diminutive divisions of the State because they are called counties.

It is my belief that this provision is to be opposed, and justly opposed, upon two grounds; first, it is unequal and it abandons the principle of representation upon which we propose to base the House of Representatives, to wit, the principle of numbers. It abandons that entirely, and it is unequal and unjust because it gives to one-fifth or one-seventh of the number of people entitled to representation ordinarily throughout the State representation in particular divisions of the State. It is to be opposed also upon the ground that it will be exceedingly offensive in the State when our amendments go before the people, and I venture to say that this little provision will create about as much antagonism to our constitutional amendments as any other one which we shall propose. It will be a constant subject for debate and denunciation in the newspa-

pers of Philadelphia and Allegheny, Lancaster, Luzerne, Schuylkill and Berks, from the time our amendments are submitted until the election shall be held. Although the question only relates to say half a dozen members out of one hundred and fifty, and may be supposed to be comparatively insignificant, yet it will attract a large amount of public attention and opposition throughout the State, because it will strike the average mass of men as unjust, as establishing unequal representation and as abandoning the true principle of population or numbers in constituting the House of Representatives.

Therefore, I should be opposed to this part of the amendment of the gentleman from Indiana, if for no other reason, because it will not be acceptable to the people of the State and will excite opposition and hostility.

Mr. President, I confine myself at present to this amendment, proposed by the gentlemen from Indiana from our adoption without going into the general debate upon other points not contained in it, an opportunity to discuss which will be presented hereafter.

Mr. BARTHOLOMEW. Mr. President: Whilst I like the provision contained in the amendment offered by the gentleman from Indiana, to which the gentleman from Columbia, is so stoutly opposed, to wit, the separate district representation, yet I am opposed to that amendment because it includes within it the idea of county representation. I do not think that the popular branch of the Legislature, which ought to represent the people, should represent counties; it should represent numbers. I believe that is a principle fixed and established, and I do not think we should depart from it. I think it is a true principle.

The difficulty that we are laboring under is that the amendments that have been offered are schemes of the different members proposing them. Each amendment includes several propositions. Therefore we can not perfect any one of them until we vote down all except the one scheme, when we may offer amendments to that which will perfect a system that perhaps will be acceptable to this Convention. I shall vote against the amendment of the gentleman from Indiana upon that ground. It contains that within it which I like and approve, but it contains that within it which I dislike and of which I disapprove.

Now, the gentleman from Columbia tells us that the late President of this Convention, for whose opinion I have as high a respect as any man on this floor, said that the single district representation worked harm. The gentlemen from Columbia, whose opinion I have a high regard for, says it will work harm. But this is an assertion. They do not give us a reason. If the late President of this Convention gave reasons therefor, the gentleman from Columbia has failed to give them or to reiterate them. He himself has given no reason why a separate district system would work hurtfully or injuriously to the public interest. Now, I cannot understand that the mere proposition that he makes, that the character of the representatives from the city of Philadelphia has been lowered since the adoption of the district system, proves that the system itself is at fault for the character of the representatives. No, that is not it. The reason for the lowering of the character of the representatives from the city of Philadelphia, and perhaps from all parts of this Commonwealth, is attributable to another cause, a more weighty and a more pertinent one. It is owing to the influences, to the growing interests that are acted upon and being discussed and passed and made into laws at Harrisburg.

When the old system was in vogue, when the corporation interests of the State had not reached their fullness, the many influences which are supposed to be hurtful and injurious and fraudulent, those which are supposed to corrupt the members of the Legislature, had not grown into power and strength. These are the reasons why the character of representatives has been lowered. It is a struggle for place. The men who now go to Harrisburg go not for the purpose of serving the State and working out its best interests, for its development and the good of its people, but for selfish and personal interests, for mere plunder, if I may use the term. I speak of most, for of course there are honorable exceptions; but still we have had it upon this floor, it has been spoken of and it has been reiterated so often that it is almost an accepted fact in argument. Many of us, I suppose, may have very grave doubt on that subject; nevertheless there is that incentive which has induced bad men to seek this place and to cast aside better men by means of mere political machinery and political work and political labor, and they have succeeded in ousting or casting aside bet-

ter men. This has been the reason why the character of the representatives of the city of Philadelphia and of this Commonwealth has been lowered.

Now, I take it that the single district system is the correct one. You take a large county like Luzerne, or you take a county like Schuylkill, where you have four or five representatives to be elected. Men living in a distant part of the county, the county being divided by chains of mountains, having different commercial centers, the towns having no connection, their finances, their mining, their shipping entirely disconnected with each other, select a man by reason of these divisions. These different parts of the county have their candidates selected in the Convention. Each of them owes no obligation to the other parts of the county; he has nothing to do with them; he cares nothing about them, and he is not responsible and he does not feel that he is responsible to the people of the whole county. But if you have separate districts where you bring the representative directly to the people, where the people have direct control over him, then you hold a practical check upon him, then he feels his responsibility, then he is more interested because he knows that he is under the eye of those to whom he owes his election in his action at the Capital. Therefore I say so far as that system is concerned, I am in favor of the single district system because it brings the representative more directly in contact with the people, and gives to the people a greater control over the representative. That provision in the amendment of the gentleman from Indiana I am heartily in favor of.

I am opposed, however, to separate county representation because I believe it violative of the principle of republican government that the popular branch of the Legislature should be based upon population, and upon that alone.

THE PRESIDENT. The hour of one o'clock having arrived, the Convention stands adjourned until three o'clock this afternoon.

AFTERNOON SESSION.

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

THE LEGISLATURE.

THE PRESIDENT. When the Convention took its recess the question was on the amendment offered by the delegate from Indiana (Mr. Harry White) to

the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill) to the article on the Legislature.

Mr. HARRY WHITE called for the yeas and nays.

Mr. MACVEAGH. Let it be read, Mr. Chairman. I understand it is essentially the proposition of the gentleman from Allegheny (Mr. D. N. White.)

The CLERK read the amendment to the amendment.

Mr. D. N. WHITE. Before the vote is taken, I should like to say a few words. The history of the present amendment is something like this: I had the honor of offering the proposition which passed the committee of the whole, and it was divided into sections nineteen and twenty of the article on the Legislature. When the question came up on second reading, after a full debate, section nineteen was defeated by a very small majority; and no action has ever been taken on section twenty on second reading. The gentleman from Indiana (Mr. Harry White) afterwards changed one word in section nineteen, making one hundred and fifty-three the number of representatives instead of one hundred and fifty-two, and offered it as an amendment. When we adjourned this morning, as was stated by the Chair, the question was on the amendment offered by the gentleman from Clearfield, (Mr. Bigler,) and the amendment of the gentleman from Philadelphia (Mr. J. Price Wetherill) was next in order.

The amendment offered this morning by my friend from Indiana is substantially the same, almost word for word, as the two sections passed the committee of the whole. They have now been incorporated into one section so that there could be no misunderstanding of what was before the Convention. At the time we took the vote on second reading which defeated section nineteen there was an impression throughout the Convention that we were voting on the question of dividing counties into single districts, which was not contained in that section but in the succeeding one. I believe that had it not been for that impression, section nineteen would at that time have been carried, and to avoid any repetition of such a mistake these two sections have been incorporated together. The objection that several members of the Convention entertained to having their counties divided into single districts has been obviated by requiring

that no county having three members or less shall be divided.

Mr. LAWRENCE. No county with three members, or less, shall be divided.

Mr. D. N. WHITE. Yes, sir. If members will look at this amendment carefully—and it has been carefully considered—they will find that in the first place it prevents all gerrymandering. Every member knows that it has been the habit of parties possessing the political power in the Legislature of the State at the time of making the apportionment, to so apportion the Legislature as to give the party in power a continuation of power for the next seven or ten years, as the case may be. This so completely fixes the number which each county may have that that is not possible hereafter, if this amendment shall pass. The census will fix the number of members which each county will have indisputably. In going over the list, making out an apportionment under this amendment, there is a most excellent representation given to every county in the State; and I may say here that it is exactly as the gentleman from Columbia apportioned the State under a proposition which he presented to this Convention. His proposition apportioned the State exactly as this proposition does; gave the same number of members to each county; and I think that the gentleman at that time did not object to the small counties having each a member. If I mistake not that proposition which he presented here allowed the small counties a member each, but if I am mistaken he will correct me.

Mr. BUCKALEW. I should like to explain. I have made speeches against that feature of the gentleman's amendment until I have tired the Convention.

Mr. D. N. WHITE. Did not the proposition which the gentleman presented to the Convention allow it?

Mr. BUCKALEW. I voted for a proposition which contained that principle, as an alternate. The gentleman from Allegheny is stating, of course, in perfect sincerity, that I proposed a measure that did not differ in principle from the present. I want to understand if this amendment does not provide for the dividing of every county in the State, entitled to three or more members, into single districts, so that Chester, Lancaster, York, Cumberland, Montgomery, Northampton, Crawford—all counties that now have two members—are to be increased; and those

that now have three members are to be divided.

Mr. D. N. WHITE. No, sir. The only counties to be divided under this proposition are the counties of Philadelphia, Allegheny, Lancaster, Luzerne, Berks and Schuylkill, as the gentleman will see if he looks at it.

Mr. BAER. I rise to a point of order. I desire to know whether discussion, after the yeas and nays have been ordered, is in order or not?

The PRESIDENT. The yeas and nays were not ordered.

Mr. D. N. WHITE. Great objection has been made here to small counties having members. I felt some objection to this myself at first; but, on due and careful consideration of the whole question, it seemed the simplest and easiest way of apportioning the State, and it does no great injustice to anybody. What harm can it do to the larger counties that the smaller counties should have a member? As a single, naked proposition, it may look a little obnoxious to some gentlemen, but, after all, it is of no practical importance whatever.

It also provides for all future time. It provides that when the census is taken every ten years an addition shall be made to the ratio by which the number of the House of Representatives shall be kept just as we make it, and that is an important matter which is contained in no other proposition presented to this body. If gentlemen will undertake to prepare an article to apportion the State to obviate every objection that can be brought against it, if they will undertake to meet every difficulty that may arise, they will see how difficult it is, and I assert here that I believe this section does meet every practical difficulty that may arise in apportioning the State for the House of Representatives.

With these remarks I submit the question to the Convention.

Mr. HOWARD. Before the vote is taken I shall ask for a division of this proposition, the first division to terminate with the words "made up," in the tenth line.

The PRESIDENT. The manuscript is not before the Chair, and it will be impossible for him, without reading it, to determine whether it is susceptible of a division or not.

Mr. HOWARD. The first division that I ask relates to the ratio and the latter to the making up of districts, whether they shall be single or otherwise. These are

entirely separate and distinct subjects. The first division prescribes the number 152 as the number of the House of Representatives and the manner of making up that number.

Mr. HARRY WHITE. I suggest to the gentleman that the printed amendment has been altered a little.

Mr. HOWARD. I understand it has been altered, but I want the first division to terminate with the words "made up" in the manuscript before the Convention. The line reads, "until the number of 152 members is made up." The second division would begin with the words, "the city of Philadelphia." They are separate and distinct subjects entirely. I am in favor of the first part of the section, and I am opposed to the latter proposition. If the division is made as I propose, then we go on to fix the number of Representatives; we get that settled; we get it out of the way. The Convention, by numerous votes that were taken here before the adjournment, seemed to indicate that 152 would be the number that they would fix for the House of Representatives. This latter clause that I object to and that I want to vote against, relates to the making up of the districts, whether they shall be single districts or otherwise. I am opposed to single districts. I think it would be an improvement to have members chosen from larger districts. I am willing to say that an entire county shall be a district, or that a city shall be a district. I believe that members from the country are just as much interested in the manner in which Philadelphia is to be represented at Harrisburg, as Philadelphia herself is; and I believe that the city of Philadelphia would be better represented at Harrisburg, that they would get better men by cutting up the city of Philadelphia into say four districts, giving about four members to a district, and then selecting the rest of her members at large. That would give the city four or five members at large, so that the city of Philadelphia could say that she had at least four members at Harrisburg who represented the city of Philadelphia, and I think it would lead to a vast improvement upon the men they would get to represent them at Harrisburg. I know some gentlemen are in the habit of speaking as though this was a local question. I do not think it is.

Mr. MACVEAGH. Will the gentleman allow me to suggest that as he proposes to have his division, the question he is now

discussing will not come up on the first vote? Suppose we take up a vote on that first division. Let it be distinctly read and take a vote by yeas and nays on it.

Mr. HOWARD. Yes, sir; the gentleman is right.

The PRESIDENT. The first division will be read.

The CLERK read as follows:

"The House of Representatives shall consist of not less than one hundred and fifty-two members, to be apportioned and distributed to the counties of the State severally in proportion to the population on a ratio of twenty-five thousand inhabitants to each member, except that each county shall be entitled to at least one member, and no county shall be attached to another in the formation of a district, and the city of Philadelphia and any county having an excess of three-fifths of said ratio over one or more ratios shall be entitled to an additional member. In case the number of one hundred and fifty-two members is not reached by the above apportionment, counties having the largest surplus over one or more ratios shall be entitled to one additional member until the number of one hundred and fifty-two members is made up."

The PRESIDENT. This is the first division. The yeas and nays are called for on this division and the Clerk will call the names of the delegates.

Mr. HARRY WHITE. Mr. President: I wish to make a personal explanation. One or two gentlemen have come up here and asked how this will divide the State. I call attention to the fact that the first proposition that we are voting on is practically that which is printed on the memorandum before me, and which is on members' desks. It merely fixes the number and leaves the manner of the apportionment to be regulated by the subsequent clause.

The yeas and nays were taken, with the following result:

YEAS.

Messrs. Achenbach, Andrews, Baily, (Perry,) Beebe, Bowman, Calvin, Curry, Darlington, Edwards, Ewing, Fulton, Funk, Green, Hanna, Hay, Howard, Knight, Lawrence, MacConnell, MacVeagh, M'Camant, M'Culloch, Minor, Parsons, Patterson, D. W., Patton, Purviance, John N., Rooke, Russell, Sharpe, Smith, Wm. H., Stanton, Stewart, Struthers, Turrell, Van Reed, White,

David N., White, Harry, and White, J. W. F.—39.

NAYS.

Messrs. Alricks, Baer, Bailey, (Huntingdon,) Bannan, Bartholomew, Boyd, Broomall, Brown, Buckalew, Cochran, Corbett, Corson, Curtin, Davis, De France, Dodd, Dunning, Ellis, Gibson, Guthrie, Harvey, Hunsicker, Kaine, Landis, Lilly, Littleton, Long, M'Clean, M'Michael, Metzger, Palmer, G. W., Pughe, Purviance, Sam'l A., Read, John R., Reed, Andrew, Smith, H. G., Smith, Henry W., Wetherill, J. M., Wetherill, Jno. Price, Worrell, Wright and Walker, President—42.

So the first division was rejected.

ABSENT.—Messrs. Addicks, Ainey, Armstrong, Baker, Barclay, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Brodhead, Bullitt, Campbell, Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Cuyler, Dallas, Elliott, Fell, Finney, Gilpin, Hall, Hazzard, Hemphill, Heveria, Horton, Lamberton, Lear, M'Murray, Mann, Mantor, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Reynolds, Ross, Runk, Simpson, Temple, Wherry and Wood—52.

The PRESIDENT. The second division being senseless without the first, the Chair will consider it rejected.

Mr. HARRY WHITE. I submit that the last clause can stand by itself.

The PRESIDENT. If the delegate is of that opinion, the Chair will withdraw his decision and take a vote on the second division, which will be read.

The CLERK read as follows:

"The city of Philadelphia and counties entitled to more than three members shall be divided into single districts of compact and contiguous territory, as nearly equal in population as possible; but no township or election precinct shall be divided in the formation of a district: *Provided*, That in making said apportionment in the year 1881, and every ten years thereafter, there shall be added to the ratio five hundred for each increase of seventy-five thousand inhabitants."

Mr. MACVEAGH. If the division is taken before the word "*Provided*" it will be a sensible division. I care nothing about it, but that will be a sensible and parliamentary division.

The PRESIDENT. Is the Convention ready for a vote?

Mr. HARRY WHITE. Yes, sir, and I call for the yeas and nays.

Mr. BARTHOLOMEW. I second the call.

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

YEAS.

Messrs. Andrews, Baily, (Perry,) Bartholomew, Ewing, Funck, Lawrence, MacConnell, Minor, Patterson, D. W., Russell, Turrell, White, David N., and White, Harry—13.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Bear, Bailey, (Huntingdon,) Ban-
nan, Barclay, Beebe, Bowman, Boyd, Broomall, Brown, Buckalew, Calvin, Campbell, Cochran, Corbett, Corson, Dar-
lington, Davis, Dodd, Dunning, Edwards, Ellis, Gibson, Green, Guthrie, Hanna, Hay, Howard, Hunsicker, Kaine, Landis, Lilly, Littleton, Long, MacVeagh, M'-
Clean, M'Culloch, M'Michael, Metzger, Palmer, G. W., Parsons, Patton, Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Sharpe, Smith, H. G., Smith, Henry W., Smith, William H., Stanton, Stewart, Struthers, Van Reed, Wetherill, J. M., Wetherill, John Price, White, J. W. F., Worrell, Wright and Walker, *President*—62.

So the second division was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Brodhead, Bullitt, Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, De France, Elliott, Fell, Finney, Fulton, Gilpin, Hall, Harvey, Hazzard, Hemphill, Heverin, Horton, Knight, Lamberton, Lear, M'Camant, M'Murry, Mann, Mantor, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Runk, Simpson, Temple, Wherry and Woodward—58.

Mr. BROOMALL. I understand the question now to be upon the amendment of the gentleman from Philadelphia, (Mr. J. Price Wetherill,) so that an amendment to the amendment will be in order.

The PRESIDENT. It will be in order.

Mr. BROOMALL. I have in my hand an amendment to the amendment which I propose to offer after saying a word or two upon the amendment itself. If I have rightly understood the several votes in the Convention, the Convention has resolved on increasing the number of rep-

resentatives some fifty members. This was very much against my judgment, but I am prepared to yield that point for the purpose of getting to something upon which we can agree. I was in favor also of letting the whole matter be with the Legislature to district the State for the purpose of representation, but I am prepared to yield that point, too, for the sake of getting something done. I have an amendment in my hand which yields these, which provides for one hundred and fifty members, which guards against gerrymandering, which requires little or no legislation, which, as nearly as possible, I think, operates itself, and which, while it does not make single districts, still does not let the city of Philadelphia and some such other very large districts throw their whole vote in favor of one set of candidates nominated by the same political party.

Before offering the amendment I will read it myself.

The PRESIDENT. The delegate cannot expect to speak upon the amendment after it is offered.

Mr. BROOMALL. I do not expect to speak upon it after I offer it. I am speaking on the question and in favor of the amendment.

"The number of representatives shall be 150. They shall be apportioned after every United States census among the several counties and cities as nearly as possible in proportion to population. Counties and cities entitled to more than five representatives shall be divided into legislative districts of contiguous territory by township and ward lines, each as large as possible, not to be entitled to more than five representatives. Every county containing more than the two-hundredth part of the population of the State shall constitute a district, and every county of less population shall be attached to such contiguous district as will tend most to equal representation."

With the single exception of dividing the very large counties and cities, this, as will be seen, requires no legislation other than calculating the number, leaves no possibility of dividing up the State in favor of some particular party. The last provision making use of a small county, even the use that the Legislature is compelled to make of it, is one that it must make. It must attach it to the legislative district that will most tend to equal representation; that is to say, if this legislative district has a fourth more and the

small county has a fourth less than the ratio, it must go there unless there is some other contiguous district that more nearly tends to equal representation than that.

The object of the provision of dividing the large counties and cities I have already stated. I have guarded against dividing them up into single districts which is said to be so objectionable in Philadelphia, and which has its objections, by requiring each district into which such county or city is divided, to be as large as possible, not to be entitled to more than five representatives.

I will now offer the amendment with the single remark that I will vote for any better one that anybody shall offer, for the sake of getting this business off our hands.

The PRESIDENT. The proposed amendment to the amendment will be read.

The CLERK read as follows:

"The number of representatives shall be one hundred and fifty. They shall be appointed after every United States census among the several counties and cities as nearly as possible in proportion to population. Counties and cities entitled to more than five representatives shall be divided into legislative districts of contiguous territory by township and ward lines as large as possible, not to be entitled to more than five representatives. Every county containing more than the two-hundredth part of the population of the State shall constitute a district, and every county of less population shall be attached to such contiguous district as will tend most to equal representation."

MR. HARRY WHITE. Under the provisions of this amendment I discover from the reading that any city or county containing the two-hundredth part of the population of the State shall be a separate district. Under the operation of that provision the city of Philadelphia will elect all its representatives by general ticket.

MR. BROOMALL. No; the city of Philadelphia is to be divided so that no district shall have more than five members.

MR. MACVEAGH. Is it that every county containing one two-hundredth part of the population shall have a member?

MR. BROOMALL. The object of that I will state. The one hundred and fiftieth part of the population is the ratio necessarily. Putting in the two hundredth part is a concession in favor of the small counties by way of compromise.

MR. DARLINGTON. I ask my colleague from Delaware whether the two hundredth part will not be about 17,500, so that a new county having that population will be entitled to a member as the census now stands.

MR. BROOMALL. A new county by this Constitution cannot be made with that small population. There is another provision in the Constitution that guards against that.

MR. J. N. PURVIANCE. I move to strike out, and insert "that each county shall be entitled to at least one member."

The PRESIDENT. The amendment now pending is an amendment to an amendment.

MR. MACVEAGH. I propose to ask for a division of the proposition.

MR. J. N. PURVIANCE. I ask then for a division of the proposition so that we shall get distinctly at the question of county representation.

The PRESIDENT. Where is the first division to end?

MR. MACVEAGH. At "one hundred and fifty members."

The PRESIDENT. A division of the amendment is proposed. The first division will now be read.

The CLERK read as follows:

"The number of representatives shall be one hundred and fifty."

The division was agreed to.

The PRESIDENT. The second division will be read.

MR. BAER. Let the division end with the word "population."

The CLERK. The second division reads as follows:

"They shall be apportioned after every United States census among the several counties and cities as nearly as possible in proportion to population."

MR. MACVEAGH. That, I suppose, raises distinctly the question of separate county representation. If this division be adopted, it avoids the recognition of county lines, undoubtedly; puts it upon population and not upon county lines. The adoption of this provision is the negating of the proposition for separate county representation beyond question. Let it be clearly understood, so that the vote may be a test vote upon it.

MR. BROOMALL. I would suggest to the gentleman from Dauphin that the division he has made is an improper one, because all the rest of the section is a qualification to that assertion.

Mr. MACVEAGH. That may be, but we will take the assertion first. Certainly, that is the proper division. That is a distinct proposition of itself, that representation shall be distributed according to population.

Mr. BROOMALL. Let me ask the gentleman whether it would be fair, if the proposition was "that the distribution shall be according to population, except that every county shall have a representative," to divide that before the word "except," and would he say that that was a fair division? I guess not. The provisions there are qualifications of the one that is asked to be considered as a separate proposition.

Mr. MACVEAGH. The gentleman will allow an answer to his proposition. I submit that such a division as he supposes would be exactly fair, because it would enable those who wanted to vote for the distribution on population to vote for that, and to vote against his exception for separate county representation. It is the only way you can get an intelligent vote. If you mingle up qualifications with a proposition until you take the life out of the proposition you cannot vote for it.

Mr. BROOMALL. I would rather withdraw my proposition than consume time.

Mr. MACCONNELL. What are we to vote upon?

Mr. MACVEAGH. Let the pending question be read.

The PRESIDENT. The pending division will be read for information.

The CLERK read as follows:

"They shall be apportioned after every United States census among the several counties and cities as nearly as possible in proportion to population."

Mr. HARRY WHITE. I should like to hear the rest of the amendment read.

The PRESIDENT. What has just been read is the division we are to vote upon.

Mr. HARRY WHITE. I know that, but I want to hear the remaining portion read for information.

The PRESIDENT. It will be read.

The CLERK read as follows:

"Counties and cities entitled to more than five representatives shall be divided into legislative districts of contiguous territory by township and ward lines, each as large as possible, not to be entitled to more than five representatives. Every county containing more than the two-hundredth part of the population of the State shall constitute a district, and every county of less population shall be at-

tached to such contiguous district as will tend most to equal representation."

Mr. S. A. PURVIANCE. I ask whether it is in order now to move to strike out the latter clause just read by the Clerk, beginning with the words, "and every county of less population?"

The PRESIDENT. We have not reached that point as yet. The question now is on the second division.

Mr. S. A. PURVIANCE. It occurs to me that there is a difficulty about that because the printed proposition before the House seems to imply that this distribution of representation is to be made upon the basis of population entirely. Now, sir, we have in this body repeatedly decided that every county, without regard to population, shall be entitled to a member.

Mr. BEEBE. Before voting on this proposition I should like the Chair to decide whether the last proposition is amendable. For instance, if an amendment should be offered to strike out the provision in regard to counties containing the two-hundredth part of the population, would that be a legitimate amendment?

Mr. MACVEAGH. When that division comes up, it can be voted down. That is the object of this division to give a fair chance on each of these votes. This is such a vote that I think we ought to have the yeas and nays upon it. It is a question of territory or population.

Mr. LILLY. I second the call.

Mr. COCHRAN. I shall vote against this division of this amendment, as I voted against the first division. The proposition itself was a complete proposition, containing the idea entire of the gentleman from Delaware. Now we are chopping it up into parcels, and some of us are getting into a false position. As an abstract proposition, I am in favor of the rule which seems to be contained in the present division of this amendment; but when I connect it with its belongings I cannot vote for it. I am opposed to the first part of the proposition already adopted and voted against it, and I shall vote against this as being part and parcel of that same proposition and also against the last division of this amendment, because I do not think that any part of the amendment from the beginning to the end ought to be adopted, and all of it, taken together as a complete rule for the apportionment of representation, does not meet my entire approbation, and therefore, being opposed to the whole, I vote against all the parts.

Mr. ARMSTRONG. From the reading of the amendment I may not have a correct impression of it; but if I have the two propositions seem to hang together so necessarily that I doubt much whether a division can be made at that point. I ask for the decision of the Chair on the question. Inasmuch as it would seem if a division is taken there it leaves no substantive proposition in the subsequent part, I ask the Chair to examine the amendment and decide whether it can be divided at that point.

The PRESIDENT. The Chair, on a careful examination and taking the advice of others, is of opinion that it may be divided.

Mr. BUCKALEW. This division of the amendment simply says that representation in the House shall be made as near as may be in proportion to population. I understand that that is the basis on which we have gone from the beginning. Nobody questions that. Now, how near it shall be to that, the gentleman from Delaware has stated in a subsequent part of his amendment so far as he conceives we should approach to or depart from that standard. The acceptance of this particular division of the amendment leaves the Convention perfectly free to determine hereafter how closely that principle shall be applied. Therefore I do not think that a vote for this division will embarrass us in any future vote.

Mr. HAY. I should like to ascertain from the mover of this amendment whether or not this proposition does not ignore entirely the separate representation of cities? Whether the cities of the State are not swallowed up in the representation of the counties in which they are located? At present the city of Pittsburgh as a community is entitled to select her own representatives. As I understand this proposition, representatives from the county of Allegheny hereafter would have to be elected from the county at large, and none would be chosen from the city of Pittsburgh as such. The ascertainment of the object of this amendment will affect my vote upon this question. For my part, I think that all cities which have population enough to entitle them to a single representative should be represented separately from the body of the county in which they are situated. As the question stands, the city of Philadelphia alone, having a county organization, is entitled to that privilege. Let the right of separate representation be ex-

tended to all the cities of the Commonwealth having sufficient population for one member.

Mr. BROOMALL. May I ask the gentleman from Allegheny how many representatives the city of Pittsburgh would be entitled to, whether or not it be more than five?

Mr. HAY. Not more than five. I think not more than four, but perhaps five.

Mr. EWING. Five with the present population.

Mr. HAY. The city of Allegheny would have two, as well.

Mr. BROOMALL. The county would have to be divided, and, of course, the city would be one of the divisions.

Mr. HAY. But as I understand the proposition, a division of the county which is not sufficient in number of inhabitants to entitle it to five representatives, would not be singled out, and form a separate district.

Mr. MACVEAGH. Allow me to suggest to the gentleman that that question does not arise on the present sub-division. The present sub-division is on population as against separate county representation.

Mr. HAY. Then I ask that the pending question be read. It is certainly involved.

Mr. J. W. F. WHITE. Mr. President: I was inclined to vote for this division, and I think I shall still, although I am not clear in the interpretation of it given by the mover. If I understand the proposition offered by the delegate from Delaware, the first part of it, which we are now to vote upon, simply provides for the distribution as a general rule of representation among the counties and cities of the State in proportion to their population. Now as I understand that, if there is a city in any county that has a population entitling it to one representative under his amendment, that city will be entitled to one representative, or two, three or four, as the case may be. We are first to distribute one hundred and fifty members among the cities and counties of the State in proportion to their population. Now the city of Pittsburgh, the city of Lancaster, the city of Reading, the city of Erie, and any other city of the State that has a population entitling it to one or more representatives under that section, I apprehend will be entitled to them by itself.

Mr. HAY. I do not so understand it.

Mr. J. W. F. WHITE. I understand the section in that way and for that reason I

am going to vote for it. If it is not in that way I want it modified so that it shall be in that shape. But I understand the amendment now before us is to that effect and I can perceive very properly why this section may be divided. In the first place, the division now before us provides that the one hundred and fifty members shall be distributed among the cities and counties of the State in proportion to their population. It says "cities." That does not mean Philadelphia alone; it means all the cities that are entitled by their population to one or more members. A subsequent part of the section then provides for those counties that would not be entitled to a member under that distribution. Now, how will it operate? One hundred and fifty members are to be distributed among the cities and counties in proportion to their population, and here are some counties that, under that distribution, would not be entitled to a member. Then the subsequent part of the section provides for those counties; that is, if they have a population equal to the two-hundredth part of the population of the State, they get one member; if not, they have to be attached to other counties.

Then the third division of this amendment goes further and says that where a city or county is entitled to more than five members it must be divided into legislative districts. That is the way I understand the section.

The division we now vote on would distribute the one hundred and fifty members among the cities and counties of the State in proportion to their population. Philadelphia would get her proportion; Lancaster would get hers; Pittsburg and Allegheny city would get their proportion. Then those counties that are not entitled to a member under the third division get one if they have the two-hundredth part of the population of the State, and if not they must be attached to other counties. Then the third division provides for another contingency, that where they are entitled to elect five or more members they are to be divided into legislative districts. Understanding the proposition in that light I shall vote for this division and vote for the other division.

MR. J. N. PURVIANCE. Mr. President: If it be in order I would now move that this subject be postponed for the present, and I would say briefly that my object in making that motion—

The PRESIDENT. The motion is not in order. We are now voting on a division of the amendment to the amendment, and a motion to postpone is not in order.

MR. J. N. PURVIANCE. Whenever it is in order I shall make that motion, and will then explain the object.

The PRESIDENT. The question is on the second division of the amendment to the amendment.

MR. MACVEAGH. On that I wish the yeas and nays. Let it be first read.

MR. HARRY WHITE. There is nothing in this division.

MR. MACVEAGH. There is, if the construction of the gentleman from Allegheny (Mr. J. W. F. White) is correct, a great deal in it. We make every city in the State a separate district.

MR. BARTHOLOMEW. If the construction of the gentleman from Dauphin is right, it disposes of county representation.

MR. MACVEAGH. Certainly, I think so.

The PRESIDENT. The division will be read.

The CLERK. The second division is as follows:

"They shall be apportioned, after every United States census, among the several counties and cities as nearly as possible in proportion to population."

The yeas and nays being taken resulted as follows, viz:

YEAS.

Messrs. Armstrong, Bailey, (Huntingdon,) Bartholomew, Broomall, Buckalew, Carter, Corbett, Cuyler, Davis, Edwards, Funck, Hanna, Hay, Howard, Kaine, Knight, Lilly, M'CLean, M'Culloch, M'Michael, Parsons, Patton, Smith, Wm. H., Van Reed, Wetherill, J. M., White, J. W. F. and Worrell—27.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Andrews, Baer, Baily, (Perry,) Beebe, Bigler, Bowman, Brown, Calvin, Campbell, Cochran, Curry, De France, Dunning, Ellis, Ewing, Fulton, Gibson, Green, Guthrie, Harvey, Hunsicker, Landis, Lawrence, Long, MacConnell, MacVeagh, M'Camant, Metzger, Minor, Palmer, G. W., Patterson, D. W., Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Stewart, Struthers, Turrell, Wetherill, John Price, White, David N.,

White, Harry, Wright and Walker, *President*—49.

So the division was rejected.

ABSENT—Messrs. Addicks, Baker, Ban-
nan, Barclay, Bardsley, Biddle, Black,
Chas. A., Black, J. S., Boyd, Brodhead,
Bullitt, Carey, Cassidy, Church, Clark,
Collins, Corson, Craig, Cronmiller, Cur-
tin, Dallas, Darlington, Dodd, Elliott,
Fell, Finney, Gilpin, Hall, Hazzard,
Hemphill, Heverin, Horton, Lamberton,
Lear, Littleton, M'Murray, Mann, Man-
tor, Mitchell, Mott, Newlin, Niles, Pal-
mer, H. W., Patterson, T. H. B., Porter,
Pughe, Purman, Read, John R., Rey-
nolds, Ross, Runk, Simpson, Smith, H.
G., Stanton, Temple, Wherry and Wood-
ward—57.

THE PRESIDENT. The third division
will be read.

The CLERK read as follows:

"Counties and cities entitled to more
than five representatives shall be divided
into legislative districts of contiguous ter-
ritory by township and ward lines, each
as large as possible, not to be entitled to
more than five representatives. Every
county and city containing more than the
two-hundredth part of the population of
the State shall constitute a district, and
every county and city of less population
shall be attached to such contiguous dis-
trict as will tend most to equal represen-
tation."

MR. BROOMALL. I ask for a division of
that last division, leaving distinct the
question whether the large counties and
cities shall be divided.

THE PRESIDENT. The proposed divi-
sion will be read. Where does the gen-
tleman desire it to end?

MR. BROOMALL. At the word "repre-
sentatives."

The CLERK read as follows:

"Counties and cities entitled to more
than five representatives shall be divided
into legislative districts of contiguous ter-
ritory by township and ward lines, each
as large as possible, not to be entitled to
more than five representatives."

MR. BROOMALL. That presents the
question whether we shall divide the
large counties and the cities into legis-
lative districts, each of which shall be as
large as possible, but not having more
than five representatives, or whether we
shall vote by a whole ticket, or whether,
on the other hand, we shall divide them
up into single districts. Therefore I de-
sire a vote upon it.

MR. MACVEAGH. I confess it seems to
me that the balance of inconveniences is
against this proposition. It appears to
me that this offers a premium to gerry-
mandering in the Legislature of the
greatest possible character, and that what-
ever party is in the majority will divide
the city of Philadelphia and the city of
Pittsburg so as to secure the return of its
own ticket in those districts. You give
them virtual control, as it seems to me, of
the city. I am not very well acquainted
with the map of Philadelphia, and with
the political predilections of the inhabi-
tants of its different quarters; but it
seems to me almost certain that a shrewd
man in the Legislature could divide this
city into five districts, and make them
every one of one political complexion.
Certainly he could if parties are at all
evenly balanced, or nearly so.

This may be a merely imaginary danger,
but it seems to me if no other restrictions
are to be given than the restrictions of
this clause such a result will follow, and
that after all the Convention will find
that the proposition prepared by the gen-
tleman from Philadelphia (Mr. J. Price
Wetherill) and waiting to be voted on
after these amendments are out of the
way, does guard this question better than
any substitute which has yet been offered.
It is a plan which was most thoroughly
debated in Illinois, and received the final
sanction of the Constitutional Convention
of that State, and when it comes to be
fully and fairly considered here, I think
it will be found to meet the difficulties of
the case more fully than any other plan
that has been suggested. But I am not
positive about it, and say to the gentle-
man from Delaware, (Mr. Broomall,) as
he said to everybody else, if his plan is
better than ours, for Heaven's sake let us
take it and dispose of the subject; but I
do not believe it is safe to give to the Leg-
islature of this State the opportunity of
separating Philadelphia into four districts,
to elect by general ticket all the members
in those districts.

I see the disadvantages on the other
side. I know that the larger is the dis-
trict, ordinarily the better is the man,
and this would go very far to elevate the
character of the representative. But,
nevertheless, there are other political
considerations to be taken into account,
and one of them is the very great danger
of the evils of gerrymandering large
cities like this, and it seems to me these

evils outweigh the probable advantages of this division.

The division was rejected.

The PRESIDENT. The fourth division will be read.

The CLERK. The fourth division is as follows:

"Every county and city containing more than the two-hundredth part of the population of the State shall constitute a district, and every county and city of less population shall be attached to such contiguous district as will tend most to equal representation."

The division was rejected.

Mr. STRUTHERS. I rise to offer an amendment. I believe the first division of this amendment was adopted, and I ask to add to that what I now present.

The PRESIDENT. The first clause of the amendment of the gentleman from Delaware (Mr. Broomall) was adopted as an amendment to the amendment of the gentleman from Philadelphia (Mr. J. Price Wetherill.) There is nothing now before the Convention but the first clause of the amendment offered by the gentleman from Delaware.

Mr. MACVEAGH. I move to reconsider the vote by which that division of the amendment to the amendment was adopted so as to get rid of it and get back to the amendment of the gentleman from Philadelphia.

Mr. HUNSICKER. I second that motion.

The PRESIDENT. The question is on the motion to reconsider.

The motion was agreed to, ayes thirty-eight, noes not counted.

The PRESIDENT. The first division of the amendment to the amendment is again before the Convention.

Mr. BROOMALL. I ask that it be read.

The CLERK read as follows:

"The number of representatives shall be one hundred and fifty."

Mr. MACVEAGH. I desire to have it negatived so as to reach the other proposition, which is the same in number.

The division was rejected.

The PRESIDENT. The question recurs on the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

Mr. STRUTHERS. I meant to offer an amendment to the proposition just disposed of; but inasmuch as there has been a reconsideration, and that part voted down, I offer my proposition now as an amendment to the amendment of the gen-

tleman from Philadelphia. I move to strike out and insert:

"The House of Representatives shall consist of one hundred and fifty members. Each county as a community shall be entitled to one member. The ratio shall be ascertained by dividing the inhabitants of the State, as ascertained by the last preceding census, by eighty-four, and the districts respectively shall be entitled to one member for each ratio of population they contain. Any deficiency in making up the number of one hundred and fifty shall be made up by the largest fractions in the district."

Mr. President, that embraces two ideas: in the first place, community representation—that is, that each county which is a community shall be represented. Each county has its separate and distinct organization and arrangements, and has many matters to be looked after that are not common to the whole Commonwealth; and it is very proper, in my estimation, that each county should therefore have a representative. When that is done, it will take sixty-six of the members, leaving eighty-four to be divided on population. Divide the whole population, then, by eighty-four, and it gives you a ratio, and according to that ratio distribute the members. It appears to me that this is the most equitable proposition that has yet been made.

The PRESIDENT. The question is on the amendment to the amendment.

Mr. S. A. PURVIANCE and Mr. STRUTHERS called for the yeas and nays.

Mr. MACVEAGH. I should ask for a division of that amendment. I beg the indulgence of the House for a moment. I had an amendment to offer, but I yielded to the gentleman from Warren, in these few words:

"Provided, That each county shall have at least one member."

Now, the gentleman has covered precisely that ground, and if we can have a distinct vote upon that question it will settle one matter at least.

The PRESIDENT. This amendment to the amendment is now before the Convention, and the yeas and nays are asked for.

Mr. MACVEAGH. Can it be divided?

SEVERAL DELEGATES. We will vote it down.

Mr. MACVEAGH. Then I withdraw the call for a division.

Mr. BROOMALL. The first branch of it presents the very question the gentleman desires to raise.

Mr. MACVEAGH. May I ask a question? If this is voted down, can I then offer an independent amendment to the present section embracing one of the matters included in this amendment? ["Certainly."]

The PRESIDENT. Undoubtedly.

Mr. MACVEAGH. All right, then; there need be no division.

Mr. HARRY WHITE. I call for a division of the question.

The PRESIDENT. A division is called for.

Mr. J. PRICE WETHERILL. Before a division is taken on this proposition, I desire to call the attention of members to the working out of this plan as printed and laid on their desks some time ago. I would call their attention merely to one fact, that so fair is this proposition that it gives to Dauphin county, with a population of 61,000, two members, and to Warren county, with a population of 23,000, two members, and so on throughout, with thousands and thousands of unused fractions, in some instances amounting to over 21,000 in a county. The mere working out of the plan shows that it must be full of defects.

Mr. BIGLER. Mr. President—

The PRESIDENT. The Chair, when the proposed division was suggested, had before him the wrong amendment, which was handed to the Chair as the pending amendment, beginning: "The House shall consist of one hundred and fifty members." In the proposed amendment that would be the first division, and then follows: "Each county as a community shall be entitled to one member."

Mr. HARRY WHITE. I call for a division, to end with the first clause.

The PRESIDENT. A division is called, to end with the words: "The House of Representatives shall consist of one hundred and fifty members."

Mr. BROOMALL. The House has just voted that down.

Mr. BIGLER. Mr. President; I rise for the purpose of interposing a point of order and insisting that the Chair shall adopt it. It must be very obvious that each one of these propositions to apportion the State is, and ought to be, and must be complete in itself. Now, if you allow a division of a proposition that is to supersede a text which is complete in itself, the chances are that you destroy

both. You may take a single item of one and vote it in—

The PRESIDENT. The Chair is of that opinion, but when a division is asked of a subject susceptible of division, the Chair must divide it.

Mr. BIGLER. I was about to attempt to relieve the Chair of just that difficulty by saying that it would become the body to waive that particular rule, because it is not practically applicable here. The Chair is right; the Chair makes his decision according to a settled rule; but in this case the rule ought to apply to each proposition, because they are submitted as complete in themselves. The text is one system of apportioning; the amendment is another. If you divide the amendment and vote some features of it into the text, you destroy the text and you destroy the amendment. Now, if the Convention itself would conclude that each member who rises with a proposition having considered it and prepared it, which will be a complete mode of apportioning the State, ought to have it voted on and accepted or rejected as an entire proposition, we should get along much better and more intelligently and satisfactorily. I see no other way in which we can proceed with any kind of success or any kind of certainty. I have been obliged to vote without being able to tell what would be the effect of the vote, because of the divisions which destroy not only the amendments, but the original text.

Mr. BAER. Mr. President: I am in favor of the amendment substantially as offered by the gentlemen from Warren (Mr. Struthers) with some amendment, but I believe at this point it is not amendable. I shall not be able to vote for it as it stands. One reason is that the basis of representation it fixes is unfair. The county of Somerset, from which I come, would, by this scheme, have two representatives, which I submit is more than it is entitled to in a House of one hundred and fifty. The city of Philadelphia and the county of Allegheny would have, one seventeen and the other seven, much less in proportion to the amount of population. But I believe in the principle of county representation. If you fix the number at two hundred, instead of getting seventeen out of one hundred and fifty, Philadelphia would have twenty-seven out of two hundred, and Allegheny, instead of seven out of one hundred and fifty, would have eleven out of two hun-

dred, and Somerset would still have her two members. That would come nearer doing justice to all portions of the State than fixing it at one hundred and fifty on this basis. If the number can be increased to two hundred, then the basis of the gentleman from Warren would have some fairness, but limiting it to one hundred and fifty it certainly does manifest injustice to many portions of the State. It gives some portions much more than they are entitled to, and other portions much less. Either number will operate against large districts, but there cannot be much complaint of that if we make up our minds that communities shall be represented and that the House shall be largely increased; but it must be apparent to every member here that if we undertake to give communities representation, then we do certainly a great injury to the large populations, unless we increase the number of representatives; and I do not believe that the number of two hundred is any too large. I believe the sentiment of this Convention has long been that the number should be increased. I was all along opposed to increasing at all, unless we increased it very largely. I still believe if we are only to increase to a moderate rate, we had better adhere to one hundred. The sense of the Convention is, however, against confining the number to one hundred, and manifestly in favor of enlarging the number. If it is enlarged, then adopt a larger number than one hundred and fifty. If we would so frame it as to make it two hundred, I think it would give greater satisfaction in many quarters where at one hundred and fifty it will not satisfy the people at all.

Mr. HUNSICKER. Mr. President; This question has been in obedience since we sat here in this Hall in the month of June last. There are quite a number of propositions all looking to this same object, to wit, to fix an apportionment here; and there is a proposition on my desk offered by Mr. Simpson, of Philadelphia, who is not here to-day, and as it is not likely we shall reach any result, I move that the Convention do now adjourn.

Mr. J. PRICE WETHERILL and Mr. MAC-VEAGH called for the yeas and nays on the motion, and they were taken with the following result:

Y E A S.

Messrs. Bailey, (Huntingdon,) Beebe, Bigler, Bowman, Boyd, Broomall, Bucka-

lew, Corbett, Corson, Cuyler, De France, Ellis, Gibson, Green, Hanna, Harvey, Howard, Hunsicker, Kaine, Landis, McClean, M'Michael, Minor, Patton, Rooke, Sharpe, Smith, H. G., Wetherill, J. M., Worrell and Walker, *President*—30.

N A Y S.

Messrs. Achenbach, Ainey, Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bannan, Barclay, Bartholomew, Campbell, Carter, Cochran, Curry, Davis, Edwards, Ewing, Finney Fulton, Guthrie, Hay, Knight, Lawrence, Lilly, Long, MacConnell, MacVeagh, McCulloch, Palmer, G. W., Patterson, D. W., Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Russell, Smith, Henry W., Smith, Wm. H., Turrell, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Wright—43.

So the Convention refused to adjourn.

ABSENT.—Messrs. Addicks, Baker, Bardsley, Biddle, Black, Chas. A., Black, J. S., Brodhead, Brown, Bullitt, Calvin, Carey, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curtin, Dallas, Darlington, Dodd, Dunning, Elliott, Fell, Funck, Gilpin, Hall, Hazzard, Hemphill, Heverin, Horton, Lamberton, Lear, Littleton, M'Camant, M'Murray, Mann, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Pughe, Purman, Reynolds, Ross, Runk, Simpson, Stanton, Stewart, Struthers, Temple, Van Reed, Wherry and Woodward—60.

Mr. STRUTHERS. I see, on looking over it, that the misapprehension about this proposition has arisen out of the fact that there is a very bad misprint in the carrying out. For instance, as printed here, it gives Philadelphia seventeen members. The carrying of it out in detail, as I think I sent it to the printers, gives Philadelphia twenty-eight members. The print, it is true, gives but two members to Dauphin county, but Dauphin county will only have to increase her population about 4,000 to get an additional member. Warren county, on the contrary, with which the gentleman from Philadelphia (Mr. J. Price Wetherill) made his comparison, will have to increase 28,000 before it gets an additional member; and that is the way it will work throughout. I see that in a number of particulars the print is incorrect. I submit the general proposition, and every gentleman can carry it out for himself.

Sixty-six counties in the first place are taken out. Then for eighty-four members the ratio would be 28,478. In the print it is put down 42,532, which would make a very large difference. If gentlemen will carry it out for themselves, dividing the whole population of the State by 84, it will give them the correct ratio. Then apply that; give to each county as many ratios as her population will justify, and if that comes up to the whole number of 150, well and good; if it does not, take the largest fraction, let that strike where it will. It may be that some county, such as Dauphin, may fall a little short of an additional member, but it will have but one or two years to run until it will have the requisite population; it will require only one, two or three thousand of population to secure another member, whereas Warren county, for instance, must have at least 26,000 or 28,000 of an increase before it can get another member. If gentlemen will take it up and estimate it for themselves carefully, I think they will find it comes nearer a true and equitable division and distribution of representation amongst the people of the Commonwealth than any other plan which has been proposed.

Mr. BLOOMALL. I merely desire to suggest to the mover of this amendment that his number, eighty-four, will only be the true number as long as the number of counties remains what it is. If you increase the number of counties in the State one, then this number, eighty-four, is wrong. I think he should have some other principle by which this constitutional provision would not be rendered improper by the mere creation of a new county.

Mr. MACVEAGH. I think if the gentleman from Delaware will consider it he will find that no other figure will possibly answer for Warren county so well as that figure does. [Laughter.]

Mr. BROOMALL. Eighty-four added to the present number of counties makes one hundred and fifty.

Mr. MACVEAGH. It depends entirely upon the stand-point you occupy. From Delaware you want some other figure, I grant you; but I defy the most skillful arithmetician of this Commonwealth to place himself on the stand-point of Warren county, and find any other figure that will divide this State as well as eighty-four. [Laughter.] That gives Warren county her maximum representation. I do not blame the gentleman from Warren. It is precisely like every other pro-

position that we have had here, or like the very great majority of them, it seems to me. For several days we adopted every proposition that any gentleman offered, who said that if you added one more, it would give his county a better chance. Afterwards we tore down all those card houses and came down to the hard-pan of Mr. Wetherill's proposition, but are slow in getting to it again. We shall amend it, I trust, and put it in shape. I hope the vote will be taken on this proposition as a whole.

Mr. J. N. PURVIANCE. I move that this whole subject be referred to a committee of seven, of which the gentleman from Dauphin (Mr. MacVeagh) shall be the chairman. I will state my purpose in making this motion. There are many propositions before the Convention. They were submitted before we adjourned by some half dozen or more of members. They were ordered to be printed, and they were printed. Those propositions in a general way embrace about the same principle and I think if a committee of seven were appointed to take up those propositions and consider them and report upon them, the probability is that we would get such an apportionment article as would be satisfactory to the Convention and to the people of this Commonwealth. Now, when you look into all the amendments that are offered, how crude they are! Mr. Struthers does not mean, I know, that each county of this Commonwealth as a community shall be entitled to a member, and yet he has it so. He would start out with Philadelphia as a community with one member and then give twenty-eight or thirty on population, and so with Allegheny, and throughout the whole Commonwealth. Therefore the words "as a community" should be omitted. Then he has not the words "at least" in his amendment. It would read, if thus amended: "Each county shall be entitled to at least one member of the Legislature." That is the amendment that he means to offer.

Now, I submit a motion that a committee of seven be appointed by the President for the purpose of taking all these amendments into consideration and making such report as that committee may deem proper; and I designate Mr. MacVeagh as chairman of the committee for this reason: By parliamentary courtesy the chairmanship of the committee might be given to the mover of it, but as he is the chairman of the Committee on the Legis-

lature, I prefer that he should be the chairman of this committee.

The PRESIDENT. The motion is to postpone the further consideration of this article for the present.

MR. J. N. PURVIANCE. And that it be referred to a committee of seven, to be appointed by the President.

MR. BARTHOLOMEW. I hope that motion will not prevail. We have been at this thing all day, and it seems to me it is time to finish it.

MR. J. N. PURVIANCE. My motion further is that the committee be directed to report on all the propositions after considering them.

MR. BARTHOLOMEW. We shall have the same difficulty then that we have now.

MR. J. N. PURVIANCE. Furthermore, I add to that, "and that the committee report to-morrow afternoon." I do not want any long time about it. It is not necessary. I can go into committee and take up some ten propositions which are here, every one of which contains the same principle nearly, and make a report upon them in twenty-four hours. There is a little pride on the part of each one who offers a proposition that his should be carried. The appointment of this committee will relieve them of that embarrassment, and will bring the matter before the Convention in a proper way, and I venture to assert that we shall come to a satisfactory apportionment of the House of Representatives in twenty-four hours.

MR. BOYD. I am opposed to the motion made by the gentleman from Butler. It is well known to every member of this body that I have taken no part in the debate on the subject of the apportionment of the State into legislative districts, and for the simple reason that the subject from the beginning has been entirely too deep for my comprehension. During the summer's vacation, having heard all that could be said on the subject before we adjourned, and after refreshing myself by relaxation, I did seriously take into consideration the pending subject-matter, and weighed with the greatest care and deliberation the arguments *pro* and *con* from the beginning to the end, and I was going to say devoted the recess to that duty, and I came in here yesterday as profoundly ignorant of the subject-matter, owing to the confused condition in which it was left by the debate here, as I was originally; and after listening with the gravest and most serious attention to the debate

here to-day, I am perfectly convinced we shall never be able to apportion this State with safety to the future.

MR. J. N. PURVIANCE. We do not propose that.

MR. BOYD. That is just exactly what it amounts to. Every gentleman who has submitted a proposition here and who has spoken to that proposition has had in view his own particular county or district.

MR. J. N. PURVIANCE. No; merely by way of illustration.

MR. BOYD. I beg the gentleman from Butler to excuse me when I say that as he has spoken he must be individuated by me. His aim and object from the beginning has been to get two members for Butler, whereas she has but one now.

MR. J. N. PURVIANCE. Allow me to explain. Under any proposition which has been offered in this Convention the county of Butler gets two members.

MR. BOYD. Then the gentleman wants three. [Laughter.]

MR. J. N. PURVIANCE. Therefore, it is not personal on my part at all.

MR. BOYD. Then I will exonerate the gentleman from Butler from any selfish personal consideration on this subject, but I will exonerate no other man. [Laughter.]

There is my friend Mr. Wetherill, of this city, who is zealous in the cause, and when you come to cypher out his proposition you find that under it Philadelphia gets two members more than she would get by any other mathematical proposition that has been submitted by any member in this House; not that Mr. Wetherill has any selfish view or consideration in this matter at all, because he says he is eminently fair, and I know that he means to be. So it will be found that with the single exception of the gentleman from Butler, every man who has submitted a proposition here has had in view something that he supposed would interest his particular county, district or party.

Is it possible under such circumstances as these that we are likely to agree upon anything? If we could set aside all selfish considerations and go earnestly to work, we would be constantly encountering the great difficulty of seeing into the future, because these propositions have for their object the fixing of the representation of this State for the long future, and that is one of the things that we have not, with all our ability and deep penetration, been able to do, so far as any development has

been made on this subject or any other as yet. And, sir, I am going to try to get this thing in such a shape that the whole subject shall be laid upon the table, so that we shall get rid of this discussion and of this question, and leave the Constitution as it is, letting the Legislature apportion the State from time to time as it may become necessary, just as they have done in the past. I am satisfied now that they are better able to do it than we are, and for the reason that men who will represent the different counties at different times in that body will be posted at the particular time when the apportionment comes to be made, and every man there will feel an interest, of course, in protecting his own district. In short the Legislature will do this business just as it has been done in the past, and I shall be in favor of a proposition of that kind, and will, if necessary, move as an amendment to the proposition that is now pending, that the whole subject-matter under consideration be indefinitely postponed, and that we leave the subject to the Legislature.

Mr. J. PRICE WETHERILL. Mr. President: I desire to say just one word. I desire to correct the distinguished member from Montgomery county in the statement that he has made in reference to the city of Philadelphia. If he will examine his files he will find that every proposition presented, but one, will give the city of Philadelphia the same number of members. Therefore, there can be no self-interest on the part of the Philadelphia delegation. Now I do not accuse him of selfishness, but if I felt so disposed I might ask him why he put the question to me when I presented my proposition this morning, "How many members will Montgomery county get?" [Laughter.]

Mr. BOYD. I will answer the question. It was because the gentleman's own selfishness tempted me in the same direction. [Laughter.]

Mr. J. PRICE WETHERILL. "How many members will Montgomery county get?" The shoe may fit possibly many members of the Convention, yet the tightest-fitting shoe in the whole Convention will be that which will be placed on the foot of the gentleman from Montgomery.

Now, sir, our trouble is this. We desire to act upon one principle and that is that representation shall be based upon population, and we desire also to mix with

that proposition the other, fairly antagonistic to it, that territory shall be entitled to representation, and the two are distinct and they are antagonistic and they will not mix. You might as well try to mix oil and water, and that is the cause of our whole trouble. Let me illustrate. You desire to represent territory, and in representing territory you must take ten or fifteen members from population, and how is that done? Why you go to counties that have three and you take one from them, as has been done in the proposition of the gentleman from Indiana. He makes up ten members to give to ten counties by taking six from six counties entitled to three members, only giving them two; and, therefore, counties with a population of 70,000 would be entitled to two members and counties with a population of 4,000 entitled to one member. It is upon the face of it offensive. It will be offensive not only to this Convention but also to the people of the State; and as we see it, as we look at it carefully, and as we trace it and work it out, we see that it will not do, and hence it is that we are befogged. We must come to hard-pan and work it out upon either territory or representation based upon population throughout. It will not do to mix them up, and we might just as well fix it this afternoon as refer it to a committee and let them report their conclusion, and our conclusion must be the same.

Mr. J. N. PURVIANCE. I beg to say that I insist on the motion which I have made, for the reason that I believe it will very much facilitate the labors of this Convention, and bring us to some conclusion in regard to this confused and difficult question. There is no question that comes before the body that is more difficult of solution and embarrasses members more than this political question, because you must look at it in some sense in that light.

For a hundred years the mode of fixing representation has been by taxable inhabitants, and that mode has never been asked from any quarter to be deviated from. It represents the solid men of the State; it represents the stable men, those who have homes, and who are likely to be on hand when political questions are to be decided. The basis of mere population is a delusion. You take a great city where there may be a population of perhaps one hundred thousand at one time, and in three months from that day that population is gone, and its place sup-

plied by one hundred thousand of entirely different persons. I made a statement to be submitted to this Convention, and it has been submitted, and by order of the Convention it has been published, of an apportionment based upon the taxable inhabitants, and it gives in the House of Representatives one hundred and fifty-two members. It is the fairest mode, perhaps, that can be adopted. It is the mode that our ancestors started with, and it should be, and I trust will be, by this Convention continued.

Now, as to separate county representation, when that question was before the Convention I took occasion to make some remarks; I do not wish to repeat them; but the argument is not a sound one that representation should alone be based upon population. It is not a sound one upon the whole theory of this government from its formation down to the present time. Take our territories; they have representatives in Congress though they may not have a population of five thousand. Take our counties and they have the same rights as communities.

Mr. BARTHOLOMEW. Do the delegates from the territories vote in Congress?

Mr. J. N. PURVIANCE. They can speak. They are on the floor and they have the right to represent the people of the territories in all questions which affect the rights of the people of the territories. That is a great matter. Now we come to the sparsely settled counties of this Commonwealth, and we find that they are unrepresented on the floor of the House of Representatives. They have a right to a voice in the popular branch of the Legislature; and if there were no other reason for a present postponement of this question, perhaps it would be found in the fact that Mr. Mann, representing Potter county, and Mr. Elliott, representing Tioga, and Mr. Hall, representing Elk, and several other representatives of small counties, are not on the floor of the Convention. Let their voices be heard, and if the motion which I have made prevails for the appointment of this committee the whole matter can be well considered, well digested, and we shall get something before us upon which we can intelligently and properly act, and which will satisfy the people.

We have always kept in view the principle of every seven years apportioning the State. Now I should like to ask any gentleman what reason there is for a departure from it? There is none.

The proposition which I have submitted is very brief, and I shall read it:

"In the year one thousand eight hundred and seventy-four, and in every seventh year thereafter, representatives to the number of one hundred and fifty-two shall be apportioned and distributed equally throughout the State by districts, in proportion to the number of taxable inhabitants in the several parts thereof, except that each county shall be entitled to at least one representative in the House of Representatives, and that counties shall not be joined in order to form districts, and no county shall be divided in the formation of a district. Any city or county having an excess of three-fifths of the ratio over one or more ratios, shall be entitled to an additional member. Any city containing a sufficient number of taxables to entitle it to at least four representatives shall be divided into convenient districts of contiguous territory, of equal taxable population, as near as may be, each of which districts shall elect one representative."

That, Mr. President, conforms word for word to the old Constitution. The mere changes are made that have been so clearly indicated by this Convention, but in drawing it up I conformed to the language of the present Constitution as closely as I possibly could.

The PRESIDENT. The delegate's motion was to postpone the further consideration and to refer the whole matter to a committee of seven.

Mr. J. N. PURVIANCE. Of which Mr. MacVeagh shall be chairman.

The PRESIDENT. Now I understand the gentleman that what he has just read is the proposition he offers.

Mr. J. N. PURVIANCE. No; I am not offering this proposition, except that I desire (as it is already before the Convention and printed by order of the Convention) it shall go to the committee, and if they choose to adopt the principle of taxable inhabitants they can do so.

Mr. MACVEAGH. Mr. President! I desire to say that this question was before the Committee on the Legislature for a very considerable time. It was reported to the Convention among the earliest of the reports made to it. It was referred back and reconsidered by the committee. It has taken its time on different occasions to a very considerable extent, and surely the Convention itself is now the proper body to settle and decide the matter. We have made very considerable

progress to-day. ["No." "No."] Yes, we got rid of the proposition of the delegate-at-large from Clearfield, (Mr. Bigler.) That is one good thing. We got rid of the proposition of the delegate-at-large from Indiana, (Mr. White;) that is another good thing. We got rid of the proposition of the delegate from Delaware, (Mr. Broomall;) that is a third good thing; and if you give us a little time we shall get rid of the proposition of my friend from Warren, (Mr. Struthers;) and then if anybody else has a proposition let him present it, because the Convention must dispose of these propositions. Their reference to a committee will have no influence upon their authors. They will persist in taking the sense of the Convention upon them. We have gotten rid of the proposition of the gentleman from Allegheny twice, first in his own name and then in the name of the delegate-at-large from Indiana; and as I said this morning I am willing to take any number of votes, endure any amount of discussion; only let us sit here and discuss and vote till we reach a practical conclusion; and we can reach one.

We have but two propositions to dispose of now. Perhaps one of them may be withdrawn, and then we shall come down to the proposition of the committee, which has never yet been considered, which never yet has had an hour of impartial consideration, for which a substitute was thoughtlessly voted, and the report of the committee not allowed to appear on second reading before the eyes of members, and that substitute itself incontinently voted down by the Convention itself. We have never gotten to any well considered and well digested plan reported for the action of the Convention. At least let us get rid of these substitutes or adopt them, I am not particular, for, gentlemen, the fate of this Commonwealth does not depend on how you choose your House of Representatives in these minor details—not at all. Take away the power of corrupt legislation by allowing every person injured to attack the life of a rotten law, and do what you can to limit your legislation to general objects, and offer what inducements you can to better men to go into your legislative halls, and your Commonwealth will be safe and honorable whether the legislative body is elected on one plan or another. But this body can adopt a plan and will adopt a plan if we keep steadily at work. The trouble has always arisen from such motions as the

gentleman from Butler, with the best motives and the kindest to me personally, interposes here to-day. After we talk about it awhile and one or two propositions are voted down, then gentlemen imagine we must run away from our duty. Let us look at it and think of it and turn it over and hear discussion and take votes, and we shall reach a practical, sensible result in this matter, as we have in others of infinitely greater importance.

The PRESIDENT. The question is on the motion of the delegate from Butler, to postpone and refer to a committee.

The motion was not agreed to.

The PRESIDENT. The question recurs on the amendment of the delegate from Warren (Mr. Struthers) to the amendment of the delegate from Philadelphia, (Mr. J. Price Wetherill,) which will be read.

The CLERK read as follows:

"The House of Representatives shall consist of one hundred and fifty members. Each county, as a community, shall be entitled to one member. The ratio shall be ascertained by dividing the inhabitants of the State, as ascertained by the last preceding national census, by eighty-four, and the districts respectively shall be entitled to one member for each ratio of population they contain. Any deficiency in making up the number of one hundred and fifty shall be made up by the largest fractions in the districts."

The amendment to the amendment was rejected.

Mr. J. N. PURVIANCE. I now offer the proposition which I read, so that it may be before the Convention as one of the measures proposed upon this subject. I move to strike out and insert the following:

"In the year one thousand eight hundred and seventy-four, and in every seventh year thereafter, representatives to the number of one hundred and fifty-two shall be apportioned and distributed equally throughout the State by districts, in proportion to the number of taxable inhabitants in the several parts thereof, except that each county shall be entitled to at least one representative in the House of Representatives, and that counties shall not be joined in order to form districts, and no county shall be divided in the formation of a district. Any city or county having an excess of three-fifths of the ratio over one or more ratios, shall be entitled to an additional member. Any city containing a sufficient number

of taxables to entitle it to at least four representatives shall be divided into convenient districts of contiguous territory, of equal taxable population, as near as may be, such of which districts shall elect one representative."

The amendment to the amendment was rejected.

MR. HARRY WHITE. I now move to amend by striking out the pending proposition and inserting this:

"The House of Representatives shall consist of not less than one hundred and fifty-three members, to be apportioned and distributed to the counties of the State severally, in proportion to the population, on a ratio of 25,000 inhabitants to each member, except that no county shall have less than one member. And the city of Philadelphia or any other county having an excess of three-fifths of such ratio over one or more ratios shall be entitled to an additional member. And in case the number of one hundred and fifty-three members is not reached by the above apportionment, the counties having the largest surplus over one or more ratios shall be entitled to an additional member until the number of one hundred and fifty-three members is arrived at."

MR. HOWARD. I believe it would be of benefit to this Convention and the State if we should adjourn now. There seems to be some propriety in it, and I move that the Convention now adjourn.

MR. BOYD. I second the motion.

MR. CUYLER. I move to amend by adding "until ten o'clock to-morrow morning."

MR. MACVEAGH. To do that would require a two-thirds vote, as it would need a suspension of the rules.

MR. CUYLER. The hour fixed for our assembling is not a standing order. It is a mere resolution, and can be amended at any time. We met at ten o'clock this morning under a mere resolution.

MR. EWING. I rise to a point of order. The motion to adjourn is a simple motion, and is not debatable or amendable.

THE PRESIDENT. The point of order is well taken. The question is on the motion to adjourn.

The motion to adjourn was rejected, thirty-three, less than a majority of a quorum, voting in the affirmative.

THE PRESIDENT. The question is on the amendment of the gentleman from Indiana to the amendment of the gentleman from Philadelphia.

MR. HARRY WHITE. On that I call for the yeas and nays.

MR. HOWARD. I second the call.

MR. MACVEAGH. Let us understand this subject. This is the proposition of the gentleman from Allegheny (Mr. D. N. White.) Has it been so amended as to make it in order?

MR. J. PRICE WETHERILL. Oh, yes. The gentleman from Indiana (Mr. Harry White) has amended it in the very important respect of striking out "152," and inserting "153." [Laughter.]

MR. HARRY WHITE. I did that at the instance of several gentlemen who told me that they would vote for the proposition if that change were made, having voted against it on that ground before.

MR. J. M. BAILEY. I would like to inquire whether it is not necessary for ten members to second the call for the yeas and nays. We are on second reading at present, and on the fourth day of June this House adopted a rule to that effect.

MR. MACVEAGH. It is the same thing. If anybody desires to have the yeas and nays called to place himself on record of course we would accord that privilege.

THE PRESIDENT. The Chair will state that the gentleman from Huntingdon is correct, and the Chair will adhere to the rule after this vote is taken.

The yeas and nays which had been required by Mr. Harry White and Mr. Howard, were as follow, viz:

YEAS.

Messrs. Ainey, Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Bigler, Bowman, Calvin, Carter, Edwards, Ewing, Finney, Fulton, Green, Hanna, Hay, Knight, Lawrence, Long, MacConnell, McCulloch, Minor, Pughe, Purviance, John N., Rooke, Russell, Struthers, Turrell, White, David N., White, Harry, White, J. W. F. and Worrell—32.

NAYS.

Messrs. Alricks, Armstrong, Bear, Bannan, Barclay, Bartholomew, Boyd, Brown, Buckalew, Campbell, Cochran, Corbett, Cuyler, Davis, De France, Dunning, Ellis, Guthrie, Howard, Hunsicker, Kaine, Lilly, MacVeagh, McClean, Michael, Patterson, D. W., Read, John R., Reed, Andrew, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Wetherill, J. M., Wetherill, John Price and Walker, *President*—25.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Baker, Bardsley, Biddle, Black, Chas. A., Black, J. S., Brodhead, Broomall, Bullitt, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Cronmiller, Curry, Curtin, Dallas, Darlington, Dodd, Elliott, Fell, Funck, Gibson, Gilpin, Hall, Harvey, Hazzard, Hemphill, Heverin, Horton, Lamberton, Landis, Lear, Littleton, M'Camant, M'Murray, Mann, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purman, Purviance, Samuel A., Reynolds, Ross, Runk, Simpson, Stanton, Stewart, Temple, Van Reed, Wherry, Woodward and Wright—66.

Mr. WORRELL. I move that this Convention adjourn until to-morrow morning at ten o'clock.

Mr. LILLY. I rise to a point of order. A resolution of the House provides that we meet at nine o'clock, and to change the hour will require a resolution, which would not now be in order.

The PRESIDENT. The point of order is sustained.

Mr. LILLY. I move that we do now adjourn.

The motion was agreed to, and at five o'clock and forty minutes P. M. the Convention adjourned until nine o'clock to-morrow morning.

ONE HUNDRED AND FORTY-FOURTH DAY.

THURSDAY, *September 18, 1873.*

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

Prayer by Rev. J. W. Curry.

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

COMMITTEE ON REVISION AND ADJUSTMENT.

The PRESIDENT appointed Mr. Buckalew, Mr. M'Michael, Mr. Cuyler and Mr. Stewart as additional members of the Committee on Revision and Adjustment, in pursuance of the resolution adopted yesterday.

HORTICULTURAL SOCIETY.

The PRESIDENT laid before the Convention a communication from the president of the Pennsylvania Horticultural Society, inviting the members of the Convention to visit the exhibition of the society, at any time up to Friday evening next.

Mr. LILLY. I move that the invitation be accepted, with the thanks of the Convention.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. LAWRENCE asked and obtained leave of absence for Mr. Hazzard for to-day and to-morrow.

ORDER OF BUSINESS.

The PRESIDENT. Resolutions are now in order.

Mr. MACVEAGH. I should like to suggest to gentlemen that unless there is an absolute necessity for the resolutions they propose to offer, and they are of such a character as to require immediate action, they withhold them for the present and let us go on with the consideration of the article on the Legislature until we get through with it. I am very sure we shall be through with it before long. They give rise to debate and discussion, and we get away from the subject properly before us.

HOURS OF SESSION.

Mr. HUNSICKER. I offer the following resolution:

Resolved, That on and after to-day the Convention will meet at nine and a half A. M. and adjourn at three P. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted thirty-six in the affirmative to twenty-nine in the negative. The result was announced by the Chair, when Mr. Lawrence rose and called for the yeas and nays.

Mr. HUNSICKER. I rise to a point of order. The result of the vote just taken was announced by the Chair. It is therefore too late to call for the yeas and nays. We have only resolved to proceed to the second reading, and we can take the yeas and nays on the final passage.

The PRESIDENT. The gentleman from Montgomery is correct in his statement, but the Chair will always withdraw his decision if any gentleman desires the yeas and nays called on any question.

Mr. STANTON. I would suggest that the gentleman call the yeas and nays on the final passage.

Mr. LAWRENCE. I desire to nip this thing in the bud, and I call for the yeas and nays now.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Ainey, Alricks, Baer, Baker, Bannan, Bartholomew, Bigler, Black, J. S., Bowman, Boyd, Broomall, Buckalew, Calvin, Corbett, Curry, Curtin, Darlington, Davis, Dunning, Edwards, Ellis, Funck, Gibson, Green, Guthrie, Harvey, Hay, Hemphill, Hunsicker, Landis, M'Clean, M'Michael, Metzger, Minor, Newlin, Parsons, Sharpe, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Woodward and Walker, *President*—46.

NAYS.

Messrs. Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Brown, Carter, Cochran, Collins, De France, Ewing, Fulton, Hall, Horton, Howard, Kaine, Lawrence, Lilly, Mac-

Connell, MacVeagh, M'Culloch, Patterson, D. W., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Struthers, Temple, White, David N., White, Harry, White, J. W. F. and Wright—32.

So the question was determined in the affirmative.

ABSENT.—Messrs. Achenbach, Addicks, Barclay, Beebe, Biddle, Black, Chas. A., Brodhead, Bullitt, Campbell, Carey, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Cuyler, Dallas, Dodd, Elliott, Fell, Finney, Gilpin, Hanna, Hazzard, Heverin, Knight, Lamberton, Lear, Littleton, Long, M'Camant, Mann, Mantor, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Read, John R., Reynolds, Ross, Runk, Simpson, Smith, H. G., Wetherill, Jno. Price, Wherry and Worrell—55.

The resolution was read the second time and considered.

Mr. HARRY WHITE. I move to amend by adding to the resolution the words, "and a session beginning at seven and one-half o'clock and adjourning at nine and one-half o'clock."

The PRESIDENT. The question is on the amendment of the gentleman from Indiana.

Mr. HARRY WHITE and Mr. MACVEAGH called for the yeas and nays.

Mr. BUCKALEW. Mr. President: I hope I may be indulged in a single remark. For two or three days the Committee on Schedule and the Committee on Revision and Adjustment ought to be in session all the afternoon and evening in order to dispose of pending matters. The evening session would prevent those committees from meeting. We cannot do anything more with any of the articles until the Committee on Revision report. I am, therefore, in favor of adopting the resolution which the gentleman from Montgomery (Mr. Hunsicker) has offered, although I was not consulted about it, and keeping it in force at least for a few days until we have business ready for the Convention.

The PRESIDENT. The yeas and nays have been ordered, and the Clerk will call the names of delegates on the amendment of the delegate from Indiana (Mr. Harry White.)

Mr. J. S. BLACK. Let me ask the gentleman whether he does not think his proposition is a violation of the Scripture: 'Work while it is yet day, for the night

cometh when no man can work.' [Laughter.]

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

Y E A S .

Messrs. Alricks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Bowman, Carter, Cochran, Collins, Curry, De France, Hall, Hay, Horton, Kaine, Lawrence, Lilly, MacConnell, M'Culloch, Metzgar, Parsons, Patterson, D. W., Purviance, Samuel A., Rooke, Russell, Smith, Henry W., Struthers, White, David N., White, Harry, White, J. W. F. and Wright—32.

N A Y S .

Messrs. Ainey, Armstrong, Baker, Bannan, Bartholomew, Bigler, Black, J. S., Boyd, Broomall, Brown, Buckalew, Calvin, Corbett, Curtin, Darlington, Davis, Dunning, Edwards, Ellis, Ewing, Fulton, Funck, Gibson, Green, Guthrie, Harvey, Hemphill, Howard, Hunsicker, Landis, MacVeagh, M'Clean, M'Michael, Minor, Newlin, Palmer, G. W., Pughe, Reed, Andrew, Sharp, Smith Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Woodward, and Walker, *President*—48.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Barclay, Beebe, Biddle, Black, Charles A., Brodhead, Bullitt, Campbell, Carey, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Cuyler, Dallas, Dodd, Elliott, Fell, Finney, Gilpin, Hanna, Hazzard, Heverin, Knight, Lamberton, Lear, Littleton, Long, M'Camant, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Read, John R., Reynolds, Ross, Runk, Simpson, Smith, H. G., Wetherill, Jno. Price, Wherry and Worrell—53.

Mr. MACVEAGH. I move to amend the pending proposition by changing the word "three" to "four," which will give us precisely the same number of working hours that we have now.

The PRESIDENT. The question is on the amendment of the delegate from Dauphin.

Mr. HARRY WHITE. I hope the amendment offered by the delegate from Dauphin will not prevail, for this simple reason: If we meet at half-past nine o'clock and continue in session until four o'clock, we shall be in session continuous-

ly six and a half hours. Now, I submit that that is unfair to gentlemen here from the country who are accustomed to a plain manner of living, of whom I am one, who dine at from half-past twelve to one o'clock. Unless we get our dinners at that hour our healths will be impaired as much as the heat impaired the health of some gentlemen some time ago. I submit that in justice to gentlemen from Western Pennsylvania, this amendment ought not to prevail.

Mr. MACVEAGH. It was with a view partly to allow those gentlemen the opportunity of getting their dinners that I have steadfastly voted against changing the present hours. I believe that a single session, while it will inconvenience certain members of the Convention, which I regret, will be more efficacious in disposing of the work of this body than the two sessions we now have; but I thought the question was not again to be disturbed, and I voted against disturbing it. Now that it is to be changed, if it is to be, I trust the working hours will not be diminished. Three o'clock is too late for the gentlemen to whom the delegate from Indiana alludes. My friend from York (Mr. Cochran) and other gentlemen who are accustomed to dine at one o'clock, must have their lunch or dinner at that hour. They can either have it at the refreshment room in the building, or at refreshment rooms very near the hall. If the Convention remains in session over two o'clock and up to three o'clock, their dinner hour is destroyed anyhow; they must go out of the Convention for a few minutes, either to the refreshment room here or some place else and get their dinner. Now, my amendment only gives us six and a half hours of working time, and I think that is not too much.

Mr. HUNSICKER. I desire to say but one word to the Convention, and it is rather to make a personal appeal to the gentleman from Dauphin to allow a vote to be taken squarely upon the resolution, and if it is defeated I shall be perfectly content. My object in offering it was simply to consolidate the members into one session. We know what difficulties we have had in the past in regard to two sessions a day. We shall have as many working hours, I take it, when we meet at half-past nine o'clock and sit until three o'clock, as we shall have in any other mode, and this plan of tacking on amendments simply takes up time and we reach no result. Let us take a vote

on the resolution as it stands, and if it is not acceptable that is the end of it.

Mr. COCHRAN. Mr. President: This discussion about sessions reminds me a good deal of the old Roman fable that we read of in our histories relating to the contention between the belly and the members. Our action upon this whole question seems to be very largely governed by reasons relating to our personal convenience and comfort. Now, there are two classes of men in this body, one who are the fashionable class I suppose, who do not eat their dinners until four o'clock, and the other old fogies like myself who are in the habit of dining, as our forefathers did, somewhere about the middle of the day.

If a majority of the members belong to the fashionable class and do not eat their dinner until four o'clock, and are determined that we old fogies shall submit to their regimen in that respect, and if gentlemen who live within striking distance of Philadelphia are determined to have this Convention adjourn in time to let them take the cars and go home every evening and return in the morning, and these two combined interests are to control in this matter, then, sir, we may just as well agree to sit until four o'clock as adjourn at three, for after we have once passed our regular hour, and gone out and taken up what we can get, bread and cheese on the doorsteps, and eat them—which was once forbidden, I believe, by the Colonial Assembly of Pennsylvania—after we have once done that, we can sit as well till four o'clock as we can until three. So, sir, I hope if this proposition is to pass at all and this change of sessions is to be adopted, that we shall conclude to sit until four o'clock.

Mr. WRIGHT. Mr. President: I move the indefinite postponement of this resolution, and on that motion I call for the yeas and nays.

The PRESIDENT. The gentleman from Luzerne moves to postpone indefinitely the amendment and the original resolution.

Mr. AINEY. I hope the Convention will not postpone this question indefinitely. I hope that we shall vote down the proposition to postpone indefinitely, and then vote down the amendment offered by the gentleman from Dauphin. After the Committee on Revision have reported to this body, I will then agree to extend the hours of session to four o'clock; but until that time, from nine and a-half

until three will be ample for this Convention to labor in, and if we are industrious and assiduous, we can do all that we ought to do, and more, in that time. Until the Committee on Revision have reported, we are not prepared to work and go on and finish the third reading of the instrument which we are to submit to the people. I hope, therefore, that the Convention will fix the hours at from nine and a-half to three. I think we shall have better action, fuller attendance, more intelligent action by this body if we have but one session without intervening hours.

Mr. D. N. WHITE. I hope the motion to postpone the resolution indefinitely will prevail. Every gentleman knows that when we have one session a day the last hour or so of that session is absolutely wasted, because we are so fagged out that we cannot do anything. It is impossible for me to sit here and pass all the time in a continuous session of five or six hours. I cannot do it. It is ruinous to my health and ruinous to my usefulness. I think it is unreasonable. Let us adjourn in the middle of the day, go to dinner and come back. We did more practical work yesterday afternoon than we did in the forenoon. Every morning we are troubled with these resolutions about adjournment. The question was settled after fair debate that we should have two sessions a day; but as soon as we got back here gentlemen began to stir it up again. I hope we shall lay this on the table and see the end of it forever.

Mr. W. H. SMITH. I hope this resolution will pass. I should like to see it modified by making the hours of session from nine to three; but if you make them from nine to four I shall not object, for one. I believe it is the only way to get done with this work. As for those persons who cannot do without their dinner possibly and must have it, let them go out and get it; they need be gone but a little while; and they can come back refreshed for business. Yesterday afternoon I noticed, and other gentlemen noticed, that we absolutely did not meet for half an hour after the time fixed, and we did not do anything that I remember which was of any value to anybody, and I found a general indisposition to work and a disposition to quit and go home at five o'clock, and even a proposition to adjourn was made at half-past four. I believe that we can work better at this sort of business towards three o'clock upon empty stom-

achs than we can with full stomachs, and I believe we had better fix this time now permanently for the whole session. I would rather see it from nine to three, but I do not insist on that.

As for this being done for the benefit of Philadelphia people, I do not think it is so. I know that there are a great many others who would like to have this change

Mr. WRIGHT. I rise to a question of order. Debate is not admissible after the yeas and nays are ordered.

Mr. W. H. SMITH. I believe they have not been ordered.

The PRESIDENT. The yeas and nays have not been ordered.

Mr. WRIGHT. I call for the yeas and nays on my motion to postpone indefinitely.

Mr. HARRY WHITE. I second the call.

M. CARTER. I wish to say a word. I hope that the amendment fixing four o'clock as the hour of adjournment will prevail, and for a reason different from that stated by others. Those who advocated an adjournment from the middle of July, urged that we were to come back here with renewed energies and go to work and complete our business as speedily as possible; and one of our first acts on re-assembling is to cut off our daily time one hour and a half without any occasion. I think there is a great deal of work, a great deal of wind work, at least, to be done before the result of the labors of the Committee on Revision is required to be before this body.

The gentleman from Montgomery (Mr. Hunsicker) says he wants a square vote on this thing to settle it. Well, sir, a vote was taken yesterday, and because it did not suit the gentleman he has it up again this morning, and it will be settled just so far as the settlement agrees with the respective opinions of members.

I hope the amendment will prevail. For one, it is very unpleasant to me to do without my noonday meal; but I am willing to yield. But the chief point with me is, that we are at the time that we were going to work with a will and complete this most tedious job, cutting off an hour and a half of most precious time unnecessarily, in this cool and pleasant weather.

The PRESIDENT. The Clerk will call the yeas and nays on the motion to postpone indefinitely.

The yeas and nays were taken with the following result:

Y E A S.

Messrs. Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Bardsley, Brown, Carter, Cochran, Collins, Curry, De France, Ewing, Fulton, Hall, Horton, Howard, Kaine, Lawrence, Lilly, Long, MacConnell, MacVeagh, M'Culloch, Palmer, G. W., Patton, Pughe, Purviance, Sam'l A., Reed, Andrew, Rooke, Russell, Struthers, White, David N., White, Harry, White, J. W. F., and Wright—34.

N A Y S.

Messrs. Ainey, Alricks, Armstrong, Baer, Baker, Bannan, Bartholomew, Biddle, Bigler, Black, J. S., Bowman, Boyd, Broomall, Buckalew, Calvin, Corbett, Curtin, Dallas, Darlington, Davis, Dunning, Edwards, Ellis, Funck, Gibson, Guthrie, Hanna, Harvey, Hay, Hemphill, Hunsicker, Landis, Littleton, M'Camant, M'Clean, M'Michael, Metzger, Minor, Newlin, Parsons, Sharpe, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Woodward, Worrell and Walker, *President*—52.

So the motion to indefinitely postpone was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Barclay, Beebe, Black, Charles A., Brodhead, Bullitt, Campbell, Carey, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Cuyler, Dodd, Elliott, Fell, Finney, Gilpin, Green, Hazzard, Heverin, Knight, Lamberton, Lear, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Read, John R., Reynolds, Ross, Runk, Simpson, Smith, H. G., Wetherill, Jno. Price and Wherry—47.

Mr. W. H. SMITH. If it is in order—I merely wish to inquire whether it is or not—I will offer the following substitute for the resolution and amendments:

"That hereafter the Convention will meet at nine o'clock A. M. and take a recess at one o'clock P. M., until three o'clock P. M., and adjourn at five o'clock P. M., and on Saturdays adjourn at one o'clock, P. M. until Monday at ten o'clock A. M.

The PRESIDENT. The Chair is obliged to rule that out of order as not an amendment to the amendment. If the amendment be voted down, the gentleman from Berks can then present his proposition.

The question now is on the amendment of the delegate from Dauphin, to strike

out "three" and insert "four" as the hour of adjournment.

The yeas and nays were required by Mr. MacVeagh and Mr. Cochran, and were as follow, viz:

Y E A S.

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bardsley, Bowman, Carey, Carter, Cochran, Collins, Edwards, Fulton, Gibson, Hall, Hay, Horton, Kane, Landis, Lawrence, Lilly, Long, MacConnell, MacVeagh, M'Clean, M'Culloch, M'Michael, Metzger, Palmer, G. W., Patterson, D. W., Pughe, Russell, Smith, Wm. H., White, David N., White Harry and White, J. W. F.—36.

N A Y S.

Messrs. Addicks, Ainey, Armstrong, Baker, Bannan, Bartholomew, Biddle, Bigler, Black, J. S., Boyd, Broomall, Brown, Buckalew, Calvin, Corbett, Curry, Curtin, Dallas, Darlington, Davis, De France, Dunning, Ellis, Ewing, Funck, Guthrie, Hanna, Harvey, Hemphill, Howard, Hunsicker, Littleton, M'Camant, Minor, Newlin, Parsons, Patton, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Turrell, Van Reed, Wetherill, J. M., Woodward, Worrell and Walker, *President*—53.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Barclay, Beebe, Black, Charles A., Brodhead, Bullitt, Campbell, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Cuyler, Dodd, Elliott, Fell, Finney, Gilpin, Green, Hazzard, Heverin, Knight, Lamberton, Lear, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Read, John R., Ross, Runk, Simpson, Temple, Wetherill, John Price, Wherry and Wright—44.

The PRESIDENT. The question recurs on the original resolution.

Mr. ALRICKS. As the resolution stands I cannot vote for it, but if the time is extended half an hour it will receive my support. I move to strike out "half past," so as to make the meeting nine o'clock.

The PRESIDENT. It is moved to strike out nine and a half and insert nine o'clock. The question is on the amendment.

The amendment was rejected.

Mr. H. W. SMITH. I offer the following amendment as a substitute for the

resolution, to strike out all after the word "resolved" and insert :

"That hereafter the Convention meet at nine o'clock A. M., and take a recess at one o'clock P. M. until three o'clock P. M., and adjourn at five o'clock P. M., and on Saturdays adjourn at one o'clock P. M., until Monday at ten o'clock A. M."

The PRESIDENT. The question is on the amendment of the delegate from Berks.

The amendment was rejected.

The PRESIDENT. The question recurs on the original resolution.

Mr. COCHRAN. I ask for the yeas and nays.

Mr. ARMSTRONG. I second the call.

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

Y E A S .

Messrs. Addicks, Ainey, Armstrong, Baker, Bannan, Bardsley, Bartholomew, Biddle, Bigler, Black, J. S., Bowman, Boyd, Broomall, Buckalew, Calvin, Carey, Corbett, Curtin, Dallas, Darlington, Davis, Dunning, Edwards, Ellis, Ewing, Finney, Funck, Gibson, Guthrie, Hanna, Harvey, Hay, Hemphill, Hunsicker, Landis, Littleton, Long, M'Camant, M'Clean, M' Michael, Metzger, Minor, Newlin, Palmer, G. W., Parsons, Pughe, Reynolds, Runk, Sharpe, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Struthers, Temple, Turrell, Van Reed, Wetherill, J. M., Woodward, Worrell and Walker, *President*—61.

N A Y S .

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Barclay, Brown, Carter, Cochran, Collins, Curry, DeFrance, Fulton, Hall, Horton Howard, Kaine, Lawrence, Lilly, MacConnell, MacVeagh, M'Culloch, Patterson, D. W., Patton, Purviance, Sam'l A., Reed, Andrew, Rooke, Russell, Smith, Henry W., White, D. N., White, Harry, White, J. W. F., and Wright—33.

So the resolution was adopted.

ABSENT.—Messrs. Achenbach, Beebe, Black, Charles A., Brodhead, Bullitt, Campbell, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Cuyler, Dodd, Elliott, Fell, Gilpin, Green, Hazzard, Heverin, Knight, Lamberton, Lear, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B. Porter, Purviance, John N., Read, John R., Ross, Simpson, Wetherill, Jno. Price and Wherry—39.

RULE RELATING TO HOURS OF MEETING.

Mr. BROOMALL. I offer the following resolution to change the rules, and ask that it lie over for the present.

Resolved, That the rules of the Convention be so changed that resolutions changing the hours of meeting and adjournment shall only be in order on the first Monday of every month.

The resolution was ordered to lie on the table.

MEMORIAL.

Mr. DARLINGTON asked and obtained leave to present a memorial from the president of the Board of Public Charities on the subject of the legislative and educational articles of the Constitution, which was ordered to be printed in the Journal.

PRESENTATION OF COPIES OF DEBATES.

Mr. HAY. I offer the following resolution :

Resolved, That a copy of the Debates of this Convention be presented, under the direction of the Committee on Printing and Binding, to Daniel Agnew, Andrew Bayne, Andrew Bedford, Charles Brown, Joseph R. Chandler, Walter Craig, William Darlington, John R. Donnell, David N. Farrelly, Robert Fleming, John A. Gamble, Orio J. Hamlin, Henry G. Long, Levi Merkel, Christian Myers, Hiram Payne, Samuel A. Purviance, Ebenezer W. Sturdevant, Robert G. White and George W. Woodward, the only surviving members of the Constitutional Convention of 1837-38, as a token of respect from this body.

I move to proceed to the second reading and consideration of the resolution.

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

Mr. WOODWARD. I move to amend by adding the name of Virgil Grenell, of Wayne county, who was a member of the Convention, and who I believe is still living.

Mr. HAY. I understood that this resolution included all.

Mr. DARLINGTON. I have understood, after inquiry, that Mr. Grenell is deceased.

Mr. WOODWARD. He was living the last I knew of him.

Mr. DARLINGTON. Then add him by all means.

Mr. HAY. I accept the amendment.

Mr. LILLY. I suggest to the mover of the resolution to add the words, "and such other surviving members."

Mr. HAY. I consulted with the gentlemen here who were members of that Convention as to who were still living, and carefully sought all information on the subject that I could obtain, and I am satisfied that the list in the resolution is complete. I was informed by one of those gentlemen that Mr. Grenell was dead, or of course his name would have been inserted. It seems to me that this is a mere matter of decent respect that ought to be paid by this body to the surviving members of that Convention, and I hope the resolution will be agreed to. I remember that in the Convention of 1837-38 similar action was had, although I believe only two or three members of the Convention of 1790 were then living. I hope this Convention will pay the same testimony of respect to the surviving members of the Convention of 1837-38.

Mr. LILLY. I think the resolution should be amended by adding the words "and such other surviving members." There may some of them be overlooked in this list.

Mr. WOODWARD. If that be adopted, it obviates the necessity for my amendment. I think probably that would be the better amendment. Let the amendment be adopted and I will withdraw mine.

The PRESIDENT. The name suggested by the delegate was inserted. The amendment offered by the gentleman from Carbon (Mr. Lilly) is before the Convention.

Mr. HAY. I hope the amendment will not be agreed to. I think it should be presumed by gentlemen when a resolution of this kind is offered, that matters of that sort have been attended to, and that the resolution has not been offered without proper inquiry and examination. Certainly the amendment is unnecessary, because if there were any other surviving members than those named, they would be included in the resolution without further action, the sense of the House being understood by its passage, and a copy would be presented to every surviving member.

Mr. LILLY. I wish to explain. I did not make a motion to amend. I only suggested that modification.

The PRESIDENT. The Chair then misunderstood the delegate from Carbon.

Mr. TURRELL. I understand that our late President, Mr. Meredith, left an only son, William Meredith. I move that his

name be included as a mark of respect to our deceased President.

Mr. BIDDLE. I second the motion.

The PRESIDENT. It is moved to insert the name of William Meredith.

Mr. HAY. That is unnecessary for this very obvious reason: Mr. Meredith was a member of this Convention, and, of course, his copies will go to his family, and they will be abundantly supplied.

The PRESIDENT. The question is on the amendment of the delegate from Susquehanna (Mr. Turrell.)

The amendment was rejected.

The PRESIDENT. The question recurs on the resolution.

The resolution was agreed to.

THE LEGISLATURE.

Mr. MACVEAGH. I move that we proceed with the further consideration on second reading of the article on the Legislature.

The PRESIDENT. That is the next business in order. The article on the Legislature is before the Convention. When the Convention adjourned yesterday the amendment of the delegate from the city (Mr. J. Price Wetherill) was before the Convention. It will be read.

The CLERK read as follows:

SECTION 19. The General Assembly shall apportion the State every ten years, beginning at its first session after the adoption of this Constitution, by dividing the population of the State as ascertained by the last preceding Federal census by the number one hundred and fifty, and the quotient shall be the ratio of representation in the House of Representatives. Every county shall be entitled to one Representative, unless its population is less than three-fifths of the ratio. Every county having a population not less than the ratio and three-fifths, shall be entitled to two representatives, and for each additional number of inhabitants equal to the ratio one representative. Counties containing less than three-fifths of the ratio shall be formed into single districts of compact and contiguous territory, bounded by county lines, and contain as nearly as possible an equal number of inhabitants; or where there is not sufficient population in counties having less than three-fifths of a ratio which are adjacent to each other to form a single district, such counties shall be annexed to any one adjoining county, and the district so formed shall be entitled to the same

number of members as if it consisted of a single county.

MR. D. W. PATTERSON. I offer the following as a substitute for the amendment of the gentleman from Philadelphia:

"The House of Representatives shall consist of two hundred members.

"The General Assembly at its first session after the adoption of this Constitution, and every ten years thereafter, shall apportion the number of members aforesaid throughout the State by districts in proportion to the population in the several parts thereof for the election of representatives, according to the population of the whole State as ascertained by the last preceding census.

"Representative districts shall be composed of compact and contiguous territory, and no more than three counties shall be joined, and no county shall be divided in the formation of a district.

"There shall be a separate representation assigned to any city and county containing population sufficient to entitle them to at least two representatives; and the Legislature may at any time divide the cities and counties of the State into convenient single districts, of contiguous territory, of as nearly equal population as may be, each of which districts shall elect one member."

THE PRESIDENT. The question is on the amendment to the amendment.

MR. D. W. PATTERSON. Mr. President: My amendment is based upon the words, so far as they are applicable, of the old Constitution, section four of article two. The principle of the basis is different, as we have adopted population instead of taxables. The first section proposes two hundred members. I did that in accordance with my own individual conviction, though I believe it is pretty well settled that the members of this House will not go higher than one hundred and fifty-two or one hundred and fifty-three representatives. I could never see the propriety of increasing the present number unless we increase it to such an extent that we should have the benefit of a very large representation. As it stands now, one hundred and fifty as indicated by the House, we only have additional expense of fifty members, without, at that number, having the opportunity of trying the principle and reaping the advantage of a large representation. Therefore, if you only increase to one hundred and fifty or one hundred and fifty-two or one hundred and fifty-three, I should much prefer indi-

vidually, seeing the number remain as it is—one hundred. But my convictions are that we should make the lower House two hundred or three hundred, in order to bring the representative as close to the electors, as close to his constituents, as possible; and hence I have made the number two hundred, supposing that possibly the Convention might see proper to adopt that increased number. If that number does not meet with the sentiment of the Convention, they can amend the first section by making it conform to the sentiment of the majority of this body, one hundred and fifty-two or one hundred and fifty-three. If such change should be made, the next section will not thereby be affected, because it proposes to apportion the State according to the national census every ten years, and it proposes to let the Legislature do that as in the present Constitution. I was impelled to make that proposition after having looked at the action of this Convention for days past and having seen the various projects of gentlemen here, undoubtedly brought up in the best of faith and with the best intentions, and which were all rejected by this House; and it seems to me, therefore, that we have arrived at the point now at which we have evidence sufficient to convince us that we cannot get up a machinery in the organic law by which we can apportion the State judiciously, justly and satisfactorily to the electors thereof. It is a matter which is very difficult to do; and if we put anything into the organic law it is permanent, invariable, unchangeable; and, therefore, however injurious or inconvenient or unfair it may be in its operations after put into practical effect, we are not at liberty to alter it except by a change of the organic law.

As was said yesterday by the gentleman from Montgomery (Mr. Boyd) and others, I think it is manifest that we may as well leave that much to the Legislature; we must put that much confidence in the representatives of the people; and, as was remarked, every representative is presumed to be competent to take care of his own district, and thus secure a fair representation, and the consequence will be that it will give more satisfaction to our constituents than if we put it in the organic law.

I have provided in the latter part of the section that the Legislature may form separate and distinct single districts in the large counties, each of which shall be entitled to a member. It is providing

for single districts, yet the article does not make it imperative on the Legislature, and hence if the Legislature find the people demand the single district system, by which a member will come down to and represent the inhabitants of three or four or five townships in a county, thus bringing the representative closer to his constituents, the Legislature may enact such a law and make it applicable to both cities and counties or to the counties alone, so that if it appears from experience that the people of Philadelphia do not want their city districted into single districts she can have her members elected by a community, by the whole city, but the Legislature may create single districts in a city or in the counties of the State as it sees proper. Well, suppose the people demand it and the representatives enact a law of that kind, if it is found not to do well they can repeal it and go back to the community representation, to united county and city district representation, and this will not conflict with the other provisions of the article. They will still stand under the general district system as they do under the existing Constitution, so that the amendment I propose leaves it where it may be changed to suit public sentiment and to suit the condition of the people of the State, and may be modified or changed with regard to single districts without, in any way, causing a conflict or want of harmony in the balance of the amendment now proposed for adoption.

I am obliged to make these remarks in favor of the single district system because I believe it is the system the people desire in this State, and I cannot agree with my friend from Columbia that the example of Philadelphia city alone is sufficient to convince us that the single district system does not work well. It has worked well in other Commonwealths. It has worked so well that even in these degenerate days we have not heard of corruption in those Legislatures where it prevails and where the representation is large. I apprehend that under the existing moral condition, the political demoralization of the city of Philadelphia as admitted by all the delegates on this floor from the city, if the single district system for the election of representatives did not exist in Philadelphia the result would not have been different, the character of the representatives would have been the same, because you cannot expect a pure stream from an impure foun-

tain. In making this remark I don't wish to be understood as reflecting on the present or past members from this city, for I know many of them personally and know them to be upright and honorable gentlemen; but I say that whenever you educate the people up to a sense of their duty, whenever you influence them and instruct them to know their own rights and to do their own governmental duty, they will, whether the system is single districts or community districts, send representatives representing their sentiments and who will honestly execute their will. It would not have been different, I say, sir, in the city of Philadelphia, I apprehend, if the single district system had not prevailed there. I am convinced, Mr. President, that the single district system throughout the whole State is the true system to secure accountable representatives and honest legislation. I am convinced that the people of the State to-day want that system tried. Two or three of the leading papers of this city advocated it the past week, and the leading papers of both parties in the rural districts have been advocating it for weeks and weeks, and I feel and know from my observation and contact with the people that it is the sentiment, not of any one party, but of all parties, that the single district system is the system that will hold the representative more to his duty and make him feel more responsibility than the community district system. It brings him close to the electors.

With these remarks, Mr. President, explaining this amendment which I have the honor to offer, I hope that if gentlemen do not agree with the number of two hundred, it will be altered, and that the second section of my proposition at least will be adopted.

THE PRESIDENT. The question is on the amendment to the amendment.

MR. D. W. PATTERSON. I ask a division of the question so that the vote be taken on the first section.

THE PRESIDENT. The first division will be read.

THE CLERK read as follows:

"The House of Representatives shall consist of two hundred members."

The division was rejected, the yeas being twenty-nine, less than a majority of a quorum.

THE PRESIDENT. The second division will be read.

THE CLERK read as follows:

"The General Assembly, at its first session after the adoption of this Constitution, and every ten years thereafter, shall apportion the number of members aforesaid throughout the State by districts in proportion to the population in the several parts thereof, for the election of representatives according to the population of the whole State as ascertained by the last preceding national census. Representative districts shall be composed of compact and contiguous territory; but no more than three counties shall be joined, and no county shall be divided in the formation of a district."

"There shall be a separate representation assigned to any city and county containing population sufficient to entitle them to at least two representatives, and the Legislature may at any time divide the cities and counties of the State into convenient single districts of contiguous territory of as nearly equal population as may be, each of which districts shall elect one representative."

On the question of agreeing to the second division, a division was called for, which resulted seventeen in the affirmative. This being less than a majority of a quorum, the division was rejected.

THE PRESIDENT. The question recurs on the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

MR. STRUTHERS. I move to amend the amendment by striking out all after the word "the," in the first line, and insert as follows:

"House of Representatives shall consist of one hundred and fifty members, and the State shall be apportioned every ten years, beginning the first year after the adoption of this Constitution, by dividing the population as ascertained by the last preceding United States census by one hundred and fifty, and the quotient shall be the ratio of representation."

"Each county shall be a district and entitled to a member for each ratio and one for each three-fifths of a ratio which it may contain at the time of such apportionment. Each county organized at the adoption of this Constitution shall have a representative, but shall not be entitled to an additional member until its population shall be equal to a ratio or three-fifths of a ratio."

"Counties hereafter organized shall not be entitled to separate representation until their population shall be equal to at least three-fifths of the ratio."

It appears to me that it is very much better for this Convention to settle this apportionment than to refer it to the Legislature. We all know what scrambles there always have been in the Legislature when they came to make an apportionment. They have gerrymandered the State, and perhaps more trouble has arisen, and more time been wasted, and more improper measures frequently resorted to for the purpose of bringing about an apportionment than has attended almost any other subject of legislation. This question of apportionment seems to me to be now a very simple matter, and one that ought to be by us very easily and equitably settled.

The proposition which I have offered will meet the approval, I think, of everybody, even of the gentleman from Dauphin. It is very nearly the proposition of the gentleman from Philadelphia, and at all events presents a sure, equitable and fair arrangement and settlement of this difficulty. There is only one feature of it to which objection can be possibly urged. Some gentlemen are opposed to giving each of the small counties a representative. I thought that question had been settled. There were many votes taken on this subject, prior to our summer adjournment, and if I understood their meaning it was decided that we should give each county a representative, and I hope that this will now be carried out. In other respects the amendment I have offered cannot be open to objection, and I therefore hope it will meet the approbation of every gentleman upon the floor. It certainly does do so as nearly as I have been able to ascertain their feelings on the subject.

MR. MACVEAGH. I beg now to illustrate what I said yesterday about the very undesirable action—if there is any danger of such action—of accepting a section written upon a subject so important as this that has not received a most careful consideration in committee. The gentleman from Warren (Mr. Struthers) really supposes he is introducing an equivalent of the proposition of the Committee on the Legislature. But he will allow me to tell him that his House of Representatives cannot be constructed on his own plan. There is no possible way in which he can construct the House. The one part of his plan will defeat the other. If he takes a divisor and makes the quotient a ratio, he cannot possibly fix the number definitely. He cannot possibly take the divisor

and the fixed number. These are things that require perhaps a little more study and careful consideration of the language than gentlemen are apt to suppose. This proposition cannot possibly work. There is that objection to it. I do not mean to say that the main object the gentleman has in view is not the same as is included in the report of the Committee on the Legislature, but I mean to say that though there may be defects in the language of the report, and there probably are, still the language has at least been carefully weighed in every part. I know enough to say to persons of arithmetical instincts that if you take a quotient as a ratio, you cannot be certain of a fixed number.

MR. EWING. Will the gentleman from Dauphin allow me to ask him a question for information?

MR. MACVEAGH. Certainly.

MR. EWING. The gentleman refers to the report of the Committee on the Legislature. Is that Mr. Wetherill's amendment?

MR. MACVEAGH. Yes, sir, that is Mr. Wetherill's amendment. I will explain to the House how it comes to be that it is Mr. Wetherill's amendment. When it came into committee of the whole I supposed, after examining the proposition of Mr. White, of Allegheny, and listening to the assurances of gentlemen from different sides of the House, that the proposition was reasonably acceptable to everybody, and that an enormous majority of this body was in favor of separate county representation—in short, that that proposition was acceptable in that form.

I have not a particle of pride in this proposition. It is not my proposition individually. It is the Illinois proposition. It received in that Convention an exhaustive debate and consideration, and after submitting it to all the arithmetical tests, to all the tests of experiment, I could not, upon three separate States, New York, Illinois and Kentucky, as well as Pennsylvania, see how it could operate other than fairly to everybody. It was therefore reported, but as I knew it would be a difficult matter to settle, the moment that I was told the proposition of the gentleman from Allegheny was more acceptable, I joined heartily in accepting that proposition, voted for it and worked for it. It was voted in, and then it was found that the proposition was not acceptable, and under the attacks mainly of the gentleman from Columbia, (Mr. Buckalew,) whom I confess showed me defects in the

proposition that I did not see in it, it was voted down. I only now rise to call the attention of the Convention to the very great danger of voting upon any proposition affirmatively without very full consideration of it, and to suggest to my friend from Warren that if he takes a divisor and adopts his quotient as a ratio he not only cannot be certain of the fixed number that he fixes, but he cannot be certain of any fixed number.

MR. EWING. There is one thing that the debates on this question have pretty fully illustrated, and that is that no member on this floor has any desire to obtain a system of representation that will in any way result to the special advantage of his particular county! Nor is there any man on the floor who at any time has ever looked to the effect it will have on his particular party, although my friend from Montgomery (Mr. Boyd) yesterday seemed to intimate that that was the case. I am aware there are a great many singular coincidences that look like supporting his position, but he is mistaken about that. The proposition of the gentleman from Philadelphia, or as the chairman of the Committee on Legislature chooses to call it, the proposition of the Committee on Legislature, is another of these coincidences. The gentleman from Philadelphia, the author of this proposition, has been very loud in his denunciation of the "injustice" of letting these little counties of eight or ten thousand inhabitants have a representatives. "It is gross injustice." "Representatives should be distributed on the basis of population and on that alone, and it must be done justly so as not to give one portion of the State an undue preponderance over other portions of the State." So says the delegate from Philadelphia. Now, although he is so earnest about that, and entirely honest, it is a singular coincidence, and one of those things which led my friend from Montgomery (Mr. Boyd) into his blunder yesterday, that this very proposition which he submits gives Philadelphia two more members than it is entitled to in a fair representation of the State on the number that his proposition would give.

MR. MACVEAGH. Will the gentleman allow me to explain?

MR. EWING. Yes, sir.

MR. MACVEAGH. I only desired this as I shall only desire when that proposition comes to be debated, that it shall be open to the fullest possible criticism and

amendment; but when substitutes are proposed for it, I think it is wise to point to the objections in those substitutes.

Mr. EWING. I am legitimately discussing the substitute here. I intend to show wherein the two differ and what advantage, if any, the substitute has. Now, the few of us who did not present here our propositions in writing and have them printed as to how the State should be divided and districted, owe the other members of the Convention an apology. I suppose it was because we were too lazy to have it done or found it difficult. We all had them but did not present them.

This proposition of the delegate from Philadelphia starts out with providing that you shall have for your ratio the one hundred and fiftieth part of the population of the State. It seems to have been assumed that this proposition of Mr. Wetherill or of the committee would give us one hundred and fifty members, but it does not do anything of the kind. I have made a careful analysis of this, as I did of almost every principal proposition submitted here to see how it would work, and I find that instead of giving us one hundred and fifty members it would give us one hundred and forty members, leaving eight of the small counties not provided for; and they would probably have three—either two or three—which would give one hundred and forty-two or one hundred and forty-three members. The proper proportion of Philadelphia in one hundred and forty-two or one hundred and forty-three members is twenty-seven members, not twenty-nine, as this proposition would give it. The gentleman from Philadelphia who introduced this proposition never thought of it being any benefit to Philadelphia, and it is a blunder that my friend from Montgomery made when he alluded to it. Nevertheless it is a fact that is well to be looked into.

The proposition of the gentleman from Warren (Mr. Struthers) differs from that of the gentleman from Philadelphia in this: It would give to each of those eight small counties a representative; it would add five to the number, making one hundred and forty-eight instead of one hundred and forty-three, still leaving Philadelphia one more than it is entitled to in that number of representatives, because it so happens that Philadelphia gets a representative under this proposition on a small fraction. Almost any other ar-

rangement would give Philadelphia one member less.

Mr. President. I am satisfied there has been no proposition offered here that will come so near doing entire justice throughout the State as that of my colleague from Allegheny (Mr. D. N. White.) It leaves less fractions unrepresented and without doing injustice; but it is utterly impossible to have exact justice done here unless you have substantially the proposition that we have in the old Constitution or something similar; that is, to leave to the Legislature to apportion the State; and you will have to unite several counties in one district.

I cannot vote for the original amendment offered here by the gentleman from Philadelphia (Mr. J. Price Wetherill.) I believe the amendment of the gentleman from Warren (Mr. Struthers) is better in this, that it is not so unequal as the original proposition. It only gives Philadelphia one more than it is entitled to, (whereas the original proposition gives it two;) and it divides up the fractions among those smaller counties. The original proposition leaves about two hundred and sixty thousand people unrepresented, and it gives five members where they are not entitled to one.

The PRESIDENT. The question is on amendment of the delegate from Warren (Mr. Struthers) to the amendment.

Mr. STRUTHERS. I ask for the yeas and nays.

The PRESIDENT. It requires ten gentlemen to second the call.

The call was seconded, ten members rising to second the call.

Mr. ALRICKS. I understand that the gentleman from Warren has agreed to modify his amendment. The difficulty is in regard to the fractions. Where there is enough to entitle a county to one member, three-fifths of the ratio in addition will entitle it to two representatives. I understand the gentleman who moved the amendment has agreed to modify it by using up the fractions so that where a county is entitled to two members with a fraction equal to three-fifths of the ratios it shall then be entitled to three members. I offer this modification, which the mover of the amendment will accept before the vote is taken.

Mr. MACVEAGH. That is not in order.

The PRESIDENT. The amendment of the gentleman from Dauphin (Mr. Alricks) will not be in order unless the gen-

tleman from Warren accepts it as a modification. The amendment will be read.

The CLERK. The gentleman from Daphin moves to insert after the word "ratio" the words:

"And every county having a population of double the ratio and not less than three-fifths of the ratio shall be entitled to three representatives."

Mr. STRUTHERS. I accept that.

Mr. MACVEAGH and Mr. J. S. BLACK. Let the amendment as modified be read.

The CLERK read as follows:

"The House of Representatives shall consist of one hundred and fifty members, and the State shall be apportioned every ten years, beginning the first year after the adoption of this Constitution, by dividing the population, as ascertained by the last preceding United States census, by one hundred and fifty, and the quotient shall be the ratio of representation. Each county shall be a district and entitled to a member for each ratio and one for each three-fifths of a ratio which it may contain at the time of such apportionment. Each county organized at the adoption of this Constitution shall have a representative but shall not be entitled to an additional member until its population shall be equal to a ratio and three-fifths of a ratio; and every county having a population of double the ratio, and not less than three-fifths the ratio, shall be entitled to three representatives. Counties hereafter organized shall not be entitled to separate representation until their population shall be equal to at least three-fifths of a ratio.

The PRESIDENT. The yeas and nays have been called for and ordered.

Mr. J. PRICE WETHERILL. I desire to ask the gentleman from Warren a single question before the vote is taken on his proposition: Whether he will say in his place, from actual calculation worked out by himself, that the House will consist of one hundred and fifty members only by his plan.

Mr. STRUTHERS. As near as I can ascertain it will not come up to it; it will only be about one hundred and forty-eight.

The PRESIDENT. The Clerk will call the roll.

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

Y E A S.

Messrs. Alricks, Andrews, Bigler, Black, J. S., Bowman, Boyd, Brown, Calvin,

Carey, Collins, Curry, Ewing, Fulton, Funck, Hall, Horton, Kaine, Long, McClean, Minor, Newlin, Parsons, Purviance, Sam'l A., Struthers, White, Harry and Walker, *President*—26.

N A Y S.

Messrs. Addicks, Ainey, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Bartholomew, Biddle, Broomall, Buckalew, Cochran, Corbett, Curtin, Cuyler, Dallas, Darlington, Davis, De France, Edwards, Fell, Gibson, Green, Guthrie, Hanna, Harvey, Hay, Hemphill, Howard, Hunsicker, Landis, Lawrence, Lilly, Littleton, MacConnell, MacVeagh, M'Camant, M'Culloch, M'Michael, Metzger, Palmer, G. W., Patterson, D. W., Patton, Pughe, Read, John R., Reed, Andrew, Reynolds, Rooke, Runk, Russell, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, J. W. F., Woodward, Worrell and Wright—68.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Bannan, Beebe, Black, Chas. A., Brodhead, Bullitt, Campbell, Carter, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Dodd, Dunning, Elliott, Ellis, Finney Gilpin, Hazard, Heverin, Knight, Lambertson, Lear, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Ross, Simpson, Temple, Van Reed and Wherry—41.

Mr. MACVEAGH. Mr. President: I think the Convention will agree with me that the time has now come to consider, at least, the proposition reported by the Committee on the Legislature, to ascertain what defects it has, to propose such amendments as gentlemen consider desirable, and to endeavor, by giving our exclusive attention to it for a very few hours to perfect it so that it will meet the views not of everybody here in every detail, but in its main scope meet the views of a majority of this body. I ask the attention of the members while I tell them its salient points.

In the first place, it makes gerrymandering impossible, strikes it down at once and forever as far as a constitutional article can do. In the next place, it makes the census of the United States the basis of apportionment. In the third place, it fixes the apportionment of every period

of ten years in accordance with the arrangements of the taking of the census of the United States. In the next place, it approximates the number of one hundred and fifty as the number of the House; and I wish to call the attention of members to this consideration, that it is better to take an approximate number than to take an absolute number, for this reason: You can then prescribe the method of reaching the approximate number so that partisan prejudices and partisan corruption shall not control your House of Representatives, whereas if you fix a positive number you put it in the power of the House to give the five, six, or seven odd members to such districts as a partisan majority may select. You may provide that they shall go here and there at every term, but what tribunal have you to sit in supervision of the apportionment when it is made? And if the control of the Legislature depends upon two or three votes in the House of Representatives a partisan majority is offered the vast temptation of disregarding the letter of the Constitution in order to secure that majority.

This plan received thorough consideration, underwent the ordeal of a prolonged discussion in the Reform Convention of Illinois, and when it was introduced here gentlemen began at once to figure the practical results of it, some of them with reference to their counties, others with reference to their party. So far as I am concerned, I have never yet asked myself to consider what would be, under the present accidental division of parties in this State, the practical working of this section; but I have turned it in various lights; I have endeavored to look at it from different stand-points, and I am unable to see how it can work injustice to anybody. Why is it not fair? The government of the United States ascertains your population for you every ten years. You avoid all the squabbles and troubles about a State census such as existed in New York a few years ago, when it was said that the Republican canvassers refused to report the proper population of New York city, in order to prevent New York city from having her proper Democratic representation in the House of Representatives. You get rid of that temptation to partisanship; and then you have a fixed divisor, not a fixed result, not a result that offers a temptation to partisanship to palter with a duty like this, but a fixed divisor in your funda-

mental law, and the quotient is the basis of representation.

Then what are you to do with that quotient? It finds this Convention, as all conventions would be, largely divided between two opinions, one saying that representation must be absolutely upon the basis of population; another saying that it must respect the corporate community known as the county. Then this quotient is let down to a proper compromise between those opinions. It goes down to three-fifths of the quotient, and admits the county that has three-fifths as a corporate entity, entitled to representation, and it closes the door against the very smallest counties that have 4,000 and 8,000 of population, offering thereby, as it seems to me, a reasonable compromise between these conflicting opinions; and then, in order to secure as exact justice as possible in human arrangements, it utilizes the fractions. How? By taking again the same proportion, three-fifths of the ratio, and giving an additional member wherever that fraction of the ratio is attained.

Now, it will be found here as it was found in Illinois, that while of course in any plan submitted, when it comes to be worked out, accidental injustices and inequalities will be discovered, nevertheless take a great city like Philadelphia and take the country districts bounded by county lines, and what is the result? Philadelphia, the country members say, loses none of her fractions because she divides solidly twenty times into her population and the country districts lose their fractions below three-fifths. Very well; but the country districts gain their fractions whenever they exceed three-fifths and the large cities gain nothing from excess of fractions. It is therefore a system that works with absolute equality—the equality that is born of justice.

If any man will let his tables alone and will point out an unjust result, I do not mean to say that this year he may not find a fraction in one county not represented and a fraction in another somewhat larger represented, but those inequalities are inevitable to the working of human government. If he will point out an unjust result that this principle will produce he will adduce an argument against its adoption; but I submit it is not an argument against it to say that it does not work with absolute perfection. We are reduced to the alternative of accepting some such proposition as this, amended, improved, if it can be, and the

reference of the entire subject to the Legislature itself.

The Convention will remember that there are two matters remaining open for final settlement. One is whether this compromise between the large and the small counties shall be accepted, or whether the smallest counties shall in every instance have a member. That question can be reached by a very simple amendment which I propose to offer in the interest of the settlement of that question, unless somebody else does, and not because I intend to favor it, and I will indicate to the friends of separate county representation that their question will be nakedly put before the House without embarrassment, and presented squarely, so that no man can err about it, by simply proposing to strike out of the seventh line these words, "unless its population is less than three-fifths of the ratio." The sentence reads: "Every county shall be entitled to one representative unless its population is less than three-fifths of the ratio." By striking those words out it will leave it to read, "every county shall be entitled to one representative."

Then as to the division of counties and cities into districts, the committee thought it was better to leave that matter to the Legislature. I believe they had no doubt—certainly I had none—that the present method of allowing the old counties to elect their representatives on general ticket is preferable to the division of them into small separate districts, and if the people of the large cities desire to have their cities divided into districts of five members the Legislature will be competent to do it, or into districts of one member. What I think is now utterly impracticable is the view entertained by the late lamented President of this Convention, that a city so great as Philadelphia, and entitled to so large a proportion of the representation of the Commonwealth, should be allowed to elect her members on one single ticket. I think the counterbalancing dangers far outweigh all the possible advantages of such a policy.

The PRESIDENT. The delegate's time has expired.

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

The motion was agreed to.

Mr. MACVEAGH. I do not care to proceed further.

Mr. BUCKALEW. Mr. President: I think the debate is beginning now at the

proper point. I agree entirely with the chairman of the Committee on the Legislature, that we ought to consider in the first place the plan which is endorsed, wholly or partially, by his committee, and after considering it proceed to consider the amendments which may be proposed to it. We have proceeded, however, upon a different plan. We have been considering a great number of entire propositions of representation and apportionment offered by individual members on all sides of the Hall. Probably some portion of our embarrassment and much of the delay attending this debate has arisen from this cause. I agree, therefore, that we had best now consider what is before us, offered formally by the gentleman from Philadelphia, but really endorsed, at least in part, by the committee charged with this subject of the constitution of the Legislature.

Sir, we are informed by the gentleman from Dauphin that this is substantially the Illinois plan, that it comes recommended to us by the judgment of that State. Now, in point of fact, this proposition is not contained in the Constitution of Illinois. It was a frame of amendment proposed in a general body of amendments by the Convention of that State, but it was displaced by the adoption by the people of a separate proposition with regard to the House of Representatives. Therefore, sir, it can receive no sanction from the manipulation or consideration which it has undergone in the State of Illinois.

This amendment, from my point of view, is very much like having the play of Hamlet with the principal character omitted. It does not grapple with or solve the principal difficulty which we have in considering this question of representation. It does not determine what shall be done with the great cities of Philadelphia and Pittsburg, or rather with the city of Philadelphia and the county of Allegheny. It leaves the whole question as to these two great and populous communities, to the unregulated and complete discretion of the Legislature. It leaves that subject, I insist, in this shape: That representatives must be elected from Philadelphia and from Allegheny by general ticket.

Now, what does the amendment say? It says that each county containing a ratio shall have a representative; containing a ratio and three-fifths of a second, two members, and an additional repre-

sentative for each additional ratio. Now, sir, what is this but county representation, pure and simple, representation of counties as such? If a county is to have a representative in the first case, two representatives in the second, and as many additional representatives as it may have additional ratios above two, as a matter of course, as I construe this section, the Legislature must give this representation to the counties as counties, and cannot divide counties in any way whatever. If the opposite construction were to prevail, this section would authorize the Legislature to divide all counties of the State which are entitled to more than one member. One or the other construction is inevitable; either a general division of all the counties of the State selecting more than one member each, or on the other hand an election by counties as counties and as communities, including Philadelphia and Allegheny. Well, sir, I am for neither of these alternatives, nor do I suppose a majority of this Convention will be for either.

Then, again, this proposed section excludes separate representation of the city of Pittsburgh. By the present Constitution that city is entitled to representation separate from the county of Allegheny, and she now elects two representatives. This amendment would merge her in the great mass of the vote of Allegheny county, and the election of representatives, as I contend, would be from the entire county. I suppose this is a result which the gentlemen from Allegheny do not desire.

The times for apportionment under this amendment commence with the year 1874, and apportionments are to be made under the successive decennial censuses of the United States. That is, a census is to be taken in the year 1880; and yet the re-adjustment of representation among the counties is not to be actually made until the year 1884, four years afterwards, and so on forever. The re-adjustment of representation in each case is to be at least four years after a census shall be taken under authority of the United States.

But my principal objection to this proposed section is, that it does expressly provide for continuing with the Legislature itself the power of making apportionment.

Sir, the member from Dauphin is not authorized by the facts to appeal to this Convention in favor of this amendment,

upon the ground that it destroys or reduces gerrymandering. If his construction of it is true, the Legislature may district every county in the State electing more than one member. They may make Philadelphia into single districts, into double districts, into triple or quadruple districts, as they please. There is no limitation at all upon them, not even those limitations which now exist in the Constitution of the State. It is, therefore, not tolerable, it is not to be allowed, that he shall appeal to us in favor of this amendment because it will check gerrymandering. On the contrary, it will immensely increase it; it will at least offer facilities for it, and if we do not have it hereafter, we must rely on the good sense, fidelity and integrity of the Legislature, and not upon anything contained in the Constitution.

Now, sir, after what I have said, it but remains for me to move an amendment, which is to strike out from the commencement of the amendment to and including the word "Constitution," where it first occurs and insert these words:

"The State shall be formed into representative districts every ten years."

The PRESIDENT. It is moved to amend, by striking out, in the first and second lines, the words from the beginning to the word "Constitution," inclusive, and inserting: "The State shall be formed into representative districts every ten years."

Mr. J. PRICE WETHERILL. I should like very much to know what the gentleman from Columbia intends to offer afterwards as additional amendments before I vote upon this one, so as to see exactly what the bearing of his first amendment is upon any other which he may have to offer.

Mr. BUCKALEW. That amendment will change the section in this manner: Instead of saying the Legislature shall apportion the State every ten years, it will simply say that the State shall be apportioned every ten years, and we shall separate the whole question of the authority by which apportionments shall be made from the other matters which are contained in this section.

Mr. J. PRICE WETHERILL. That is just what I wanted to get at; how is it to be done?

Mr. BUCKALEW. The question whether the Legislature shall apportion or not may be raised in an added section or amendment offered afterwards.

Mr. MACVEAGH. What the gentleman from Philadelphia means is to learn this: If the Legislature is not to apportion, who is?

Mr. BUCKALEW. I shall submit an amendment on that subject at the proper time. I can state now what I am in favor of, if that is what is wanted.

Mr. MACVEAGH. Well.

Mr. BUCKALEW. I am in favor of the amendment which was submitted two or three months since by the gentleman from Carbon, (Mr. Lilly,) which was that every tenth year commissioners should be elected by a vote of the people of the State for the purpose of making apportionments, taking it out of the Legislature. If this is not acceptable to the Convention, I am then in favor of the amendment which was proposed by the gentleman from Philadelphia, (Mr. Simpson,) that the Legislature itself, in joint convention, on the first Tuesday of the session following the United States census, should select commissioners for the same purpose, and providing how the apportionment should be made and disqualifying these commissioners of apportionments from holding any seat in the Legislature for five years thereafter. But, Mr. President, for the present I do not care to precipitate a debate on that question in connection with the other matters which are contained in this section. My present motion is simply to separate the two questions and allow that to come afterward.

Mr. HARRY WHITE. I do not exactly apprehend the amendment offered by the delegate from Columbia. I hold in my hand the proposition before the Convention, submitted by the delegate from Philadelphia (Mr. J. Price Wetherill.) Do I understand that the delegate from Columbia proposes to strike out the entire amendment?

The PRESIDENT. No, sir. He moves to strike out the third line, leaving the first line and the second line stand down to and including the word "Constitution," and to insert in lieu thereof the words: "The State shall be formed into representative districts every ten years." The question is on the amendment.

Mr. BUCKALEW. I ask the mover of the original amendment whether there is no possibility of separating this question of the authority to make the apportionment from the subject of the apportionment itself. Let us vote on them separately.

Mr. HARRY WHITE. I have just an observation to make on the principle of this amendment, and I will make it now. I shall vote against the amendment offered by the delegate from Columbia, at this time—I do not know how I shall vote upon it ultimately—for I want to take a vote on the naked proposition offered by the delegate from Philadelphia, and I shall have great pleasure in voting against that proposition.

It is possibly no egotism for me to say that I have had the privilege, if not the honor or possibly dishonor, of participating three times in the apportionment of the State into legislative districts, as a member of the Senate of Pennsylvania; and I confess that I am almost forced to the conclusion that it would be quite as safe to trust the Legislature of the State to make a fair apportionment as it would be a Convention of this kind. This is, doubtless, as we all admit, an assemblage of very respectable gentlemen, but I discover that they are animated for their respective districts by the same motives that seem to animate many members of the Legislature in making what have been, from time to time, characterized as gerrymandering bills of apportionment. If we wish to strike at that which is characterized by the popular voice as gerrymandering by the Legislature, if we wish to make that impossible for the future, we shall hesitate long before we adopt the proposition offered by the honorable delegate from Philadelphia (Mr. J. Price Wetherill.)

Why is this? It has certain indicative features about it. One, the object of which was thoughtlessly avowed by the gentleman from Philadelphia, gives Philadelphia two more representatives on this principle than upon any other principle which has yet been under consideration. But the honorable delegate from Philadelphia has asserted that he has not considered locality in announcing any principle here whatever, and certainly I take him at his word. Leave that, then, out of view entirely and it is obnoxious for another objection. That objection is that it throws the small counties of this Commonwealth into a Legislature with which the dishonest members of that body can play battle-door if you please. Why, sir, the great difficulty that the Legislature has encountered from time to time has been in making disposition of the small counties of the Commonwealth. I discover that under the principle of this proposi-

tion there will be left from thirteen to fifteen small counties of the Commonwealth. Those gentlemen who are familiar with the political character of those counties know that they are very diverse in politics. They are so territorially located that they can be attached to or taken from certain counties to which they are contiguous and thus effect ultimately the political character of the Legislature. This has been the stumbling block in the way of a fair apportionment of members of the Legislature hitherto in the history of all bills that have been passed. I remember at the passage of the last bill the committee of conference of the Legislature sat in one of the committee rooms of the State Capitol until the grey dawn appeared, and the bone of contention was the disposition of particular small counties, for upon their disposition depended somewhat the political results to be attained, certainly the political fortunes of some gentlemen who had selfish interests as members of the Legislature.

Now, sir, with this experience, knowing what has existed in the past, I am opposed to any principle which will leave it loose, and which will not determine the *status* of those counties hereafter. If we are to leave this thing to the Legislature, I would leave it as an entirety; I would make a simple enunciation providing for the apportionment at the end of a certain period, and then let the legislative discretion be wide and free to satisfy itself and be responsible to its constituents. I would not, however, vote for any principle which provided for the separation of counties, and allowed the Legislature to take charge of those small counties and to dispose of them as the political necessities of the times or the individual necessities of the representatives might determine.

I find this proposition of the delegate from Philadelphia specially obnoxious to this objection, and if I had none other to it, I would vote against it for this reason.

Mr. BUCKALEW. I withdraw my amendment for the present and will offer it hereafter.

THE PRESIDENT. The question recurs then on the original amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

Mr. MACVEAGH. In order to raise this question distinctly, I propose to offer an amendment to come in at the close, providing that no county entitled to less than

five members shall be divided in the formation of representative districts.

Mr. J. M. WETHERILL. Make it four members.

Mr. BARTHOLOMEW. Make it three.

Mr. MACVEAGH. It will be the liberty of any gentleman to present his views upon that subject. My friend from Schuylkill (Mr. Bartholomew) desires me to make the number three, and other gentlemen around me suggest four. I have proposed this amendment, however, and if it be voted down, then any gentleman may introduce his proposition; but it shall not be said that we had not an opportunity of fixing this matter.

On this amendment I desire to say a single word. It will remove the ambiguity that gentlemen seem to see in this section. The ambiguity was considered and was not supposed to exist in it. The rule of construction in reference to the consideration of a State Constitution was supposed to be ample to cover this matter, that the Legislature had power to do what they were not forbidden to do; but this amendment relieves it of this difficulty. It prevents the division of any county not entitled to more than five members. I do not care what the view of the Convention is on this subject; I would prefer to leave it entirely to the Legislature as the smaller of two evils; but if gentlemen desire to put in an additional provision prohibiting the division of the counties not entitled to more than five members, very well. Or if they propose to limit the division to Philadelphia and Allegheny, that can be done by an amendment. It is entirely in the power of the House to make the section very explicit on this subject.

Mr. DARLINGTON. Mr. President: I cannot yield my assent to this proposition, and my reasons I shall state very briefly indeed. I think we shall be compelled to come to one of two propositions, either single districts dividing every county and every city in the State, as is my favorite proposition; or allow county representation to exist and city representation, however large. I do not see how we can, with propriety, adopt one rule for one part of the State and another rule for another. Why is it that Philadelphia ought to be divided into single districts? Because of the preponderance that she would have in the Legislature if all the members of that large community in the Legislature were of one political party. It would be better for the interests of the

State that they should be divided. How can they be safely divided except by dividing them as they are now, by single districts, so that gerrymandering would be impossible, for districts of compact and contiguous territory throughout the city would necessarily ensure some members of one party and some of another party? So with regard to Allegheny and every other large county in the State. The division by township and ward lines of compact and contiguous territory cannot be formed without allowing a just and fair representation to both parties, because you cannot gerrymander under such a division.

Now, this is the end to be obtained: Single districts, impossible of gerrymandering, and treating all the State alike; freeing ourselves from all idea of mischiefs in the Legislature hereafter; relieving ourselves from any notion of having ten gentlemen selected, either five by one side or five by another, or by the Legislature performing this labor for us; freeing us from all that trouble and leaving it to the Legislature, where it properly belongs, to divide the State everywhere, and in dividing counties to divide them into single districts.

That is one idea, and allow me to present one other, and that is in regard to county representation. That was the favorite idea of our late President and of many other gentlemen. It is found to be dangerous, and it would be so. It would be dangerous in the county of Philadelphia, it would be dangerous probably in the county of Allegheny, and it would be useful nowhere.

Therefore, I think it would not be best to adopt it.

I am opposed to any division of the counties into districts which looks to the representation by three or five, or any other number more than one, because it is but an entering wedge to that heresy of minority representation which has been again and again endeavored to be introduced into this body, and for which I do not believe the people of the Commonwealth are yet prepared. I cannot therefore support the amendment of the gentleman from Dauphin.

Mr. MACVEAGH. If the gentleman from Chester will allow me, I will withdraw my amendment for the present, if he will introduce one for single legislative districts throughout the State, and have a vote taken on that. Let him introduce his proposition and I will withdraw mine;

or else let us take the vote upon my proposition as it stands.

Mr. DARLINGTON. I suggest to the gentleman that he make his proposition read that the Legislature shall be composed of representatives elected from single districts all over the State.

Mr. S. A. PURVIANCE. Mr. President: If it is in order I move to amend—

The PRESIDENT. No further amendment is now in order. There is an amendment to an amendment pending.

Mr. S. A. PURVIANCE. I understood the gentleman from Dauphin to withdraw his amendment.

Mr. MACVEAGH. No; I offered to do it if the gentleman from Chester would present his proposition.

The PRESIDENT. The question is on the amendment of the delegate from Dauphin to the amendment of the delegate from Philadelphia, which will be read.

The CLERK. It is proposed to add the following proviso:

Provided, That no county entitled to less than five members shall be divided in the formation of representative districts.

The amendment to the amendment was rejected, there being, on a division, ayes twenty-six—less than a majority of a quorum.

Mr. BARTHOLOMEW. I propose the following as an amendment, to come in at the end of the pending amendment:

“Provided, That counties entitled to three or more members shall be divided into separate single districts; but no township shall be divided in the formation of such districts.”

Mr. AINEY. Mr. President: I hope that this amendment will not be adopted. A proposition submitted to this body giving single districts throughout the Commonwealth, would incorporate a principle into the fundamental law of this State which would be commendable; but if we are to single out counties entitled to a given representation, it is special legislation; it is obnoxious in principle, in my judgment, and I cannot support it. I believe that the people of this Commonwealth are in favor of single districts, if we do not adopt the system of minority or proportional representation.

I hope I may be pardoned for saying at this time that I do not believe this Convention would be in session here to-day but for the feeling prevalent in the minds of the people of this Commonwealth,

that the system which has heretofore prevailed is not just or satisfactory. Experience has proven that it is defective. It has resulted in discontent and dissatisfaction in every minority district in this Commonwealth. It was to assert this and to demand reform representation that there assembled a convention of minority counties of this State in the city of Reading in 1870. The action of that convention, more than any other one cause, induced the calling of this Convention. I have in my hands, and they are very brief, the resolutions which were adopted at the Reading convention, and I will, if the Convention will pardon me, read some of them. In that convention was represented every minority county in the State on the Republican side. It was convened in a year when no State ticket was to be elected, and when it might properly assemble to give expression to the views of those who suffered under our unjust and imperfect form of representation.

The resolutions are as follow :

"Resolved, That the practice which has grown up in the Legislature of Pennsylvania of submitting all matters of local legislation to the exclusive control of local representatives has practically placed the local, political and business interests of minority constituencies requiring legislation at the mercy of majority local representatives, and has afforded such a continued series of wrongs and petty oppression as loudly call for reform.

"Resolved, That we can conceive of no other remedy for such wrong and oppression except in a system which will secure to each local minority, as near as can be, its proportional share of local representation.

* * * * *

"Resolved, That we recommend the passage of an act of Assembly providing for a Constitutional Convention to be composed of members elected on the principle, and to such convention, in making the many constitutional reforms so loudly demanded for years, we respectfully recommend that the principles of minority representation be embodied in the new Constitution of Pennsylvania."

That Convention appointed an executive committee—

Mr. BARTHOLOMEW. If the gentleman from Lehigh will allow me, I will modify my amendment and make it, "counties entitled to two or more." That will

bring the question squarely before the Convention as to single districts.

Mr. AINEY. I am very glad that the gentleman has modified his amendment; in that form I will vote for it; but I have just a single word more to add.

The PRESIDENT. The question is on the amendment to the amendment as modified.

Mr. AINEY. I was about to state that the Reading convention appointed an executive committee to wait upon the State Executive and upon the Legislature which should assemble in 1871, to bring this matter to their attention. That committee at the discharge of its duty waited upon the Governor and Legislature—at least saw the leading members of the Legislature. It demanded this Constitutional Convention in order to reform the system of representation which then prevailed.

I allude to this fact partly because gentlemen have from time to time risen here and said they had never heard any complaint from the people about the present form of representation, claiming that the people were very well satisfied with the existing system. These gentlemen must have been enjoying a Rip Van Winkle sleep. The people are not satisfied with it. At that time the press throughout the State quite generally united in demanding reform representation. The Governor in his annual message to the Legislature following the Reading convention, recommended the calling of a Constitutional Convention, and alluded to the evil which had grown up in the Legislature and which prevails to-day, of allowing all local legislation to be controlled by the local member, as one of the reasons why reform representation was demanded. Citizens of the largest influence, the largest tax-payers, most deeply interested in local legislation, which may unjustly affect them, have no voice whatever. If they appeal to the Legislature upon grounds of principle and right, they are told that by courtesy the local member from the district has this wholly in his own hands, and it would be a breach of courtesy for any other member to interfere. Owing to local political jealousies and animosities, the grossest wrongs are sometimes practised by the local member in the enactment of local legislation. Now I believe if we had representatives of the two parties from each county in the State, or as nearly so as we can—in other words, a better system of local represen-

tation—this evil would to a great extent be remedied.

Next to proportional representation I am in favor of single districts. I will vote for any fair proposition which will make single districts. Understanding this to be the effect of the proposition of the gentleman from Schuylkill, I will vote for it. I think a better system of local representation is demanded by the people of this Commonwealth. Anything less will not meet the necessities of the times or the wishes of a large portion of our population.

Mr. MINOR. I find, sir, in looking at the figures, that the proposition of the gentleman from Schuylkill will leave the Legislature to manipulate representatives by dividing twenty-nine or thirty counties of the State, as that number will have two or more representatives. Now, if any man can tell me how we are going to avoid the evils that have been rampant in the past on account of distributing the representatives among the several counties, by carrying the same discussion and difficulty inside of the county lines, then I shall be able to see some improvement in the pending proposition, but not till then. How can the Legislature decide in regard to the division of a county as well as it can as to divisions among counties themselves? By this proposition we are introducing all the evils of the past, which we need not to depict or repeat, for we understand them. We are introducing all these into the Legislature in a worse form than they have ever existed heretofore.

I will not go further upon that point, because that is simply the fact and those are the figures. Yet, as to the large counties I feel disposed to leave the subject to them; and I will take the liberty of making a suggestion—I cannot move an amendment at this stage, of course. If we leave all the counties sending three or less representatives to vote by general ticket and not by single districts it disposes of sixty counties of the State. It then becomes so far self-adjusting, and there are but six to be arranged in such manner as those six or the Legislature may desire. If we make it four it reduces the number down to five, whereas if we vote in this amendment it increases the number to twenty-nine or thirty.

Now, sir, I am not specially enamored of that proposition, yet I will say that it seems to me if we stop anywhere we should stop at the number three, because

it settles so many counties; and as to the five or six beyond that I am willing to vote, if we know what they desire, just as they wish.

The PRESIDENT. The question is on the amendment of the delegate from Schuylkill (Mr. Bartholomew) to the amendment.

Mr. MACVEAGH. On so important a question as that I hope we shall take the vote by yeas and nays and settle it once for all, so as to get it out of the way.

The PRESIDENT. It requires ten gentlemen to second the call.

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

YEAS.

Messrs. Addicks, Ainey, Alricks, Bailly, (Perry,) Baker, Bannan, Bartholomew, Bowman, Collins, Corbett, Darlington, Davis, De France, Dunning, Edwards, Ewing, Fell, Finney, Fulton, Green, Hanna, Horton, Lawrence, Lilly, MacConnell, McCulloch, M'Michael, Palmer, G. W.; Parsons, Patterson, D. W., Patton, Reynolds, Runk, Russell, Smith, William H., Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry and White, J. W. F.—41

NAYS.

Messrs. Baer, Bailey, (Huntingdon,) Bardsley, Biddle, Black, J. S., Boyd, Broomall, Brown, Buckalew, Bullitt, Campbell, Curry, Curtin, Dallas, Dodd, Ellis, Funck, Gibson, Guthrie, Harvey, Hay, Hemphill, Howard, Hunsicker, Landis, Littleton, Long, MacVeagh, M'Camant, M'Clean, Minor, Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Struthers, Wetherill, John Price, Woodward, Worrell, Wright and Walker, *President*—45.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Andrews, Armstrong, Barclay, Beebe, Bigler, Black, Charles A., Brodhead, Calvin, Carey, Carter, Cassidy, Church, Clark, Cochran, Corson, Craig, Cronmiller, Cuyler, Elliott, Gilpin, Hall, Hazzard, Heverin, Kaine, Knight, Lambertson, Lear, M'Murray, Mann, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Ross, Simpson, Stewart, Temple and Wherry—47.

Mr. S. A. PURVIANCE. I now move to amend by striking out in the fifth line the following words: "Unless its population is less than three-fifths of the ratio." It will then read: "Every county shall be entitled so one representative." I will state that I offer this amendment for the purpose of again calling the attention of the body to what has been repeatedly decided; that is, that each county in the Commonwealth shall be entitled to a representative. I hope that the attention of members will be given to it when the yeas and nays shall be called as a test vote.

Mr. MACVEAGH. I trust the call for the yeas and nays will be sustained upon this question, whether each county, without reference to population, shall have a member, and that we will then stand by the result of this vote.

The PRESIDENT. The question is on the amendment of the delegate from Allegheny (Mr. S. A. Purviance) to the amendment, upon which the yeas and nays are demanded.

The yeas and nays were ordered, ten members rising to second the call, and being taken, resulted as follows:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bowman, Boyd, Brown, Calvin, Carey, Collins, Curry, Darlington, Dodd, Ewing, Fell, Finney, Fulton, Funck, Guthrie, Hall, Hay, Horton, Howard, Hunsicker, Landis, MacConnell, M'Camant, M'Clean, Minor, Parsons, Patton, Purviance, Sam'l A., Reed, Andrew, Rooke, Runk, Russell, Sharpe, Smith, Wm. H., Stanton, Struthers, Turrell, Van Reed, White, David N., White, Harry, Woodward, Worrell and Walker, *President*—48.

NAYS.

Messrs. Addicks, Ainey, Bardsley, Bidle, Broomall, Buckalew, Campbell, Carter, Cochran, Corbett, Curtin, Cuyler, Dallas, Davis, DeFrance, Dunning, Edwards, Ellis, Gibson, Green, Hanna, Harvey, Hemphill, Kaine, Lawrence, Lilly, Littleton, Long, Mac-Veagh, M'Culloch, M'Michael, Palmer, G. W., Patterson, D. W., Read, John R., Reynolds, Smith, H. G., Smith, Henry W., Stewart, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F. and Wright—42.

So the amendment to the amendment was agreed to.

ABSENT. — Messrs. Achenbach, Andrews, Armstrong, Baker, Barclay, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Brodhead, Bullitt, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Elliott, Gilpin, Hazzard, Heverin, Knight, Lamberton, Lear, M'Murray, Mann, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Ross, Simpson, Temple and Wherry—43.

Mr. DARLINGTON. I move to amend by striking out and inserting the following—

Mr. J. PRICE WETHERILL. I ask for the reading of the amendment as amended.

The PRESIDENT. The amendment as it stands will be read.

The CLERK. The section as amended reads as follows:

"The General Assembly shall apportion the State every ten years, beginning at its first session after the adoption of this Constitution, by dividing the population of the State as ascertained by the last preceding census of the United States, by the number one hundred and fifty, and the quotient shall be the ratio of representation in the House of Representatives. Every county shall be entitled to one representative. Every county having a population not less than the ratio and three-fifths shall be entitled to two representatives, and for each additional number of inhabitants equal to the ratio, one representative. Counties containing less than three-fifths of the ratio shall be formed into single districts of compact and contiguous territory, bounded by county lines, and contain as nearly as possible an equal number of inhabitants, or where there is not sufficient population in counties having less than three-fifths of a ratio which are adjacent to each other to form a single district, such county shall be annexed to any one adjoining county, and the district so formed shall be entitled to the same number of members as if it consisted of a single county."

Mr. MACVEAGH. I submit now that the vote just taken disposes of the last section of this proposition, and therefore I trust consent will be given to withdraw that. I move to amend by striking out the section of the proposition commencing "Counties containing less than three-fifths of the ratio shall be formed into single districts," &c.

This was a section providing for the arrangement of the small counties into other districts. Now as each county is to have its own representative, of course there is no sense in that.

The PRESIDENT. The amendment proposed will be read.

The CLERK. It is proposed to strike out all after the word "representative." The section, if amended as proposed, would read :

"The General Assembly shall apportion the State every ten years, beginning at its first session after the adoption of this Constitution, by dividing the population of the State, as ascertained by the last preceding census of the United States, by the number 150, and the quotient shall be the ratio of representation in the House of Representatives. Every county shall be entitled to one representative. Every county having a population not less than the ratio and three-fifths, shall be entitled to two representatives, and for each additional number of inhabitants equal to the ratio, one representative."

Mr. MACVEAGH. It is insensible, now.

Mr. J. PRICE WETHERILL. Before action on that amendment, I should like to ask the gentleman from Dauphin what will be the size of the House under this section after the amendment is passed giving each county one representative?

Mr. MACVEAGH. It is then proposed, with a view to this contingency, which was anticipated as possible though not as probable by me this morning I confess, to provide by an amendment that the number of the House shall be one hundred and fifty. If the section had been adopted as it came from the committee without the introduction of the amendment now voted in, it would leave a varying number. I do not think it would have run over one hundred and forty-three or one hundred and forty-five under the present census, but it is now proposed to add an amendment when this is stricken out to make the number one hundred and fifty by taking the largest fraction unrepresented when the number is below that. I should suppose, though I have not made the calculation—the gentleman from Philadelphia has—that it would come very near making the House one hundred and fifty, or perhaps make it over that. If it does, then this amendment to which I refer, which has been carefully prepared by the delegate from Delaware, (Mr. Broomall,) provides

for striking out until it reaches that number.

Mr. J. PRICE WETHERILL. The proposition before us will not settle the difficulty. I think if we examine the journals we will find that although it does not appear in the Constitution as printed, and as having passed second reading, we have decided that the House of Representatives shall consist of one hundred and fifty members. We, I think, have so decided. Now we find if we pass this section as now amended we shall decide that the House of Representatives shall consist of one hundred and fifty-eight members and not one hundred and fifty. You cannot fix an arbitrary rule that each county shall have a representative and then follow it by mixing territory, as I said yesterday, with population as a basis of representation and make it tally with the figures which we desire and which we should have, and hence our error and hence our trouble under this amendment.

We have a House, we do not know exactly of what size; it may be one hundred and fifty-five this year and perhaps one hundred and sixty next. When we adopt the principle of representation based upon population, and when we get at that by fixing the number of representatives at one hundred and fifty, there can be no mistake. In the one we do not violate principle and in the other we do, and when we do not violate principle we know we are right, and when we do violate principle we cannot tell where we stand.

Mr. EWING. Mr. President: I wish to correct what I think is a wrong impression of the gentleman from Philadelphia. In the first place, the Convention has not, I think, fixed any absolute number that the House of Representatives shall contain. In the next place, the proposition of the gentleman himself presented here would give one hundred and forty-two members from fifty-eight counties, each entitled to one or more members, and leave eight small counties not entitled to a representative as it now stands amended; and with the amendment offered by the gentleman from Dauphin, these eight counties will each have a representative, and the House will consist of one hundred and fifty members. The mistake of the gentleman from Philadelphia arises, I presume, from a printed memorandum that has been laid on the desks of members, in which he blunders as to what the

ratio is under his own proposition. He puts it down to twenty-three thousand, whereas it is twenty-three thousand four hundred and seventy-eight.

Mr. J. PRICE WETHERILL. Mr. President: I never made any such mistake.

Mr. EWING. I do not know who made it. It has been made by some one.

Mr. J. PRICE WETHERILL. I desire to explain. The calculation was made not by myself, but by myself in connection with the gentleman from Blair, and we know we are right.

Mr. EWING. I am not particular whether it was made by the gentleman from Philadelphia or the gentlemen from Philadelphia and Blair together. They are wrong and any gentleman who will take the trouble of dividing the population of the State, 3,521,791, by one hundred and fifty will find that they are wrong by nearly five hundred on this ratio; and if gentlemen run over the whole of it they will find that he is wrong by at least seven members on his general calculation.

Mr. MACVEAGH. Whether right or wrong, it has nothing to do with the pending proposition.

Mr. EWING. No.

Mr. MACVEAGH. Let us vote that out.

The PRESIDENT. The question is on the amendment of the delegate from Dauphin to the amendment.

The amendment to the amendment was agreed to.

The PRESIDENT. The question recurs on the amendment as amended.

Mr. BROOMALL. I offer the following amendment to the amendment, to come in at the end:

"And the number of Representatives shall be made one hundred and fifty by giving representatives to the lowest unrepresented fractions, or taking them from the smallest represented fractions, as the case may require."

The necessity for the amendment which I have offered is obvious. By the plan as suggested by the Committee on the Legislature the number of the House may vary from one hundred and forty to one hundred and sixty. It is desirable that it should be made uniform, and that can only be done by operating upon the fractions. The amendment proposes to do just that, to make the number one hundred and fifty by taking from the smallest represented fractions or giving to the largest unrepresented fractions, as the case may require. I now desire to say

that although I shall vote in favor of this amendment, because whatever becomes of the proposition itself this amendment should be attached to it, yet I intend to vote against the proposition, in consequence of the result of the last vote taken. I have taken up the map and hastily contrasted certain counties to see the enormous inequality of representation in different parts of the State by it. We complain of the Legislature gerrymandering the State, by which inequality of representation is produced; but there never was a Legislature in any part of the United States that dared to make the inequality of representation which we have done by that last vote. I never will consent that a man shall be counted several times more in one portion of the State than in another. I want all representation to be as nearly as possible equal, and I will never vote for a proposition that does not do that. Why, in the county of Delaware there is a city of 15,000 population that will have no representation but that which is given to its county; yet the interests of that city are more diverse from the interests of the people of the county than the interests of the people of Elk are from those of Forest.

Talk about the necessity of county representation, arising out of the different interests. There is no diversity of interest between counties that equals the diversity of interest between a city in a county and the county itself, and when I am required to admit that a citizen of Chester shall count but the fifth part of a man measured by the standard of Elk, I would have to advise every constituent I have to repudiate the whole instrument rather than consent to any such monstrosity.

Now let me contrast a few of these cases:

I find by the vote just taken that in Lebanon there will be one representative to 34,096 of population, while in Cameron there will be one representative to 4,273.

In Wayne, one representative to 33,188; in Elk, one to 8,488.

In Tioga, one representative to 35,097; in Forest, one to 4,910.

In Huntingdon, one representative to 31,251; and in Sullivan, one to 6,191.

In Cambria, one representative to 36,569; and in Pike, one to 8,436.

In Centre, a representative to 24,418; and in McKean, one to 8,825.

In Indiana, a representative to 36,138; and in Fulton, one to 9,360.

I was stopped at this point in going over the map by the necessity of taking the floor at this time, and I do not know what other monstrosities this proposition will show when it is carried out. I know this, that when the people of Indiana are told that it requires nine of them to measure a man by the standard of Forest, they will think they have had very little cause to complain of anything in the way of gerrymandering and of unfair representation in any Legislature that ever existed in the State or elsewhere.

Sir, there will be opposition enough to this Constitution, and there will be a great deal of it here in Philadelphia. There will be unfair opposition enough, and a matter like this will be taken hold of by those whose opposition to the Constitution requires to be concealed. There will be causes taken hold of by men who will be opposed to the Constitution for something they dare not tell, and the magistracy of Philadelphia will use this as an excuse to remedy the wrongs that have been inflicted upon them in depriving them of that patronage and the perquisites on which they have been fattening for years. They will tell the people of Philadelphia that one of them, measured by the standard of Forest, will be but the sixth part of a man, and that being demonstrably true will have an effect that we can hardly measure. Why, for the purpose of conciliating a few small counties, shall we outrage all the rest of the State? I will vote against the proposition voting, however, for the amendment, thinking that if the proposition has the misfortune to carry, it should at least be made as little objectionable as possible.

Mr. MINOR. I think the statements of the member who has just taken his seat ought not to pass unchallenged. He labors under a very great mistake, and we may as well meet it here as anywhere. His assertion is in substance that no Legislature has ever been guilty of making such discrepancies and differences as we have done by the vote just taken, that, never were there made such great discriminations in numbers. The gentleman, if he had looked at the figures, would have found himself thoroughly mistaken. Let us look at the last apportionment only of this State, and see how it stands.

I find there, for instance, two counties, Westmoreland and Montgomery, differing nearly twenty-three thousand in population, and yet those two are just

alike in their proportion of members in the House of Representatives.

Again, Potter and M'Kean are placed together and Mercer is put by itself. Although Mercer has nearly 30,000 population more than the other two put together, yet it has only the same representation.

Again, Bradford and Montgomery differ very much, over 28,000, and yet are represented alike.

Again, Dauphin and Perry are put together, and they have the same representation as Schuylkill, although the difference in population is over 30,000.

Then, when we come to Dauphin and Perry put together, and Lancaster alone, we find the two are given the same number of representatives as the one, although the population differs over 35,000.

Now, I might go on with these figures, but what we have given are enough to show that the result of the legislative action to which the gentleman would carry us back by voting down what we have just voted in, will inevitably give rise to gerrymandering and political figuring. A regular Pandora's box would thus be opened in every Legislature which might make an apportionment, out of which would come all the evils that can well be imagined or that scheming politicians can devise. We cannot do exact justice, of course, to every county, but we can come nearer than we have. Even under a basis of population, taking the ratio of 150, you reduce it down to eight representatives to be divided among seven counties, and you dispose of those by giving each county a member. This subject makes no difference to me or my district, for every proposition that has been introduced on this floor, so far as I recollect, leaves my county in the same condition relatively as every other proposition. I favor this on principle, and I want the evils that we have seen in the past done away with, and done away with forever, so far as is possible, without giving rise to others which are greater.

Mr. ANDREW REED. I do not see any reason for adopting the amendment just proposed. I can see no reason whatever why the House of Representatives should have a fixed number. I cannot see any great necessity why it should be one hundred and forty-seven, one hundred and forty-eight, or one hundred and fifty. And what is the use of marring the scheme we have just adopted by adding on these fractions afterward? I think

we can get along well enough with it as it is. I can see no propriety in having a fixed number, and if our House of Representatives should, during one decade of ten years, consist of one hundred and forty-seven members, and during the next ten years of one hundred and fifty-two members, let it be so. It would make no difference, and I can conceive of no argument why this amendment should be added to the scheme just adopted.

Mr. HALL. I have listened with pleasure, as I always do, to the gentleman from Delaware, differing very materially, however, from his conclusions, and not being entirely able to see the application of his argument to the amendment he has proposed. Still, since he has made it and since I do differ so materially with him, I wish to say a few words counter to the argument he has made. It seems to have been adopted as an axiom by all those in this Convention who are opposed to representation of counties, that population is the only true and fair basis. They not only assume that to be an axiom, but they assume it to be an axiom always recognized throughout the American government. It seems strange, after the speech of the gentleman from Delaware, and after the many warm and eloquent harangues that have been made by other gentlemen of the same view, that history should prove this supposition to be entirely incorrect. Not only has that assumed axiom never been adopted in this country as a principle of government, but it has been always treated as an unsafe basis of representation. Why, sir, in the national government, as we are all aware, Senators are not chosen by population. They are chosen by committees, two to each State, and even in the House of Representatives there is at least one member to each State, although it is professedly based upon population. The Constitution of the United States does not base representation on population alone, because it provides even as to the constitution of the lower House of Congress, that each State shall be entitled to one member. That is in principle what we propose here, when we say that each county shall be entitled to one member, so that we have a direct, complete and honored precedent for our action in this Convention.

Not only is this principle of representation of communities recognized in the United States government, but it is also recognized in many State Constitutions. I look-

ed them over when this question was before us in committee of the whole, then intending to make some remarks on the subject, but I did not intrude upon the Convention, and I have not now the facts before me, but the principle is recognized in some Constitutions by limiting the number of representatives which certain counties shall have; for instance, by providing that no county shall have more than a certain number, thus admitting that mere population is not the true basis of representation; and in some other Constitutions the same principle is recognized by providing that each county shall have at least one representative in one House of the Legislature. The basis for representation adopted in this State has never been population. Under the Constitution of 1700 every county was entitled to a representative and under the present Constitution the basis is not population but taxables.

Here then is the history of our government and here are the facts as to existing Constitutions. Population seems to be very rarely if ever acknowledged as the true basis of representation. There must be checks and balances in the construction of our forms of government which must be obtained by some other mode. Population is recognized to some extent, but it has placed upon it checks. The evils resulting from the aggregation of population in cities like Philadelphia, and in other great communities, must be avoided and counterbalanced by some other principle of representation. In the government of several of the States we find they have adopted the plan of representation by communities, and we propose simply in our Constitution to provide the same check—representation by communities.

Well, now, that is the history of this country, and it seems to me to prove that representation by population simply, as is contended for here, has not been generally accepted as correct in principle, or to any great extent carried out in practice.

This is a representative democracy. It would be a pure democracy were it not for the fact that the numbers of our people are so great that it would be impossible for them to meet and deliberate together as was the custom in some of the ancient republics. Therefore, as this cannot be, we must have representatives. Now, if we were a pure republic, it would not be population that would govern, but the electors; logically the basis should be

electors rather than population. Electors and population are two very different things. Let me illustrate. If 30,000 aliens should settle in Forest county, her population would be increased to that extent, and if population be the accepted basis, might therefore be entitled to a representative, while in fact her voting capacity would not be increased one vote. Therefore whether we regard the precedents afforded by existing Constitutions, or the philosophy of a representative government, the inevitable conclusion is that population is not the true basis of representation.

We are in favor of representation by communities, because it affords a simple, uniform rule, and avoids gerrymandering. It is a simple, complete and uniform system. We do accept population to a certain extent, but not as the only true, safe basis, for the reasons I have given. Therefore I think that what the Convention has done here to-day it has done well and wisely, and that the criticisms of the gentleman from Delaware are not well founded.

Mr. GIBSON. I am one of those who have not submitted any proposition to the members of this Convention in regard to the apportionment of the State; but as the amendment that is now before the Convention seems to overlook the question, I feel it my duty to express a few general ideas I have upon the subject. I was one of those who voted against the proposition to give each county a representative, and I think that an answer can be given to the argument that has been made by the gentleman who has just taken his seat (Mr. Hall) when he compares this plan with the one on which representatives are elected to the Congress of the United States. If the main proposition now before this Convention provided in any way for an increase in the future, and if it was based upon the ratio of the smallest amount of population that there is in any one of the counties of this Commonwealth, then his argument would be good. The idea then was, under the principle of State sovereignty, which governed in the organization of the Federal Congress, first to give each State a representation in the Senate of two Senators. Then, for the apportioning of representatives according to population, they took the State of the very smallest population as the ratio, and they provided that every State should have at least one member.

But here is an arbitrary rule to be laid down, of one hundred and fifty members. Why, sir, is that? Why is not the matter to remain open? Why cannot the Legislature increase, from time to time, according to the increase of population? I oppose the representation of counties because I believe the true principle of representation is according to population. One House or the other of the Legislature of this Commonwealth ought to be composed according to population. We voted to restrict the city of Philadelphia in its representation in the State Senate because we were afraid of its overpowering influence as a great community. If this principle of each county having a representative in the lower House is to be adopted, if an unjust discrimination is to be made there, then it would be well for this Convention to let the Senate at least have representation according to population.

And, sir, as regards numbers, I am one of those who believe that you cannot make the House of Representatives too large, I would be in favor of every county having a representative, if you will make the county of the lowest population the ratio of representation. Then it will be fair. But it is objected that that would make too large a House; that that would make five hundred members. What if it does? Sir, you may prescribe as many oaths as you please, you may adopt what you choose in the way of restraining local and special legislation, I believe that if you have a large House, as there is in some of the New England Houses, you will at once cure the whole evil. A House consisting of three hundred or five hundred members will be entirely free from the noxious influences which members upon this floor so much deprecate.

But, sir, the principle seems to be adopted; this Convention has now declared that every county shall have a representative. There are only two ways of reconciling this thing and placing it upon such a basis that it will lead to no confusion. One is to take the county of the lowest population as the ratio and let the State be apportioned, and let the House of Representatives consist of the number of members that that will give, and the other is a proposition which I have been expecting to be submitted to this body, for I believe there is one delegate who is prepared to submit it, and that is this: Let every county in the State have a representative. That repre-

sentative will represent the fractions over the ratio that this Convention may adopt. Then let the ratio of representation be twenty or twenty-five thousand, and you will have for every county in the State that has twenty thousand a representative; those that have forty thousand, two; those that have sixty thousand and upwards, three representatives, according to the ratio, but at the same time you will have a representative who represents the county. If there is such a thing required in the legislation of the State as that each interest should be represented, that each corporate power should be represented, that the municipalities or counties should be represented, then give each county at once a representative. That representative, then, in a county that is under the ratio, will represent that county and its small population, and in the counties that are entitled to three or four members he will represent the fraction over.

I do not see why that would not relieve us of all the difficulty. It will make a House of some two hundred or two hundred and fifty or three hundred members; I have not made the calculation; but it will avoid all this confusion, all this discussion, all this distraction about fractions. No matter what the fraction is over the ratio, let the county member be the representative of that fraction. This, it seems to me, would reconcile all the differences.

I do not wish to take up the time of the Convention in the further discussion of this matter, but I do hope that some gentleman will offer a proposition of that kind, because I think that from the expression of opinion which I have heard here, and from the votes which have been cast, it is now decided that every county shall have a representative. Then why not avoid this difficulty of fractions by letting the county representative represent those fractions, whatever they may be?

Mr. STANTON. [At one o'clock and twenty-five minutes P. M.] I move that we adjourn.

Mr. LILLY. I ask for a call of the House. There is not a quorum present.

The PRESIDENT. There is certainly not a quorum present and has not been for ten minutes.

Mr. STANTON. I move an adjournment.

Mr. J. PRICE WETHERILL. We ought not to adjourn. There are at least ten or

fifteen members outside getting lunch now.

Mr. HARRY WHITE. I rise to a question of order. A motion to adjourn is not debatable.

The PRESIDENT.—It is not debatable.

Mr. MACVEAGH, Mr. J. PRICE WETHERILL and others called for the yeas and nays on the motion to adjourn; and the yeas and nays were taken with the following result:

YEAS.

Messrs. Addicks, Baker, Bartholomew, Black, J. S., Boyd, Buckalew, Curry, Dunning, Ellis, Ewing, Fulton, Gibson, Green, Guthrie, Hall, Kaine, Lilly, M'Michael, Minor, Parsons, Pughe, Stanton, Stewart, Struthers, Van Reed, White, Harry, Worrell and Walker, *President*—28.

NAYS.

Messrs. Ainey, Baer, Bailey, (Huntingdon,) Bannan, Biddle, Bowman, Broomall, Brown, Calvin, Campbell, Darlington, Davis, Edwards, Finney, Funck, Hay, Hemphill, Hunsicker, Lawrence, MacConnell, MacVeagh, M'CLean, Newlin, Palmer, G. W., Patterson, D. W., Purviance, Samuel A., Read, John R., Reynolds, Sharpe, Smith, Henry W., Smith, Wm. H., Turrell, Wetherill, J. M., Wetherill, John Price, and White, J. W. F.—35.

ABSENT.—Messrs. Achenbach, Alricks, Andrews, Armstrong, Baily, (Perry,) Barclay, Bardsley, Beebe, Bigler, Black, Charles A., Brodhead, Bullitt, Carey, Carter, Cassidy, Church, Clark, Cochran, Collins, Corbett, Corson, Craig, Cronmiller, Curtin, Cuyler, Dallas, De France, Dodd, Elliott, Fell, Gilpin, Hanna, Harvey, Hazzard, Heverin, Horton, Howard, Knight, Lamberton, Landis, Lear, Littleton, Long, M'Camant, M'Culloch, M'Murray, Mann, Mantor, Metzger, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Reed, Andrew, Rooke, Ross, Runk, Russell, Simpson, Smith, H. G., Temple, Wherry, White, David N., Woodward and Wright—70.

The PRESIDENT. The motion is not agreed to, but there is not a quorum of delegates voting.

Mr. DARLINGTON. I move that the Sergeant-at-Arms be sent for the absent members forthwith.

Mr. CURRY. I propose to amend the motion by moving that we adjourn to-morrow.

Mr. DARLINGTON. It is not amendable.

Mr. MACVEAGH. If gentlemen would allow I should like to move simply for a recess of ten minutes. I think a quorum will certainly be here in that time.

Mr. DARLINGTON. I think the right way would be to compel members to attend.

Mr. STANTON. I will only suggest that a great many members left the Convention upon the idea that we took a recess at one o'clock to-day.

Mr. MACVEAGH. No, that was explained before.

Mr. STRUTHERS. I beg the gentleman's pardon; several gentlemen thought so.

Mr. BIDDLE. I thought so, for one.

Mr. EWING. I did until about one o'clock.

Mr. CURRY. I insist upon my amendment.

Mr. HARRY WHITE. I second the amendment.

Mr. BROOMALL. I submit that a motion to adjourn is not in order without the intervention of other business.

Mr. BUCKALEW. Mr. President: We know very well what this motion to send out the Sergeant-at-Arms means. It means that after we have sat here awhile we shall adjourn anyhow. I think we had not better go through that form.

The PRESIDENT. The Chair will put the question on the motion that the Sergeant-at-Arms be sent for absent members.

The motion was not agreed to.

Mr. HARRY WHITE. I move that the Convention do now adjourn for want of a quorum.

Mr. CAMPBELL and others called for the yeas and nays.

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

Y E A S .

Messrs. Addicks, Baker, Bartholomew, Biddle, Bowman, Boyd, Brown, Buckalew, Calvin, Curry, Davis, De France, Dunning, Ellis, Ewing, Fulton, Gibson, Green, Guthrie, Hall, Hemphill, Kaine, Lilly, Minor, Palmer, G. W., Parsons, Pughe, Purviance, Samuel A., Read, John R., Stinton, Stewart, Struthers, Van Reed, White, Harry, White, J. W. F., Worrell and Walker, *President*—37.

N A Y S .

Messrs. Ainey, Baer, Bailey, (Huntingdon,) Bannan, Broomall, Campbell, Darlington, Edwards, Finney, Funk, Hay, Horton, Hunsicker, Lawrence, MacConnell, MacVeagh, M'Clean, M'Culloch, Metzger, Patterson, D. W., Reynolds, Sharpe, Smith, Henry W., Smith, Wm. H., Turrell, Wetherill, J. M., and Wetherill, Jno. Price—27.

ABSENT.—Messrs. Achenbach, Alricks, Andrews, Armstrong, Baily, (Perry,) Barclay, Bardsley, Beebe, Bigler, Black, Charles A., Black, J. S., Brodhead, Bulitt, Carey, Carter, Cassidy, Church, Clark, Cochran, Collins, Corbett, Corson, Craig, Cronmiller, Curtin, Cuyler, Dallas, Dodd, Elliott, Fell, Gilpin, Hanna, Harvey, Hazard, Heverin, Howard, Knight, Lamberton, Landis, Lear, Littleton, Long, M'Camant, M'Michael, M'Murray, Mann, Mantor, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Reed, Andrew, Rooke, Ross, Runk, Russell, Simpson, Smith, H. G., Temple, Wherry, White, David N., Woodward and Wright—69.

So the motion was agreed to; and, at one o'clock and forty-two minutes P. M., the Convention adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FORTY-FIFTH DAY.

FRIDAY, *September 19, 1873.*

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

Prayer by Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. BROOMALL asked and obtained leave of absence for himself until Monday next.

Mr. DAVIS asked and obtained leave of absence for himself for a few days from to-day.

Mr. SHARPE asked and obtained leave of absence for Mr. Struthers for to-day.

Mr. WRIGHT asked and obtained leave of absence for Mr. Craig from the commencement of the present session of the Convention for a few days on account of serious indisposition.

SESSIONS AT HARRISBURG.

Mr. BAER. I offer the following resolution :

Resolved, That from and after Monday next the sessions of this Convention shall be held in the hall of the House of Representatives at Harrisburg.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for which resulted twenty-three in the affirmative. This being less than a majority of a quorum, the question was determined in the negative.

APPOINTMENT OF OFFICERS, &c.

Mr. KAINE, from the Committee on Commissions, Offices, Oaths of Office and Incompatibility of Office reported the following articles, which were read and ordered to be printed :

ARTICLES.

OF THE STATE SEAL AND COMMISSIONS.

SECTION 1. The present great seal of Pennsylvania shall be the seal of the State.

SECTION 2. All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be

sealed with the State seal and signed by the Governor.

ARTICLE—.

OF OFFICERS AND INCOMPATIBILITY OF OFFICE.

SECTION 1. No person but an elector shall ever be elected or appointed to any office in this Commonwealth.

SECTION 2. All officers whose election is not provided for in this Constitution shall be elected or appointed as may be directed by law. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected ; but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

SECTION 3. No person (except notaries public, commissioners of deeds, and officers of the militia not in actual service,) shall at the same time hold or exercise more than one office in this State, to which a salary is, or fees or perquisites are by law annexed ; but the Legislature may provide by law the number of persons in each county who shall hold the offices of prothonotary, register of wills, recorder of deeds, and clerk of the courts, and how many and which of said offices shall be held by one person.

SECTION 4. No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary is, or fees or perquisites are by law attached.

SECTION 5. All officers shall hold their offices for the terms respectively specified only on the condition that they so long behave themselves well, and shall be removed on conviction of misbehavior in office, or of any infamous crime.

SECTION 6. Prothonotaries, clerks of the peace and orphans' courts, recorders of deeds, registers of wills, county surveyors and sheriffs shall keep their offices in the county town of the county in

which they respectively shall be officers; unless when the Governor shall for special reasons dispense therewith, for any term not exceeding five years after the county shall have been erected.

SECTION 7. Any person who shall fight a duel or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and shall be punished otherwise in such a manner as is or may be prescribed by law; but the Executive may remit the said offence and all its disqualifications.

The report was ordered to lie on the table and be printed.

RESOLUTIONS AS TO HOURS OF MEETING.

Mr. BROOMALL. Before the order for resolutions had passed I endeavored to get the floor for the purpose of calling up the resolution I offered yesterday which was laid over under the rules. I now ask to call that up.

The PRESIDENT. The Chair did not observe the delegate from Delaware until he had called for reports of committees.

Mr. BROOMALL. I supposed the gentleman from Fayette had a resolution to offer or I would have called a little louder so as not to let the order pass.

The PRESIDENT. Resolutions on second reading are now in order, and the delegate from Delaware can call up his resolution now.

Mr. BROOMALL. I call for its second reading.

The PRESIDENT. The delegate from Delaware calls up on second reading the resolution offered by him yesterday, which will be read.

The CLERK read as follows.

Resolved, That the rules of the Convention be so changed that resolutions changing the hours of meeting and adjournment shall only be in order on the first Monday of every month.

Mr. BROOMALL. I only desire to say that this is just the time to pass that resolution. We are a little while before the day upon which these resolutions will be in order, the first Monday in October, and we can then fix for October throughout the whole month the time of meeting and adjournment, and thereby save about one day of debate in every week. I say this is the time to pass this resolution because the time comes so soon when those who are not satisfied with the present arrangement can change it if they will or

if the majority wish to do so. For my part I desire nothing but that the hours of meeting and adjournment shall be fixed. You may fix them, if you choose, at midnight to commence and at the next midnight to conclude, and I will conform to them; but my desire is to avoid the constant annoyance of having these questions up and debated. It requires, I suppose, two-thirds to pass the resolution, but I really hope the Convention will see the necessity of doing it.

Mr. DARLINGTON. I move to postpone the further consideration of this resolution until the first Monday in October.

Mr. ALRICKS. I second the motion.

The motion to postpone was agreed to, there being on a division ayes thirty-four, nays thirty-two.

The PRESIDENT. The Chair would suggest to the delegate from Delaware whether he is not mistaken in saying that it would take a two-thirds vote to pass this resolution.

Mr. BROOMALL. I said that without thinking about it. I am not sure.

Mr. WOODWARD. It does not require a vote of two-thirds. A majority is competent to alter the hours of meeting and adjournment.

The PRESIDENT. The resolution has been postponed.

THE LEGISLATURE.

Mr. MACVEAGH. I trust that we shall now pass to the order of the day, which is the further consideration of the article reported by the Committee on the Legislature.

The PRESIDENT. The next business in order is the further consideration on second reading of the article under consideration yesterday, the article on the Legislature. When the Convention adjourned yesterday, the pending question was on the amendment offered by the delegate from Delaware (Mr. Broomall) to the amendment of the delegate from Philadelphia, (Mr. J. Price Wetherill,) which will be read.

The CLERK read the amendment to the amendment, which was to add the following:

"And the number of representatives shall be made one hundred and fifty, by giving the representatives to the largest unrepresented fractions, or taking them from the smallest represented fractions, as the case may require."

Mr. KATNE. Be good enough to read the section to which it is proposed to affix that amendment.

The PRESIDENT. The entire section will be read, with the amendment to it.

The CLERK. If this amendment to the amendment be adopted, the original amendment will read :

"SECTION 19. The General Assembly shall apportion the State every ten years, beginning at its first session after the adoption of this Constitution, by dividing the population of the State, as ascertained by the last preceding census of the United States, by the number one hundred and fifty, and the quotient shall be the ratio of representation in the House of Representatives. Every county shall be entitled to one representative. Every county having a population not less than the ratio and three-fifths shall be entitled to two representatives, and for each additional number of inhabitants equal to the ratio one representative. And the number of representatives shall be made one hundred and fifty, by giving representatives to the largest unrepresented fractions or taking them from the smallest represented fractions as the case may require."

Mr. MACVEAGH. I trust the Convention will pause for a moment while this is again explained to them. The whole effect of this amendment is to make the House a definite number, three times the size of the Senate, to make it one hundred and fifty by using the largest fractions either way to effect that purpose; otherwise as under the Illinois plan, you have a divisor and a quotient as a basis and have to use fractions in order to do justice. You cannot be sure of any definite number. This amendment of the gentleman from Delaware secures a definite number by a direction to use the largest fractions in their order to secure that number.

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

Mr. MACVEAGH. Certainly.

Mr. KATNE. What is the use of placing the number one hundred and fifty twice in this section? The first part already provides that the House shall consist of one hundred and fifty members.

Mr. MACVEAGH. No, that is not a part of it now as I understand it. I understand the truth to be that we did make that the number before we adjourned, did vote upon it on second reading and pass it. I have a very distinct and positive recollection of that kind; but it does not appear in the printed report.

The PRESIDENT. The Chair is informed that that vote was reconsidered and then the section voted down.

Mr. MACVEAGH. If that is not now, the amendment of the gentleman from Delaware exactly fits it.

Mr. J. W. F. WHITE. I should like to ask the gentleman from Dauphin what is the use of this amendment, when according to the previous part of this section there will be one hundred and fifty members apportioned among the counties?

Mr. MACVEAGH. According to the last census, that may or may not be true; I have great confidence in the gentleman's arithmetical accuracy, but other gentlemen reach a different result by the use of the same figures. Even if it is true, as is suggested to me, that the original proposition would make one hundred and fifty-one members, the amendment of the gentleman from Delaware will reduce it one, making it just one hundred and fifty.

Mr. S. W. F. WHITE. That is what I want to know, how it will be reduced one member?

Mr. MACVEAGH. By discarding the least fraction; that is, the least fraction to be left unrepresented.

Mr. J. W. F. WHITE. Then you leave some county without a representative?

Mr. MACVEAGH. No.

Mr. J. W. F. WHITE. It takes one from some other county?

Mr. MACVEAGH. Yes, sir.

Mr. J. W. F. WHITE. And leaves that county minus one representative for a full ratio.

Mr. MACVEAGH. No, sir, for three-fifths of a ratio. The one that has the smallest unrepresented fraction of a ratio will be dropped.

Mr. BROOMALL. The smallest represented fraction.

Mr. MACVEAGH. Yes, the smallest represented fraction of a ratio. It does exact mathematical justice. Now, the Convention can take either one of these two plans. The amendment makes the number of the House one hundred and fifty, just three times the number of the Senate, and makes it a definite number and does arithmetical justice.

Mr. ANDREW REED. I should like to ask the gentleman what practical use is there in having a definite number fixed.

Mr. MACVEAGH. Well, I cannot say that there is any important advantage to be gained in having three times the number or in having any definite number.

That is for the House to consider. I am not earnest either way.

Mr. BEEBE. Is the amendment of the gentleman from Delaware satisfactory to the gentleman from Dauphin?

Mr. MACVEAGH. Oh yes, the amendment of the gentleman from Delaware is satisfactory. I see no objection to it. It makes the number certain and definite. On the other hand, I see no special advantage in it.

Mr. HARRY WHITE. I have read very carefully the amendment offered by the gentleman from Delaware, and if that amendment is incorporated in the proposition as thus amended, I do not know but that I shall vote for it. I am satisfied that the sense of a majority of the Convention is to allow the Legislature to apportion the State. I understand that if this amendment is adopted, it will leave the question in this way: A certain clause of the provision authorizes the Legislature to apportion the State every ten years for representatives according to the population in the respective localities; and then it provides furthermore that each county shall have a separate representation, and it also provides that each county having a ratio and three-fifths of another ratio shall be entitled to two members, and to an additional member for each additional ratio of population.

So far it is plain. Now the delegate from Delaware proposes to amend this proposition by limiting the number of representatives to one hundred and fifty. I have no objection to that; but the amendment provides additionally that if the number of one hundred and fifty is not made up by ratios, the deficiency shall be given to the largest unrepresented fraction. I do not have any objection even to that. We seem all to agree upon that point; but his amendment adds a further provision, that if the plan works out over one hundred and fifty the surplus shall be taken from the unrepresented fraction. Why the necessity of making that negative provision?

Mr. BROOMALL. Allow me to explain. It may happen that by this calculation the number of representatives will be one hundred and fifty-one, as has been stated by the gentleman from Allegheny, (Mr. J. W. F. White,) or it may be one hundred and fifty-five or one hundred and fifty-six; and then the only way to insure equality is to throw off the representation of the smallest represented fractions, so that the provisions is necessarily in the

alternative. I would say that I do not care anything about the proposition. If it is desirable that the number should be an even number, however, and I think it is desirable, then this is the only fair way of doing it.

Mr. HARRY WHITE. I think the negative part of your proposition is mere surplusage.

Mr. BROOMALL. No, sir.

Mr. HARRY WHITE. As I understand it, unless the number of representatives shall be one hundred and fifty, that number is to be made up by allowing a representative to the largest fraction.

Mr. BROOMALL. Suppose the number of representatives by the calculation should be one hundred and fifty-two, then instead of adding two or three you must deduct them. The gentleman's position would be right if by the calculation the number of representatives would be one hundred and forty-five or one hundred and forty-six or one hundred and forty-seven, or anything less than one hundred and fifty. But it may happen that the calculation will make over one hundred and fifty members, and in this particular case I am afraid it will make too many, and then there must be an abatement of it to one hundred and fifty.

Mr. HARRY WHITE. Then I understand this negative proposition is to meet this contingency; suppose by dividing the population of the State by one hundred and fifty we get a representation, and we discover that the representation will make up in the aggregate more than one hundred and fifty members. Now, then, we are to confine the number to one hundred and fifty by providing that those counties which may be entitled to an additional member and have the least fractions shall surrender to the counties having the largest fractions over a ratio.

Mr. BROOMALL. Not surrender to anybody, but simply abate that number which is thrown off. The small fractions should not be represented in preference to the large fractions.

Mr. J. W. F. WHITE. The best way to test any principle is to see its practical workings. Now, I spent some time last evening and the evening before in seeing how this would work out, and I have made a very careful calculation of what will be the representation of each county under the section now before us, and I am satisfied it foots up 151 members. That this result will work out is very evident from the fact that we allow a representa-

tive to three-fifths of a ratio. I have the figures before me now, but I do not intend to read them; yet, the working out of this plan in every county in the State, giving every county one representative to start with and then another representative for a ratio or for three-fifths of a ratio, we have two representatives for every county that has 37,565 inhabitants, three representatives for 61,043 inhabitants, and so on.

Now, the amendment proposed by the delegate from Delaware must throw off one member from some county, and I believe that the loss of that member would fall upon Northampton. Northampton has a population of 61,432. To entitle it to three members there must be a population of 61,043, so that Northampton has a population of a very little over 300 more than the number necessary to entitle it to three members, the smallest fraction, I believe, that there will be in any county of the State, so that this amendment would result in taking from Northampton one representative, leaving it with 61,432 inhabitants and only two representatives. And just to show the injustice of this mode of apportioning the State, I will state the fact that under this section, if we should adopt it with the amendment proposed by the delegate from Delaware, Northampton would have two representatives in the Legislature, with a population greater than the eight small counties of the State that would have eight representatives in the Legislature. Take the eight small counties—Forest, Cameron, Sullivan, Pike, Elk, McKean, Fulton and Potter. They have together 60,848, and are entitled to eight members of the Legislature, yet under this section Northampton county, with a greater population, will be entitled to only two members in the Legislature.

I am now arguing what will be the result if this amendment should be adopted and the section as amended should be adopted; and this will be the working out of this principle in the apportioning of the State. Does not everybody see that such would be rank injustice?

I will call the attention of the Convention to a few more facts. If this section and the amendment should be adopted, not only would it work out that injustice with reference to Northampton county, but here are eight other counties, Berks, Dauphin, Montgomery, Westmoreland, Lehigh, Chester, Bradford and York, that would have a surplus population, of

154,378, nearly three times the total population of these eight counties, and yet these eight other counties of the State would each be entitled to one member under this section. Now, take Beaver, Butler, Cambria, Indiana, Clarion, Lebanon, Tioga and Centre, eight counties that each would be entitled to one member under this section, and they have a total population of 286,000, whereas this small population, a population of only 60,000, in these eight other small counties, would have the same number of representatives in the House. Now, it does seem to me that if we should incorporate a principle in our Constitution which would work out such results in the apportionment of our State, we should be doing great injustice. It works out this way now, and in future apportionments it may be a great deal worse than that.

Now, I call attention to this fact, that all these schemes for apportioning the State by giving to each county one representative do not affect Philadelphia or Pittsburg, or the large counties of the State. I am therefore, not arguing this question because of any bearing upon our county, because in all of these schemes Philadelphia has twenty-seven or twenty-nine members. Under this plan it would have twenty-nine, Allegheny county, would have eleven. And yet these small counties are entitled to representatives to the injury and sacrifice of the medium counties of the State. It is not a question therefore so much affecting us as it is the medium counties of the State. Their population is not represented in the Legislature.

The amendment offered by the delegate from Delaware will take off one member from the apportionment according to the present population. Ten years hence it might take off two, three, four or five members, because I believe there will hardly ever be an apportionment in the State when you allow one representative for three-fifths of the ratio but what the number will exceed one hundred and fifty, and nearly every apportionment would have to be adjusted by striking off one or more members from the different counties.

If you would make the fraction of a ratio more, say three-fourths of a ratio, to entitle a county to an additional member, you would always have a deficiency; at least with the present population of the State you would have a deficiency that would have to be made up to make one

hundred and fifty; but when you reduce the fraction down to three-fifths you give more members to the counties of the State than the one hundred and fifty, and you have to strike off one or more from some of the counties.

Conceiving this to be unjust, conceiving the whole plan to be not the best one, because my mind for a great while was in favor of granting the small counties a representative, and I would do so still if I could see how it would work out without doing great injustice to other portions of the State; and the conclusion of my mind after studying this thing most carefully and closely is that it is manifest injustice to give to each county in the State one representative, or if we do that we must increase the number of the House to two or three hundred to work out anything like justice throughout the State.

The PRESIDENT. The question is on the amendment of the delegate from Delaware (Mr. Broomall) to the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

The amendment to the amendment was rejected.

Mr. GUTHRIE. I desire to offer an amendment, but I do not know exactly how it is to be done. I send it up, however, to be read by the Clerk.

The CLERK. It is proposed to strike out of the amendment all of it, beginning with the words, "every county shall be entitled to one representative," and after the word "representative" to insert: "and in addition thereto one representative for every ratio of twenty-five thousand inhabitants contained therein. Any county having a fraction of less than twenty-five thousand inhabitants shall, when its population reaches the said ratio of twenty-five thousand, be entitled to an additional representative for such ratio."

Mr. GUTHRIE. I propose to strike out all of the original section previous to the words "every county shall be entitled to one representative," and then to amend by adding to what is left of the section what I have sent up to the desk. Let the section be read as it would then stand.

The CLERK. As proposed to be amended, the amendment would read:

"Every county shall be entitled to one representative, and in addition thereto one representative for every ratio of twenty-five thousand inhabitants contained therein. Any county having a fraction of less

than twenty-five thousand inhabitants shall, when its population reaches the said ratio of twenty-five thousand, be entitled to an additional representative for such ratio."

Mr. GUTHRIE. Now, sir, I offer this because it comes directly to the point. The whole question has been discussed here on abstractions, and many of the amendments which have been offered have been, to my mind, delusions and snares. They say, many of them, that every county shall have at least one representative. That would give the smaller counties, such as Forest, Cameron, Elk, &c., a representative to the county, while Somerset and other counties that have a surplus over the twenty-five thousand would have but one member and would not get one for the territorial or district representation. That is the inequality of it.

But I start out on the principle that every county shall be represented for its municipal organization by one representative in the Legislature. Then I would divide the population so that every county shall have a representative according to the ratio of population that it contains. Then this proposition of mine lays aside all fractions, will have nothing to do with fractions, or this thing or that relating to two-thirds, three-fifths, seven-eighths or nine-tenths. It takes a man versed in algebra to understand these things, and I might almost say one must go into trigonometry to understand them. [Laughter.] I wish to dispense with all of that, and come directly to the point. If the Convention is in favor of increasing the number of members to one hundred and seventy-six, this proposition will make it precisely. If they want to reduce the number, they can increase the ratio to 30,000; but retain the principle.

My points in this case are these: The proposition provides for one representative for each county in fact. It provides for a population representation on the basis of 25,000. It provides for an increase of representation whenever and wherever the population increases to another ratio. The necessity for calculating fractions is dispensed with. If after the next census of 1880 it is found that the number of members of the Legislature is too large, I would authorize the Legislature to alter the ratio, either to increase the number or decrease it as they saw proper, as the popular feeling might desire. Therefore I think if these principles are adopted an

additional section may be passed authorizing the Legislature, after the next national census, to change the ratio for Senators and Representatives, to increase or decrease it. The thing will work itself. The Constitution may last for a thousand years, and the Legislature can regulate the number without interfering with the principle. My object is direct; I wish no circumlocution. If the House understand the point and are in favor of it, they will vote for it; if they object to the principle, which is clear and plain enough, of course they will vote against it.

Mr. LILLY. I am afraid this proposition is not fully understood by the House, and I do not know that I can make them understand it fully. It is a very important one, and I think the best one that has been before the House since the alteration of the proposition of the gentleman from Philadelphia (Mr. J. Price Wetherill.) It will prevent great injustice which, in my opinion, would result from the amendment of the gentleman from Allegheny, (Mr. S. A. Purviance,) which, I am sorry to say, the House has adopted. I trust that members will give their attention to this proposition, because it is a commendable one, and one that ought to receive the full consideration of members here.

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

Mr. MACVEAGH. Before the yeas and nays are ordered, let us hear what it is.

The CLERK read the amendment to the amendment.

Mr. MACVEAGH. Now, Mr. President, that simply increases the inequality that is aimed to be avoided. It is perfectly clear that the inequality is much greater under this plan than the other, and must be necessarily. Cameron county, with a population of 4,000, gets a member, to be sure, but then we go down on the plan of the committee, and take in 14,000 as the basis to give other counties a member, and therefore we leave but eight counties in the State that are excluded by the terms of it, whereas this proposition excludes every county under 25,000, and puts every one of those counties on an equality with counties having more than that population. It needlessly increases the inequality as well as needlessly enlarges the number of the House. In practical working you will see exactly where it will come to. If any man will sit down and figure out the numbers it will make for every county in the State,

he will see the results that will come from any such thing. It is difficult enough now to ask the large counties to take in eight small counties; it is as much as they ought to be required to do; but to ask them to put every county under 25,000 upon the same footing with the city of Philadelphia is asking too much.

Mr. LILLY. I should like to explain to the gentleman. He does not understand the proposition. The proposition is that a county with only twenty-five thousand is not to have an additional representative.

Mr. MACVEAGH. Not to have an additional representative, but it is to have one representative precisely the same as Philadelphia is to have.

Mr. WOODWARD. That is territorial.

Mr. MACVEAGH. Very well; but that is the plan now already reported. The only thing is that as you increase the ratio of popular representation coupled with county representation, you increase the inequality needlessly. By the first ratio you get two members. Therefore every county having twenty-five thousand population will have two members, and every county under twenty-five thousand will have a member on account of her county existence. The other plan gives every county a member and another on a second ratio, and it gives the large counties representation on a ratio and three-fifths of a ratio.

Mr. GUTHRIE. But your plan gives some counties a representation on population, and some a representation on territory; mine does the very reverse.

Mr. MACVEAGH. I know, and that very element is its injustice. We saw that the Convention was in favor of the representation of small counties, of every county having a member. Very well. Then that is done with the least injustice to the large counties, the smaller you make the fraction that entitles to a member, necessarily, because the proportion of that population to the population of the large county is thereby made more equitable and more just. But if you first take sixty-six members out of the entire representation, and give them without any reference whatever to population in any county, then you do injustice to the large counties unnecessarily, because they are not only treated unjustly with reference to Cameron and Forest, but they are treated unjustly with reference to twenty counties in the State. Well, why is that desirable? Why can such an inequality be de-

sired? The other was in order to remedy a small difficulty; this increases the difficulty and does not enlarge the remedy. Why put large counties like Chester and Luzerne and Schuylkill and Montgomery at a disadvantage to more counties than is absolutely necessary?

Mr. HAY. The delegate from Dauphin states that the Convention has decided in favor of the representation of counties. In giving every county a representative, I do not understand that the Convention has adopted the principle of county representation as that statement would lead us to understand it; that is, to give to every county a representative as a county; but has simply manifested its willingness to modify the principle of representation by population, so far as to give to each county at least one representative.

Mr. MACVEAGH. I accept that. The Convention voted to secure each of the very small counties a member.

Mr. HAY. Merely as a modification of the principle of representation according to population.

Mr. MACVEAGH. So as to give them that. Now you want to increase the disadvantage, and it seems to me utterly needless to do so. No good result is to be reached by it.

Mr. J. PRICE WETHERILL. Mr. President: I entirely agree with the remarks made by the gentleman from Dauphin. It will be found that about thirty counties in the State number in population below twenty-five thousand each. Therefore, under this plan, thirty counties would be entitled to one representative each. Now, I say that it will be offensive to twenty of these thirty counties having a population of over twenty thousand, when they find they will only have one representative, while counties having but four thousand will have an equal representation. That will be very offensive to twenty of these thirty counties with a population of twenty thousand and over.

Another point shows how unequal and unfair it is. A county having a population of twenty-four thousand five hundred will be entitled under this rule to one representative, and a county alongside of it having a population of but eight hundred or nine hundred more, say twenty-five thousand five hundred, will be entitled to two representatives, and I say that under that rule it would be extremely unfair and unjust to counties coming so near the twenty-five thousand that they will only have one, while coun-

ties running just over the twenty-five thousand will have two members. The plan as reported by the committee makes an important difference between a county entitled to one and a county entitled to two. In the one instance a county is entitled to one member with twenty-three thousand people, and before a county can be entitled to two it must have a population of thirty-seven thousand, a fair and honest difference, which I think the people of the State will be satisfied with. But when you come to say that a county just below twenty-five thousand shall have one and a county just above it shall have two members, it will be offensive and make trouble throughout the State, and I think might defeat our entire work.

The PRESIDENT. The question is on the amendment of the gentleman from Allegheny (Mr. Guthrie) to the amendment.

Mr. HUNSICKER and others called for the yeas and nays.

Mr. BUCKALEW. I understand that by this scheme the total number of members of the House is not fixed. It will be a fluctuating number. Well, sir, I have no objection to that. In fact I have been willing to vote for that from the beginning. I do not see any particular charm in the exact number of one hundred and fifty or one hundred and fifty-two. But what I rose to speak about was the general consideration raised by this amendment. I would not vote for any amendment of this kind as an original proposition, because I am immovably opposed to the representation of the territorial divisions of the State as such in the House of Representatives, as I have already explained to the Convention. But the Convention by a deliberate vote has accepted the proposition. The Convention has departed from the principle of equality in representation. It has by yeas and nays determined that a man in one section of the State shall count more than a man in another, as to representation in the people's House. I am bound to accept that decision; I mean I am bound to accept it as a decision which the Convention will stand to and maintain hereafter.

Well then, sir, as the Convention has abandoned the principle which the Committee on Suffrage reported to the Convention, and in which it was unanimous, I am looking about to see what other one we are to stand upon; and what is that?

The principle of territorial representation, the hemlock trees of Forest and Cameron counties against the freemen of Philadelphia and Lancaster. Now, sir, if we are to go upon the territorial principle, I want to accept it frankly. If we are to stand upon that principle, I am in favor of saying right upon the face of the Constitution openly and honestly that each county shall have a representative *as a county*. That this amendment does, and it does nothing else in its first division.

Then it proceeds to say that having discharged our duty to the territorial principle we will apportion the rest of our representatives upon the other principle of population. The amendment says we shall take the ratio of 25,000 to make up the House. I am indifferent as to the number. But you will have by this amendment your two principles on which you propose to fill the House as you have already determined; you will have both principles distinctly and fairly stated to the people so that they can judge of them when they come to vote on our amendments; first, each county shall have a representative as such, and next, that the relative magnitude of the counties shall be considered in apportioning the remaining members of the House. If we are to have this territorial principle put into the Constitution to build our House of Representatives in part upon it, I am in favor of the particular form which it assumes in this amendment, because it is distinct, clear, reasonable, intelligible, and can be explained by us to the people and can be thoroughly understood by them.

What I intend by rising to speak at this time, however, is not to change the sentiments of this House, if indeed it has any sentiments upon any of these questions, [laughter,] is not to change the sentiments or opinions of this House, but to explain why now in voting upon an amendment to an amendment, in view of the past vote of this House, I can without loss of self-respect vote for the amendment.

Mr. MACCONNELL. I desire to ask the gentleman from Columbia a question. Taking the ratio to entitle the several counties to each additional member to be 25,000, and supposing the population of the State to increase during the next thirty years at the same rate as in the last thirty, of how many members would the House of Representatives consist at the end of the next thirty years?

Mr. BUCKALEW. As a matter of course, it follows that under the arrangement of this amendment, we shall have to adopt some scale such as that heretofore proposed. We ought, however, to consider that as an independent proposition. This is a definite subject and must be disposed of separately. The scale is a matter which can be afterward arranged.

Mr. DARLINGTON. It is impossible, Mr. President, for us to attain any definite result unless each of us is prepared to yield something. Perfect equality of representation is utterly impossible. Try it as we may, it will be found to be impracticable. Even if we should arrive at such a fair division to-day and apportion the State for ten years with perfect equality, so much population to each member, it might not remain equal for two years. An influx of population in any one place, or a decrease of population in another, would make your apportionment unequal before a fourth of the term would expire. It is, therefore, impracticable to make any equal apportionment. We can only approximate it. How shall we best approximate equality of representation in the lower House?

The best plan of all, of course, is that which I at first suggested, single districts regardless of county lines. But this Convention is not prepared for that. It is manifest by the votes which we have taken that county representation will be insisted upon in this body. If, therefore, we adhere to county representation, and as nearly as possible, equality of members, we must attain it first by giving to each county of the Commonwealth a member of the Legislature, and although this seems unequal to some, and it has been to some extent jeered at by members, yet it is no new principle. It is that which the framers of the Constitution of 1789 adopted, and which has remained in operation from that day to this, in declaring in that Constitution that the number of representatives should not be less than sixty nor more than one hundred, and should be apportioned among the several counties. Yet they nevertheless provided that each county then existing should be entitled to one member of that Legislature, and they still further provided that as to all counties which should be thereafter created they should not be entitled to separate representation until they should possess a population—or rather taxables, which was then the rule—which should entitle them, according to

the ratio which was then established, to that member. Now we seek nothing more than to enlarge that principle and apply it to the present existing condition of the Commonwealth. Give every county now existing a representative, if you intend to adhere to the representation of communities, and then divide the remainder of the population according to numbers as nearly equal as possible.

I think the Convention have decided this one thing most emphatically, that we will give county representation. Each county must have one member, and then the rest of the members must be divided amongst the counties according to population. What plan, then, can we adopt better than that proposed by the gentleman from Pittsburg, (Mr. Guthrie?) If his ratio of 25,000 is not correct, let it be changed to some other ratio: let each county that possesses it have another member and each other county that possesses its duplicate or triplicate have its two or three members in addition to the one representing the territory. I see no great inequality that this can be likely to produce.

It is said by one gentleman that it will not, perhaps, work out the even number of 150. Well, if that should be the result, let us change that number. Instead of saying that the House shall be a determinate number of 150, let us say that it shall never be less than 150 nor greater than 300, or some other number, so as to have it flexible.

Why should it not be left flexible in the hands of the Legislature? The representation in the Congress of the United States is flexible. They fix it from time to time as suits the judgment of that body, sometimes greater, sometimes less; and I am unable to see why it may not be found possibly highly convenient in future years to increase the number of the House of Representatives, even to three hundred. Nay, there are large numbers of persons throughout this Commonwealth who believe now that we are only going half way and that a larger House would tend to secure purity in legislation to a far greater extent than the number one hundred and fifty will do. Let us, then, when we come to it, change the number that we have adopted, and while we say we shall not have less than one hundred and fifty members in the House, let us say at the same time that it shall not be greater than some other number, whether it be two hundred or three hundred. Then

the proposition of the gentleman from Pittsburg, when worked out will result fairly, whether the House shall consist of one hundred and forty or one hundred and seventy or any other number.

It is therefore for these reasons that I feel impelled to sustain a vote for the proposition of the gentleman from Pittsburg.

MR. BROOMALL. Of course it is only a mere singular and remarkable coincidence. Of course it does not govern the opinions of the three gentlemen who have advocated this proposition in succession, the gentleman from Columbia, (Mr. Buckalew,) the gentleman from Carbon (Mr. Lilly) and the gentleman from Chester (Mr. Darlington;) but it is, nevertheless one of those singular coincidences that occasionally happen, to startle and surprise us, that in each of these cases the gentlemen just get by this project the largest possible representation for their respective counties.

My colleague who does not know that fact, who had not the map before him, does not know, but I can tell him, that 77,000 is about the smallest number that would be entitled to three representatives. The other two gentlemen did not know, but it is worth while to tell them, for it will probably make them advocate the matter a little more earnestly, that 27,000 and 29,000 respectively are among the smallest numbers that will entitle a county to two representatives. Now, Mr. President, before I sit down, let me say that I intend to vote against this proposition certainly; and let me also state that we are undertaking to do that which never has been done since the business of legislation began; that is, we are undertaking, as a Convention, to district the State. Nobody who has helped to district a State anywhere, you yourself, and there are other gentlemen present here, plenty of them, know very well that no Legislature ever got up an apportionment bill. That is just what we are trying to do now.

How is it done in the Legislature? There are certain persons picked out, few in number, who sit secretly, and often day and night until they have agreed upon something, and when that is done it is brought in and put through under the gag. Once let members talk about it and see how it works as applied to this and that county, and the Legislature would be just in the position we are now; but members of the Legislature are too wise

for that and they put the thing through under the gag.

Now, we have but one of two things to do, to get our apportionment just as the thing has always been done here before, by a committee and the gag, or by leaving it to the Legislature. I am in favor, as I have said frequently on this floor, of leaving the matter to the Legislature after fixing the number, and if you choose you may put in a provision that the Legislature shall not be too wild in its inequality of representation, and I would suggest that—enlightened by the action of this body—you put in a provision that they shall not make a man in one part of the State count more than nine in another part; that it shall not go further than that. [Laughter.] This body seems to be willing to go that far, and the Legislature might as well have the same privilege; but we ought to prevent them from going further. Let us find out by sitting here day after day in the dead-lock in which we are now—let us find out sometime or other that we cannot district the State, that it must go to the Legislature; and when that is done our labors upon this point will be over. Until that is done we are just like the men who spend their whole lives in the effort to make perpetual motion, laboring at an impossibility.

MR. J. W. F. WHITE. Mr. President: I have merely a word to say on this amendment. I have figured out how it will work in the State, and it is true it gives to Chester county and to Columbia one more member than they would have under the proposition of the delegate from Philadelphia; and I will say for the benefit of Philadelphians it gives them two members less than the proposition of the delegate from Philadelphia. It gives to Philadelphia twenty-seven members. It gives to Allegheny county eleven. Good old Allegheny always stands there with the same number as ever. It will give to the entire state at this time one hundred and seventy-six members. My colleague (Mr. Hay) says our proportion would not be as large. That is true; we should only have eleven out of one hundred and seventy-six; Philadelphia would have twenty-seven out of one hundred and seventy-six, and some of the other counties would gain by the operation. But the feature that I would call attention to is this: It would give one hundred and seventy-six members in the House of Representatives now, of course increasing

it every period of apportionment; and I apprehend that in two or three apportionments from this time the House of Representatives would consist of two hundred and fifty or three hundred, perhaps three hundred and fifty members, which would necessitate a change of the Constitution in the course of two or three decades, or the House of Representatives would go on increasing *ad infinitum*.

Now, is it wise, or prudent, or proper in us as a Convention to establish a principle in the Constitution that will go on increasing without limit the number of members in the House of Representatives. I cannot vote for a proposition of that kind.

MR. HAZZARD. Mr. President: Perhaps this is a very good time for me to say a word, as most of the members have spoken on this question; but I will not consume much time in what I am about to say.

The difficulty that seems to surround us is, that we are trying to use up all the surpluses in the counties so that every man, woman and child shall have a special and personal representative. I have listened here for months, and I have been unable to understand when gentlemen tell me that there are surpluses in the different counties unrepresented, how they are unrepresented. Suppose we make twenty-five thousand the ratio, if there are thirty-five thousand people in one county, then there are ten thousand unrepresented, as gentlemen say. I do not know how they are unrepresented. I am unable to see that the people in a county which has a population over the ratio are unrepresented until they get up to the fraction agreed upon.

The gentleman from Columbia says, that in making these single districts we take the pine trees and hemlocks against the intelligent people, for instance, of the city of Philadelphia. Not at all; the people are to be represented there, and they are not more to be represented because they are below the ratio. I hope we shall stick to the old proposition that we voted on over and over again, to give each county a representative, and for this reason: that if it be so, the State will be districted "forever and a day," and gerrymandering will cease.

It is said: "Let us refer this matter to the Legislature." How do they district the State? Is it done fairly? Are there not, this very day, surplus ratios, if you may call them so, in the different coun-

ties as districted by the Legislature? Can it be possible that it will be more unequal than as at present distributed? and if parties should change, would there not be another districting of the State, and as unfair and as unjust as it is at present? Are we going to refer this back to the Legislature to do this great wrong forever? or shall we say that the counties shall represent districts, and have districting settled.

The difficulty seems to be here, Mr. President: We are trying to use up every little fraction over and above the ratio of representation. We cannot do that. We may go on here for months and months, and you might as well undertake to square a circle as to say that every person shall have a representative. We might resolve ourselves into a pure democracy and all go on to Harrisburg to make the laws. How unrepresented? Beaver has no personal representative, yet I hope she is not wholly unrepresented. If a law be passed, it must be general as provided under this Constitution. If adopted, will it not spread equally over the counties that have not quite a full ratio as well as over the other counties? It seems to me there is a great deal of theory about these surpluses not being represented, and the difficulty is here: The member from Columbia finds out that he is going to lose a member by certain fractions proposed in the ratio, and he objects to it. My colleague from Butler ascertained about two months ago that one plan would take one member from Butler, and he forthwith presented a proposition for one hundred and fifty-two instead of one hundred and fifty members of the lower House, and in that way Butler county would get another member. It was very proper in him as delegate from that county to do so; I am from the same district and voted for the proposition; but from that very time to the present we have been ascertaining how many we shall lose and how many we shall gain by making fractions to suit their particular county; but we cannot use up these surpluses and we never shall.

MR. J. N. PURVIANCE. The gentleman is mistaken; the plan referred to would not take a member from Butler county but one from Beaver county.

MR. HAZZARD. Very glad I am that my colleague discovered that, but that has been the difficulty ever since members found out that their counties were going to gain or lose, and they are trying to

use up all the fractions to remedy this, but it cannot be done. Why, Mr. President, suppose we could so district this State or arrange these fractions as to use up every surplus in all the counties, as soon as a boy becomes of age his county has either got too much representation or too little. Every child that is born in the county would destroy the ratio entirely, for here is a human soul that is not represented at Harrisburg, according to the argument of members. Are we going to work here all this winter in order to come right down to fractions? Can we so frame this Constitution as to use up all these fractions over the ratio as that every person born or every person coming of age shall constitute a particular ratio? It cannot be done. Then let us get as near to it as we can. I do not understand how it leaves a person unrepresented in a district where there are a few over a ratio, or that there is too much representation in a small county not having a full ratio.

Suppose that in Washington county we had one ratio and two-thirds or four-fifths of another ratio; would that surplus be unaffected or wronged if a law were passed for Washington county? Would it not operate upon those who did not constitute a full ratio as well as upon those who did? If so, which citizen of our county is unrepresented and which of them cannot enjoy this law? I tell you it is all theory; there is nothing in it. Do not members recollect that under the old Constitution of 1790 every county had a representative? That is the way we started out. We cannot have a pure democracy; we cannot have a certain and individual representation; we must get near to it and we ought either to take the proposition of the gentleman from Columbia (Mr. Buckalew) or the proposition of the gentleman from Allegheny, [Mr. D. N. White,] with which we started out, for I believe either of them would be nearest correct, nearest justice, and settle this question of districting the State forever. We have got past those propositions by voting them down, but we are trying to get back to them now. It is ascertained that one of them, perhaps, gives a few more Republican members, and the other a few more Democratic members, and I am afraid that is the pit we have fallen into. We have passed by doing the right thing and are skirmishing to get back to the old landmarks. Either of those propositions would be just, and ought to be adopted.

Now, Mr. President, if this principle of single districts is not adopted, then it will be as it has been heretofore; and see the inequality of the thing. In my district there are three counties territorially. Each one will nominate a candidate, and then they appoint conferees. Only two are to be elected and they are three nominated, and the conferees go to Pittsburg to settle; that question. Some things can be done as well as others, and it takes a very smart man to ascertain how the minds of the conferees may go. They set aside whom they please and put in whom they please, and instead of the county being represented in a convention to determine who shall represent them in the Legislature, it depends on some six or eight gentlemen called conferees who make the nomination and set up the candidate, and this is what gentlemen call correct representation. All that would be avoided if each county constituted a district and that would destroy this inequality in districting the State by one party or the other party.

I repeat, sir, I am wedded to this idea of every county having a representative, as that will settle the districting the State, and if one party by fair means shall have the majority, for Heaven's sake let them enjoy it; they have a right to it. But if you allow the Legislature to fix this thing up, all they have to do, if one party gets the upper hand, the way to retain it is to put certain counties in new districts and absorb them as they do now. This principle will allow legitimate majorities, let them belong to what party they may, to enjoy the power that justly belongs to them, and to exercise the franchise accordingly. If you fix it as my friend from Delaware (Mr. Broomall) desires, it will allow the Legislature to gerrymander the State forever, and do great injustice. I hope that will not be done. I trust we shall go back in committee of the whole, and take up the whole thing and adopt either the proposition of the gentleman from Columbia (Mr. Buckalew) or the proposition of the gentleman from Allegheny (Mr. D. N. White.) We shall never get anywhere near as right by any other proposition, as by either of those two.

THE PRESIDENT. The Clerk will call the roll on the amendment of the delegate from Allegheny (Mr. Guthrie.)

MR. S. A. PURVIANCE. Before the roll is called I desire to offer what is accepted by my colleague from Allegheny as a

modification of his proposition. It is to add the following:

"The Legislature at its first session after the next national census shall apportion the State for Senators and Representatives by increasing or diminishing the ratio; *Provided*, That the maximum number of Senators shall not exceed fifty and of the House one hundred and eighty."

MR. GUTHRIE. I understand the gentleman desires to add that to the end of my amendment, and I have no objection to it.

MR. D. N. WHITE. I do not think anything regulating the Senate is in order at this time. We have already passed on that subject upon second reading, and unless that action is reconsidered we cannot do anything with it.

THE PRESIDENT. The amendment of the delegate from Allegheny, (Mr. Guthrie,) as modified, is before the Convention, and the yeas and nays have been ordered upon it.

The question being taken by yeas and nays, resulted as follows:

Y E A S .

Messrs. Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Black, J. S., Bowman, Boyd, Brown, Corbett, Curry, Darlington, DeFrance, Finnèy, Guthrie, Horton, Hunsicker, Kaine, Lilly, Long, M'Cleau, Metzger, Mott, Palmer, G. W., Patton, Purviance, John N., Purviance, Sam'l A., Smith, Wm. H., Turrell, Woodward and Worrell—31.

N A Y S .

Messrs. Alricks, Armstrong, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Broomall, Calvin, Cochran, Collins, Corson, Curtin, Davis, Edwards, Ellis, Ewing, Fulton, Green, Hall, Hanna, Hay, Hazard, Hemphill, Howard, Landis, Lawrence, MacConnell, MacVeagh, M'Cament, M'Culloch, M'Michael, Minor, Newlin, Patterson, D. W., Pughe, Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, J. W. F., Wright and Walker, *President*—51.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Baker, Bigler, Black, Charles A., Brodhead, Buckalew, Bullitt, Campbell, Carey, Carter, Cassidy, Church, Clark, Craig, Cronmiller, Cuyler, Dallas, Dodd,

Dunning, Elliott, Fell, Funck, Gibson, Gilpin, Harvey, Heverin, Knight, Lamberton, Lear, Littleton, M'Murray, Mann, Mantor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Ross, Runk, Simpson, Stewart, Struthers, Temple, Van Reed, Wherry and White, Harry—51.

Mr. BAER. I offer the following amendment, to strike out and insert:

"Each county in the State shall have one representative as a community. The Legislature shall, at the first session after the adoption of this Constitution, and thereafter, at its first session after every decennial national census, apportion the State so as to provide for one hundred additional members on the basis of population."

Mr. President, as it is manifest that we must come to a compromise in order to agree upon anything on this question, I have drawn an amendment which will be a concession by both sides of this question. We have already in this Convention expressed by vote that we are in favor of community representation for each county. We have also decided that that alone, pure and simple, is not satisfactory to all the members of this Convention. I, therefore, add a provision that the Legislature shall, immediately after the adoption of this Constitution and immediately after every national census, apportion the State on the basis of population. That combines the two principles, pure and simple—the one, community representation; the other, representation on the basis of population. It differs from the proposition that has been voted down heretofore in this, that the latter clause of it being a basis of population, it is population, pure and simple. There are no losses of fractions; it is not a combination of communities and population as all the others have been, and it ought to be satisfactory to those who are in favor of population, pure and simple, inasmuch as that cannot be carried with any sort of satisfaction to this body.

Now that this leaves open the question to the Legislature to do a certain amount of gerrymandering I admit; but when you place sixty-six members there by community representation, you put sixty-six men into that body who have no interest in gerrymandering the State, and who ought to be able to stand up on the side of right at all times, to prevent any very great amount of injustice being done. I do not see that any more injus-

tice will be done by the Legislature apportioning the State for these one hundred men, on the basis of population, than we shall be doing by giving such unequal representation to the different localities of the State. If you make it on the basis of communities entirely, then these large counties and large cities suffer very largely and the small ones have an advantage. On the basis here presented you come as near to justice as you can without departing from the principle of popular representation. Personally, I am opposed to community representation, and have been all the while, on principle; but this Convention has determined that community representation shall be engrafted upon the Constitution, and if it is to be, then let us so put it there that the friends of popular representation shall also have a fair show when it comes to determining the number and the manner in which they shall be distributed. This fixes the number of the House at one hundred and sixty-six so long as the number of counties remains as now, and if you increase the counties by one it only increases the number one, and so on. It leaves one hundred as the basis for popular representation for all time to come. This, it seems to me, should be satisfactory.

The PRESIDENT. The question is on the amendment of the delegate from Somerset to the amendment.

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

Mr. BEEBE. I second the call.

The PRESIDENT. The call for the yeas and nays must be seconded by ten delegates rising.

More than ten delegates rose.

Mr. LILLY. Mr. President: I take it that this is a very fair proposition for persons who are in favor of county representation, and if they want that they will vote for it, in my opinion. If they want injustice, if they want to ostracise the large counties and give smaller counties the preponderance over everybody else according to population, and make a man in the lumber region of Forest nine times as much of a man as one in Philadelphia, they will vote against it.

Mr. EWING. That is another illustration, Mr. President, of one of the coincidences I mentioned yesterday. The gentleman from Carbon is very anxious about justice being done, and he is opposed to all injustice; but until it came so that his little county, with 27,000 peo-

ple, gets two members, he was opposed to giving counties representation. Now he is in favor of it, and he wants to give to his county and other counties of the same size two representatives for 25,000, and to Allegheny county—

Mr. LILLY. I desire to explain. The gentleman does not understand the proposition before the Convention or he would not say such a thing.

Mr. EWING. That is just what I think of the gentleman from Carbon. He has made two or three speeches here that show he does not understand the proposition before the House. The proposition will give to his county two members on a ratio of about 14,000 inhabitants. To Philadelphia it would give a member to a ratio of 30,000 to 35,000 inhabitants, and to Allegheny a member for about 23,000 or 30,000 inhabitants, and so on throughout the counties. It will give to counties having 50,000 and under of a population, having about one-third of the entire population of the State, an absolute majority of the whole number of representatives. A more infamous gerrymander never was presented in the Legislature of this State.

The PRESIDENT. The question is on the amendment of the delegate from Somerset (Mr. Baer) to the amendment. The Clerk will call the names of delegates, the yeas and nays having been ordered.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Ainey, Andrews, Baer, Bailly, (Perry,) Barclay, Beebe, Bowman, Brown, Curry, De France, Finney, Fulton, Guthrie, Hunsicker, Lilly, Long, M'Camant, Metzger, Mott, Palmer, G. W., Purviance, John N., Purviance, Sam'l A., Smith, Wm. H., Turrell and Woodward—25.

N A Y S .

Messrs. Alricks, Armstrong, Bailey, (Huntingdon,) Bardsley, Bartholomew, Biddle, Black, J. S., Broomall, Buckalew, Calvin, Cochran, Collins, Corbett, Corson, Dartington, Davis, Edwards, Ewing, Green, Hall, Hanna, Hay, Hazzard, Hemp-hill, Horton, Howard, Landis, Lawrence, MacConnell, MacVeagh, M'Clean, M'Culloch, M'Michael, Minor, Patterson, D. W., Patton, Pughe, Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Stewart, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White,

J. W. F., Worrell, Wright and Walker, President—54.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Baker, Bannan, Bigler, Black, Charles A., Boyd, Brodhead, Bullitt, Campbell, Carey, Carter, Cassidy, Church, Clark, Craig, Cronmiller, Curtin, Cuyler, Dallas, Dodd, Dunning, Elliott, Ellis, Fell, Funck, Gibson, Gilpin, Harvey, Heverin, Kaine, Knight, Lamberton, Lear, Littleton, M'Murray, Mann, Mantor, Mitchell, Newlin, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Ross, Runk, Simpson, Struthers, Temple, Van Reed, Wherry and White, Harry—54.

Mr. J. N. PURVIANCE. I now offer the following motion:

That the subject of apportionment of representatives be referred to the Committee on the Legislature with instructions to report an article embracing the following principles:

First. That representation shall be upon the basis of taxable inhabitants.

Second. That the House of Representatives shall consist of not less than one hundred and fifty members nor more than one hundred and sixty.

Third. That every county shall be entitled to at least one member.

Fourth. That counties shall not be joined in order to form districts.

Fifth. That the apportionment shall be made septennially.

And that the report be made on or before next Tuesday morning.

Mr. MACVEAGH. Is that motion in order?

The PRESIDENT. The Chair must rule it out of order. It is no amendment.

Mr. MACVEAGH. Then I trust that the Convention will come to a vote on the pending proposition, unless some other gentleman really thinks that he ought to offer another amendment.

Mr. J. N. PURVIANCE. I believe I have the floor.

Mr. MACVEAGH. I did not so understand it.

Mr. J. N. PURVIANCE. I certainly desire to explain my proposition.

Mr. MACVEAGH. It has been ruled out of order.

The PRESIDENT. Was the gentleman from Dauphin speaking?

Mr. MACVEAGH. I was, but I understand that I may have inadvertently taken the floor from the gentleman from

Butler. I understood the Chair to rule his motion out of order.

The PRESIDENT. I certainly did.

Mr. J. N. PURVIANCE. I only desire to remark that as I understand it, a motion to refer takes precedence of any motion to amend and can be made at any time.

The PRESIDENT. The Chair has decided the gentleman's motion out of order.

Mr. ANDREW REED. I offer the following amendment to the amendment:

"The population of the State, as ascertained at each decennial census of the United States, divided by one hundred and fifty, shall be the ratio for members of the House of Representatives.

"Each county shall be entitled to one representative.

"Counties containing one ratio and three-fifths of another ratio shall be entitled to two representatives.

"Those containing two ratios and four-fifths of another ratio shall be entitled to three representatives.

"Every county containing _____ or more ratios shall be entitled to one representative for each ratio of its population.

"Counties containing more than five ratios shall be divided into single districts of compact and contiguous territory as nearly equal in population as can be: *Provided*, That no ward or township shall be divided in the formation of such district."

The State shall be apportioned the first year after the adoption of this Constitution, and every ten years thereafter.

I desire to say but a word of explanation. The first proposition will always make a division to make the number about one hundred and fifty. It will require no additional legislation. The population of the State, as ascertained by the census of the United States, divided by one hundred and fifty, will always make a quotient which will make the number of the House of Representatives one hundred and fifty.

The next proposition gives a member to each county. That I presume has been decided upon in this body. I take it that that conclusion is settled.

The third proposition is the report of the Committee on Suffrage, or about that with reference to the representation of fractions. Any county containing a ratio and three-fifths of a ratio will be entitled to one additional member; but it will require two ratios and four-fifths of another

ratio to entitle a county to two additional members. This will only cause the loss of one-fifth of a ratio and will make the application of the principle more fair. This is in fact the report of the Committee on Suffrage, and that I think is the most just of all the propositions in reference to the representation of fractions.

The third proposition divides all counties having more than five ratios into single districts. The Convention has decided by a vote on a proposition offered by the gentleman from Schuylkill (Mr. Bartholomew) that it would not divide counties having two representatives. I suppose that is to keep as much power as possible out of the hands of the Legislature, but it will be very unjust in the counties of Philadelphia and Allegheny, and some other of our very large counties if they be not divided, for then whatever party carried those counties would always have the preponderance in the Legislature, and the result would be that each party would make a strong effort to carry those counties, and this would give rise to corruption.

I have explained my amendment, and I think with reference to the representation of fractions on any general division, it is the fairest proposition I have seen. It gives single districts to all counties having more than five members. Up to five members counties are represented as counties.

The PRESIDENT. The question is on the amendment to the amendment.

Mr. ANDREW REED. On that I call for the yeas and nays.

The PRESIDENT. Is the call seconded? More than ten members rose.

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

Y E A S .

Messrs. Alricks, Andrews, Bailey, (Huntingdon,) Black, E. S., Boyd, Brown, Buckalew, Carter, Corson, De France, Ellis, Ewing, Finney, Green, Hall, Hay, Hazzard, Horton, Kaine, Landis, Long, Minor, Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Sharpe, Smith, H. G., Smith, Wm. H., Turrell, Woodward and Worrell—32.

N A Y S .

Messrs. Ainey, Baer, Baily, (Perry,) Bannan, Bartholomew Beebe, Biddle, Bowman, Broomall, Campbell, Church, Cochran, Collins, Corbett, Curtin, Darlington, Davis, Edwards, Fulton, Guthrie, Hanna,

Howard, Hunsicker, Lawrence, Lilly, MacConnell, MacVeagh, M'Camant, M'Clean, M'Culloch, M'Michael, Newlin, Palmer, G. W., Patterson, D. W., Pughe, Read, John R., Reynolds, Rooke, Russell, Smith, Henry W., Stanton, Stewart, Wetherill, J. M., Wetherill, John Price, White, David N., White, J. W. F., Wright and Walker, *President*—48.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Armstrong, Baker, Barclay, Bardsley, Bigler, Black, Charles A., Brodhead, Bullitt, Calvin, Carey, Cassidy, Clark, Craig, Cronmiller, Curry, Cuyler, Dallas, Dodd, Dunning, Elliott, Fell, Funck, Gibson, Gilpin, Harvey, Hemphill, Heverin, Knight, Lamberton, Lear, Littleton, M'Murray, Mann, Mantor, Metzger, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Ross, Runk, Simpson, Struthers, Temple, Van Reed, Wherry and White, Harry—53.

Mr. D. N. WHITE. Mr. President—

Mr. J. N. PURVIANCE. I had the floor when the President ruled out the motion which I made, and perhaps he would desire now to correct that ruling. Therefore I wish to renew my motion.

Mr. D. N. WHITE. I have the floor, I believe.

The PRESIDENT. The delegate from Butler will have to defer his motion until after the delegate from Allegheny presents his proposition.

Mr. D. N. WHITE. I offer the following as an amendment to the amendment: Strike it all out and insert—

The PRESIDENT. The Chair will here state that by inadvertence he committed an error in ruling out the motion to refer, made by the delegate from Butler, and he proposes recognizing that gentleman for the purpose of placing him right and the Chair right. The amendment of the delegate from Allegheny (Mr. D. N. White) will be read.

The CLERK read as follows;

"The House of Representatives shall consist of not less than one hundred and fifty-two members, to be apportioned and distributed to the counties of the State severally in proportion to the population, on a ratio of 25,000 inhabitants to each member. The city of Philadelphia, and every county having an excess of three-fifths of said ratio over one or more ratios, shall be entitled to an additional member.

"Counties having a population of only

one-half of a ratio shall be entitled to a member.

"If the number of one hundred and fifty-two members is not reached by the above apportionment, counties having the largest surplus over one or more ratios shall be entitled to one additional member until the number of one hundred and fifty-two members is arrived at.

"The city of Philadelphia and counties entitled to more than three members shall be divided into single districts of compact and contiguous territory, as nearly equal in population as possible; but no township or election precinct shall be divided in the formation of a district; *Provided*, That in making said apportionment in the year 1881, and every ten years thereafter, there shall be added to the ratio five hundred for each increase of seventy-five thousand inhabitants."

Mr. BOWMAN. Mr. President: I rise to a point of order. My point of order is, that the gentleman proposes to strike out what has been inserted in the original proposition. The original proposition before the House has been amended by providing that each county shall have a member. The gentleman now proposes to strike that out which has already been voted in.

The PRESIDENT. The Chair does not understand that he proposes to strike out that which has been inserted.

Mr. BOWMAN. Yes, sir; there is no provision there that each county shall have a member. That was an amendment, and was voted in.

The PRESIDENT. So far as the amendment is in conflict with what the House has passed upon, the Chair will be obliged to sustain the point of order as raised.

Mr. LAWRENCE. My understanding of it is that it strikes out more than what was inserted. If it does, then it is in order.

The PRESIDENT. The Chair thinks the amendment had better be read again.

Mr. D. N. WHITE. I offer this as a substitute for the whole matter before the House, and it is perfectly in order.

Mr. BOWMAN. And that is just my point of order. We have under consideration first an original proposition; secondly, we have under consideration an amendment to that original proposition. That amendment has been voted in and carried as the sense of this Convention. Now, the gentleman from Allegheny brings forward a proposition to strike out the entire original proposition, together

with its amendment, and substitute his therefor, which I say he cannot do.

Mr. LILLY. I think it is competent for the House to vote it all down.

The PRESIDENT. The Chair will ask that it be read again, and he asks the attention of the House.

The CLERK again read the amendment to the amendment.

Mr. LAWRENCE. It evidently strikes out the whole proposition and consequently is in order.

The PRESIDENT. It is in order.

Mr. MACVEAGH. I wish to raise another question. Is it not the identical proposition which has been twice voted on by yeas and nays?

Mr. D. N. WHITE. No, sir; it is not. I will explain if I get a chance.

The PRESIDENT. The amendment to the amendment is before the Convention.

Mr. D. N. WHITE. Now, Mr. President, if gentlemen will give me their attention for a moment I will show the difference between this proposition and the proposition which was presented before by my friend from Indiana (Mr. Harry White.) That proposition said that every county should have a member. This says that every county having one-half a ratio shall have a member. Therefore there would be three or four of the small counties, which have been such a bug-bear to some of my Philadelphia friends, that would not have a member each.

I preferred the original proposition. I prefer it now. I have yielded at the solicitation of a great number of gentlemen who could not bring themselves to vote to give each county a member on a small population. The latter proposition is the same as before, with the exception that any county having only one-half a ratio, which would require 12,500 inhabitants, is to have a member. There will be three or four counties in the State that under that would be joined together for a member. That is simply the whole thing.

Mr. BOWMAN. Mr. President: A word in relation to this proposition. The gentlemen of the Convention will bear me witness that I have occupied no time of this body in the discussion of the question now under consideration. We have been here now three days and a half in discussing this proposition and we are no nearer a final result than we were when we commenced, and it must be obvious, it seems to me, to every gentleman present that it is an utter impossibility for this Con-

vention to apportion the State. When you undertake to do that and put it into your organic law, which is to last as long as your Constitution lasts, whether it works well or ill, I think every gentleman will come to the conclusion that you had better leave it in the hands of the Legislature where it has been exercised for years and years past.

Now, Mr. President, I am opposed to the proposition of the gentleman from Allegheny for the reason, first, that it does not provide that each county in the Commonwealth shall be entitled to a member. I have voted steadily and I intend to vote to the end, though it takes until next January before this question is disposed of, that every county in this Commonwealth shall be entitled to a member, irrespective of its population.

No gentleman here will accuse your honor or will charge me with any sinister or personal motive or consideration upon this question, for, sir, every proposition that has been brought forward by any gentleman will give the county that you, sir, and I in part represent upon this floor, three members. Therefore so far as I am concerned I have no personal motives, no personal feelings to gratify; but I believe that the smaller counties, eight or nine of them in the State, containing a population less than the ratio that would entitle each to member according to the proposition of the gentleman from Allegheny, should be entitled to a representative upon the floor of the Legislature. For every other purpose they are separate municipal organizations. They have their county officers, independent as far as possible of every other municipality in the State. In the judicial branch of the government one county is entirely independent of the other. Thus far you have already provided that in the counties not composing separate judicial districts you will preserve and retain the associate judges, that they shall be continued in office, thereby keeping up in each separate county, as far as possible, its judicial organization.

Gentlemen say that if you allow separate representation to each county in the State, you are doing injustice to other counties; that is to say, in Montgomery county, for instance, a county having a ratio nearly sufficient to entitle it to an additional member, you leave fourteen thousand or fifteen thousand unrepresented. How is that? Suppose, sir, that we have a surplus of fourteen thousand in the county

of Erie, do you belong to that fourteen thousand that are unrepresented on the floor of the Legislature, or do I? Where are the fourteen thousand that are unrepresented? They are all represented there. No man can say that he has not a representative upon the floor of the Legislature. It is idle, it is nonsense to talk about such a thing. I ask again, how will it harm the county of Montgomery or the county of Luzerne, whether they have five members instead of six members upon the floor of the Legislature? But if you take the little counties, Forest, Cameron, M'Kean, Potter, Sullivan and the other two small counties that do not come up in point of population to this ratio and give each one of those counties a member upon the floor of the Legislature, you do exact justice. If the gentleman from Allegheny will amend his proposition in that respect as it stood when it was originally offered months ago, I shall vote for it, but unless he will do that, I cannot.

One word further and I am done. Mr. President, we must compromise this question. There is no use talking about it. Here we will say are one hundred gentlemen. Every one of them has a proposition to bring forward. They have been brought forward, and how many more lay in abeyance I do not know. It is not possible that we are going to agree that one man's proposition shall be passed instead of another's. It is a day and age of compromises. We must come together, but not upon the basis, in my judgment, of apportioning the State. We cannot do it in the Constitution; we must leave this thing to the Legislature, where it belongs. My own idea would be to have about one hundred and fifty members, so that each county should be entitled to a representative, leaving the balance to be apportioned by the Legislature as in their wisdom they believe to be just and right, and if such apportionment should be unsatisfactory to the people, or work injustice to any particular locality, a remedy may be applied.

Mr. MINOR. The amendment as it now stands must be voted upon as an entirety but we have experienced the evil arising from that. It seems to me there is one question that we ought to settle separately, and that is the matter of single districts for the larger counties. This amendment provides that all counties having over three representatives shall be divided into single districts. That

affects six counties of the State. We are not at liberty, as I understand it, to move a further amendment to this amendment, and therefore, if it be in order, I ask that the question be taken separately upon the three parts of this amendment; the first division to end with the words "arrived at;" the next to end at the close of the provision arranging for single districts; so that when we come to the question of single districts, the large counties and cities can be heard on that subject, and we can settle it one way or the other, or else leave it to the Legislature to settle so far as that is concerned. I therefore ask for that division, if it be in order.

The PRESIDENT. A division of the amendment to the amendment is called for. The first division will be read.

The CLERK read as follows:

"The House of Representatives shall consist of not less than one hundred and fifty-two members, to be apportioned and distributed to the counties of the State severally in proportion to the population, on a ratio of 25,000 inhabitants to each member.

"The city of Philadelphia and every county having an excess of three-fifths of said ratio over one or more ratios shall be entitled to an additional member. Counties having a population of only one-half of a ratio shall be entitled to a member.

"If the number of one hundred and fifty-two members is not reached by the above apportionment, counties having the largest surplus over one or more ratios shall be entitled to one additional member until the number of one hundred and fifty-two members is arrived at."

Mr. D. N. WHITE. I call for the yeas and nays.

Mr. J. PRICE WETHERILL. I should like to say a word.

The PRESIDENT. The call for the yeas and nays has not as yet been seconded. Ten gentlemen must rise to second the call.

Mr. MACVEAGH. As regards the seconding of the call, I think we have had the yeas and nays on Mr. White's proposition three times. We have had four votes taken.

Mr. BARTHOLOMEW. Not on this.

Mr. MACVEAGH. Yes, on Mr. White's proposition, which is virtually this. The proposition of the committee has never yet been voted upon at all, yea or nay.

The PRESIDENT. The delegate from the city (Mr. J. Price Whetherill) is entitled to the floor.

Mr. J. PRICE WETHERILL. This proposition is liable to the same objection that defeated it eight or nine weeks ago: that is, that it gives to certain counties up to one hundred and fifty-two members a certain amount of members upon purely accidental fractions. The House must consist of a certain number of members, and if on the original plan that number is not reached, then certain counties, on account of the position which they hold, and which is purely accidental, will be entitled to a certain number of representatives. That I think will exist in not less than nine or ten counties in this State. It is not right; it will be objected to; and I think unless that objection is met, the action of this Convention eight weeks ago should be the action of the Convention to-day. For that reason I hope the amendment will be voted down.

Mr. D. N. WHITE. I wish to say a word in reply to the assertion of the gentleman from Dauphin that this proposition has been voted upon several times. The present proposition has never been voted upon at all. It is essentially different from any proposition that I presented before.

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

Mr. D. N. WHITE. Certainly.

Mr. MACVEAGH. Is not the difference because it has been doctored to meet certain views; that is, to avoid in certain counties injustices that the gentleman thinks has occurred under his other plan? Did he not find certain fractions accidentally large, and did he not avoid those injustices by taking an artificial number to suit them?

Mr. D. N. WHITE. In reply to that, I will say that in making this change I did not look at the figures at all. I made it out of deference to a great number of gentlemen who called upon me and asked me to make it; who said they could not vote to give every county a member, and they proposed that one-half the ratio should entitle a county to a member. In deference to their opinion, not my own, I have made this change.

With regard to what the gentleman from Philadelphia says about these fractions, I should like to call attention to a few of them. Under any mode of apportioning the State, there will be fractions. In order to get the largest fractions out of the way and to do the least injustice, I provided this mode. For instance, here is the county of Blair, which has a fraction

of thirteen thousand and fifty-one, for which I give it a member. The county of Bucks has a fraction of fourteen thousand three hundred and sixty-six, for which I give it a member. The county of Crawford has a fraction of thirteen thousand eight hundred and thirty-two, for which I give it a member. The county of Delaware has a fraction of fourteen thousand four hundred and three, for which I give it a member. Is it not better for us to adopt any arrangement which will best use up fractions? In this proposition of mine all fractions down to ten thousand are used up.

I do not wish to occupy time; I merely rose to reply to the points made by the two gentlemen who have spoken.

The PRESIDENT. The question is on the first division of the amendment of the delegate from Allegheny, (Mr. D. N. White,) on which the yeas and nays have been demanded.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken, resulted as follows:

Y E A S.

Messrs. Baily, (Perry,) Bannan, Bartholomew, Broomall, Calvin, Carter, Collins, Corson, De France, Ewing, Hay, Horton, Howard, Hunsicker, Kane, MacConnell, M'Culloch, Minor, Palmer, G. W., Purviance, John N., Reed, Andrew, Rooke, Russell, Turrell, White, David N., and White, J. W. F.—26.

N A Y S.

Messrs. Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Beebe, Biddle, Black, J. S., Bowman, Boyd, Brown, Buckalew, Campbell, Church, Cochran, Corbett, Cuyler, Darlington, Edwards, Finney, Fulton, Green, Guthrie, Hall, Hanna, Hazzard, Lawrence, Lilly, Long, MacVeagh, M'Clean, M'Michael, Mantor, Newlin, Patterson, D. W., Patton, Purviance, Samuel A., Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Wetherill, J. M., Wetherill, John Price, White, Harry, Worrell, Wright and Walker, *President* —49.

So the first division of the amendment to the amendment was rejected.

ABSENT. — Messrs. Achenbach, Addicks, Armstrong, Baker, Barclay, Bardsley, Bigler, Black, Charles A., Brodhead, Bullitt, Carey, Cassidy, Clark, Craig, Cronmiller, Curry, Curtin, Dallas, Davis, Dodd, Dunning, Elliott, Ellis, Fell,

Funk, Gibson, Gilpin, Harvey Hemphill, Heverin, Knight, Lamberton, Landis, Lear, Littleton, M'Camant, M'Murray, Mann, Metzger, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Pughe, Purman, Read, John R., Ross, Runk, Simpson, Stewart, Struthers, Temple, Van Reed, Wherry and Woodward—58.

The PRESIDENT. The second division of the amendment will now be read.

Mr. MACVEAGH. I trust that will be withdrawn.

The CLERK read as follows:

"The city of Philadelphia, and counties entitled to more than three members, shall be divided into single districts of compact and contiguous territory, as nearly equal in population as possible; but no township or election precinct shall be divided in the formation of a district: *Provided*, That in making such apportionment in the year 1881, and every ten years thereafter, there shall be added to the ratio five hundred for each increase of seventy-five thousand inhabitants."

Mr. CUYLER. I hope that will be withdrawn; it is dependent on the first proposition of course.

The PRESIDENT. It has to be voted on. The division was rejected.

Mr. J. N. PURVIANCE. I now renew the motion which I made, that the subject of the apportionment of representatives be referred to the Committee on the Legislature, with instructions to report an article embracing the following principles:

First. The apportionment shall be upon the basis of taxable inhabitants.

Second. That the House of Representatives shall consist of not less than one hundred and fifty members nor more than one hundred and sixty.

Third. That every county shall be entitled to at least one member.

Fourth. That counties shall not be joined in order to form districts.

Fifth. That the apportionment shall be septennially.

And that the report be made before next Tuesday morning.

Now I wish to remark, Mr. President,

Mr. BOWMAN. I should like to ask the gentleman one question. What does he mean by saying that counties shall not be joined in forming districts?

Mr. J. N. PURVIANCE. That each county shall have separate representation.

Mr. BOWMAN. Then no county can be joined. Why do you put that in?

Mr. J. N. PURVIANCE. I wish simply to remark that we have exhausted now all effort in Convention to fix an apportionment. Some twenty propositions perhaps have been voted on and voted down. Therefore it is that I make this motion to refer the whole matter to the Committee on the Legislature, and I desire that the vote shall be taken on each proposition, first, that the subject matter be referred to the Committee on the Legislature, to report on or before next Tuesday morning. That is a separate proposition. Then the next proposition is that representation shall be upon the basis of taxable inhabitants. I am not particular about that principle, although it is a very time-honored one, having been in existence in Pennsylvania from the formation of our government, and in fact is the principle adopted in nearly all the States of the Union. I see no reason for departing from it. It is perhaps a more correct representation of the permanent population than any other mode that can be adopted.

Then the next is that the House of Representatives shall consist of not less than *one hundred and fifty* members, nor more than *one hundred and sixty*. That gives a margin to get rid of the fractions, because in all the calculations made, and I have made several myself, I find the difficulty of fixing any particular number. You may start out with *one hundred and fifty*, and on account of fractions working both ways, you will perhaps end in having *one hundred and fifty-two*, *one hundred and fifty-three* or *one hundred and fifty-five*. Therefore I have fixed that margin so that the number shall not be less than *one hundred and fifty*, which all seem to agree upon; nor more than *one hundred and sixty*, and I desire on that proposition a separate vote; also that every county shall be entitled to at least one member. That has been over and over again determined by this Convention, and, I suppose, will be so determined again, and the committee should be instructed to report accordingly.

Next, two counties shall not be joined in order to form districts. For instance, two counties each entitled to representation shall not be joined, and that for the purpose of preventing gerrymandering, a system of corruption and dishonesty that exists more or less in perhaps almost every State of the Union. Whether this or that party be in power, that system has

brought about great corruption in fixing the representation in the Legislature, and the people expect a remedy for the evil from this Convention.

Next, that the apportionment shall be made septennially, according to the present Constitution. I am not particularly wedded to that idea. If any gentleman would prefer decennial, be it so, but I desire that this subject-matter shall go before the committee in such a way, instructed by the Convention, that all the labor expended in regard to it shall not be lost. All the propositions submitted, all the discussions which we have had on the subject, the committee now have the benefit of to guide them; and being so instructed, I take it they will report such an article as will at once be approved by this Convention, and be satisfactory to the people of the State. If there is any one thing more than another which the people of Pennsylvania expect at the hands of this Convention, it is that they will place in the Constitution a proper article in regard to representation, such as will prevent abuses which have heretofore existed. I trust, therefore, that this motion of mine will be adopted, having now exhausted every other proposition before the Convention, and in all probability we may end this matter by next Tuesday by adopting this course, and thereby very much economize time in the future consideration of the subject.

Mr. MACCONNELL. I have not taken any part in this discussion. I have made up my mind about the question; but inasmuch as it seems to have resolved itself into a free fight, I suppose I may as well put in my shillelah as anybody else. [Laughter.] I shall have to vote against the proposition now before the Convention. We did commit this subject to a committee; they reported; we acted on that report and send it back to the committee; they reported again, and, sir, we have not taken a vote on their report yet.

Mr. MACVEAGH. We have never got to it.

Mr. MACCONNELL. The gentleman from Butler (Mr. J. N. Purviance) says we have exhausted all the propositions. We have not exhausted the proposition made by the committee; we have taken no vote upon it; we have done nothing upon it; we have been merely tinkering, tinkering if you will allow me to use that expression—tinkering with it in the way of amendments. Now I say in all fairness to the committee, in order not

to treat them with disrespect, we ought at least to take a vote on their report. Are we to say that without taking a vote on their report we have exhausted all the propositions? I am not ready to say that. I want before we send it to another committee or to send it back a third time to the Committee on the Legislature that we shall take a vote on their report.

Mr. LAWRENCE. I do not design, Mr. President, to consume the time of the Convention, for I want to save it. I suppose every member on this floor must be ready to concede that if it were possible to refer this project again to the committee, the committee would fail to make a report which would be satisfactory to the Convention. I understand the committee to be as much divided as the Convention itself on this question. I watched the course of things here before we adjourned, from day to day, to see whether we might not arrive at some conclusion on this question, and I have for the last three days observed patiently, and I think considerably, the various propositions that have been presented. I see that we are all at sea and our only safe course is to come back to the great principle at once and finish this work.

Now, I object to the instructions of the gentleman from Butler for this reason also, that they instruct the committee to do what they cannot do, what it is impossible for them to do. In the first instruction he says they must report an apportionment based on the taxable inhabitants of the State; and, then, in the third proposition they must report on territory, or to give each county a member. If they apportion on the taxable population, how can they give each county a member? There have been two of the difficulties presented to us on this question. Some of us want the fair old principle of basing the representation on the population of the State, and I aver here now that there is no other just or fair principle to be found. You must take one or the other, either the taxables or the inhabitants, and you will be bound to leave it to the Legislature. So, I say, if you commit this question you arrive at no conclusion; you force a report from the committee probably in opposition to the views of many of the members of the House. The committee will not agree, cannot agree on these principles themselves, and the Convention cannot agree.

Now if this proposition is voted down I shall propose after hearing all that has

been said to come back to the plain common-sense doctrine that we should base representation in the lower House on the population of the State, wherever we find it. I utterly repudiate the policy that men advocate here and you must give to every county a representative. I have heard no man offer an argument that is worthy the name of an argument in favor of it, because you cannot go before the people of this State and advocate or defend any such doctrine. A man in Montgomery county is as good as a man in Forest county. A woman may not be, but a man is. [Laughter.] I say to any gentleman upon this floor that a man in his county is as good as a man in Washington county and no better. Hence I propose, Mr. President, if this proposition is voted down, to offer, as a compromise upon this question, that we go back to the old, plain, practicable common-sense principle of representation based upon population and upon it alone, and I will read the proposition which I have framed for that purpose: "The House of Representatives shall consist of one hundred and fifty members."

That seems to be the number agreed upon.

"To be distributed among the counties and cities of the State in proportion to the population as ascertained by the last preceding census of the United States. Each county having the requisite ratio of population shall form a separate representative district, and any county having less than the ratio of population may be connected with any adjoining county or counties in the formation of a district."

I am in favor of the last proposition, because it prevents gerrymandering and connecting of counties. I live in a district where there are three counties connected, and it makes it a Republican district. If Washington county were left to stand alone, it might elect a Democratic representative or it might not, but I care nothing about that in considering this matter. I wish to prevent any connecting of counties in the future. I have seen evils grow out of it; I have seen bad nominations made by conferees; and I say that the best way to prevent a repetition of these evils is to base representation upon population and to leave the matter of the small counties as we have done heretofore. Let us fix a ratio, for unless we do, we are at sea and some of us will be displeased; and then when we come before the

people with our Constitution, the people will look at and see that they will be deprived of representation for a large fraction, and the result will be that the people in different parts of the State will get up an opposition to the Constitution itself, and it may be voted down simply on account of these local prejudices. Let us then adopt this proposition and leave the question to the Legislature. You must trust the Legislature after all.

Mr. MACVEAGH. The differences now existing are not many; and surely there is no need of any reference of this matter again to a committee. We have listened to almost every proposition; listened to some propositions three times from the same member; listened to other propositions three times from different members, and the difficulty is that nobody seems to be satisfied with an adverse vote after he gets it. I see that my friend from Lancaster, (Mr. D. W. Patterson,) unless I am mistaken, has Monsieur Tonson again ready for us. We voted on his proposition yesterday.

Mr. J. N. PURVIANCE. Not at all.

Mr. MACVEAGH. No? I think we voted upon the proposition of my friend, but I only say that, because I see that he has a dreadful looking paper in his hand, and I become afraid of any man who I know has a paper in his hand, because I know that it is a proposition to fix the Legislature. [Laughter.]

Mr. LAWRENCE. Allow me to explain. I had my proposition written yesterday, but out of respect to the Committee on the Legislature I did not offer it, because I was willing that we should vote on their proposition.

Mr. MACVEAGH. It will all come in the end, it seems to me, to a choice between the report of the Committee on the Legislature and the leaving of the subject to the Legislature entirely, and I do not see why this House is not capable of deciding that question. There is no difficulty whatever about it if gentlemen, instead of offering substitutes drawn to suit their particular views, would allow this proposition to come before the House and take test votes on amendments to it. It seems to me that in this way the report of the Committee on Legislature can be made reasonably acceptable. Then when the vote of a majority of this Convention has decided what amendments shall be made to it, let us take a square vote on the amended report and vote it up or down; and if we vote it down, then let

the Legislature takes the responsibility of the matter. I think we can thus facilitate our labor. Gentlemen will thus gain their particular ends just as well by offering specific amendments to the sections as reported rather than by offering entire substitutes, unless some gentleman will move to refer the whole subject to the Legislature,

Mr. BOWMAN. One word in reply to the gentleman from Washington (Mr. Lawrence.) He says that there has never been any argument offered in favor of single county representation. That may be so according to his judgment; but at the same time before the gentleman concluded his speech he offered the most powerful argument himself in favor of it. He says that of all the evils that have come under his observation the greatest is that of joining counties together to form representative districts, thereby practicing fraud and gerrymandering and producing very mischievous results. I desire to ask how he supposes that nine counties in this Commonwealth are to be represented in the Legislature under his proposition without being joined with some other county. I would ask the gentleman when and where under the present joining together of the counties of Sullivan and Bradford, does he expect that Sullivan county will ever be represented upon the floor of the Legislature?

Mr. LAWRENCE. She is represented all the time.

Mr. BOWMAN. It has never been done since they are joined together.

One word further. Here are nine counties in the Commonwealth which would not be entitled to separate representation according to the gentleman's proposition, and of those counties no less than seven are not even represented on this floor today, nor have they ever been since our organization, nor in any other body. We thought that this body was organized under as fair a system of election as was ever conceived under Heaven. It was conducted upon the limited plan. There were three members to be elected to this Convention in each Senatorial district of the State, and no voter could vote for more than two, and yet under this plan, supposed to be the fairest ever originated, there are seven counties of the State that are not represented on this floor at all. Why? Because they are joined with counties that swallow them up.

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

Mr. BOWMAN. Certainly.

Mr. LAWRENCE. Let me then ask him, did not every voter in the State, vote for a delegate, and has he not a representative on this floor.

Mr. BOWMAN. I will answer the gentleman. Does he not know that the men who were nominated to those positions, and who then, under the act of Assembly providing for the calling of this Convention were elected as the representatives to this body, were chosen, three from every Senatorial district, each voter being allowed to vote for two delegates? The difficulty lies in this condition of things: It lies in the primary meetings and your corrupt political conventions. This is really the case, and unless you give each county a member in the lower House of your Legislature, the small counties will be without representation for all coming time, and we shall practically disfranchise the people of those counties forever.

Now let us be magnanimous; let us be generous here. Let us put into the Constitution a provision that each county shall be represented first. That, of course, is a concession, and we should concede that. Then after we have done that, you may put your representation upon the basis of population, or you may put it upon the basis of the taxable inhabitants, or you may put it anywhere you please, upon any certain ratio that will do justice to the people of the State: but let us make this concession in the start. Start out by saying that each county shall be entitled to one representative, because unless you do that, these small counties will be attached to other counties, of course larger than themselves, and the political party that is dominant in the large counties will always overpower and disfranchise the smaller counties, and deprive them of representation in the Legislature. I have seen this thing work year after year for the last ten or fifteen years. I know of small counties which have been joined to other and larger counties, and these larger counties always ride right over them and disregard their rights. They have no rights which the larger counties are willing to respect in any degree, because the larger counties have the power always to elect their own men and they do it.

Mr. LAWRENCE. I regret that I am under the necessity of replying to the gentleman from Erie; but an argument so fallacious as the one he has presented needs some reply and some attention

The gentleman commences with quoting the Bradford and Sullivan district, and says that the people of Sullivan have no representative on this floor and have had none in the Legislature—

Mr. MACVEAGH. Will the gentleman from Washington allow me to suggest that really this debate is just now a little premature?

Mr. LAWRENCE. I think it is, and I am glad that the gentleman from Dauphin has come to that conclusion. It would have been well if he had found it out three or four days since, and then he would not have taken up so much of the time of this Convention with his speeches as he has done. [Laughter.]

Mr. MACVEAGH. I mean only the debate as to separate county representation. That question will come up afterward in proper order. It is certainly not now raised.

Mr. LAWRENCE. I shall take but a minute. I say that every man in Sullivan county who voted for a candidate for the Legislature was represented there. I do not look at county lines in this matter, although I am opposed to this business of gerrymandering. The principle of county representation which the gentleman from Erie advocates so earnestly, should be applied according to his argument to the Congress of the United States, or there is no honest representation in that body. According to the principle for which he contends, every county in this State should have a member of Congress. I live in a district composed of Beaver, Butler, Lawrence and Washington counties; and if the gentleman from Erie be right in his conclusion, on the same principle, we ought to have four members in the lower House of Representatives at Washington, and that body ought to be composed of one thousand members in order to give every county in the Union a representative.

To state such a proposition, is to demonstrate its absurdity. You cannot carry out that principle in Congress, and you cannot carry it out in the Legislature of a State. Beaver county has not a representative upon the floor of this Convention by any man here whose residence is in that particular county, but I am free to say that my colleagues, the gentleman from Washington (Mr. Hazzard) and the gentleman from Butler, (Mr. J. N. Purviance,) are as careful of the interests of Beaver county as they would be of the interests of Butler or of Washington, be-

cause they were elected not only by the voters of the counties in which they reside, but also by the electors of Beaver county. So I take it, it will not do to say that because a county has not upon this floor a representative who lives within her borders she is not represented. Every county is represented by the member or members from the district of which that county is a part. The county of Elk, with a voting population of but a few hundred, is represented here by a delegate; but I say that it has no right to be represented in the Legislature as a separate community. It has a right to be represented as far as it has taxable inhabitants or population, but no further.

I repeat, and I desire to be understood in so stating, that earnest as the gentlemen who are opposed to me on this question have been, (and I know that the gentleman from Erie is as earnest as he is eloquent,) I have never heard an argument that could be sustained before the people to maintain a proposition of this kind for one moment. My friend here could not go before the people of Washington county and tell them that it was justice to give one representative to a county with eighteen hundred taxables when no more than one representative was given to Washington with eight thousand.

Mr. S. A. PURVIANCE. Will the gentleman from Washington allow himself to be interrogated?

Mr. LAWRENCE. Certainly.

Mr. S. A. PURVIANCE. Would not that depend somewhat upon the character of business in the county? Might not a county with a population of 4,000, 6,000 or 8,000 have more business than the county of Washington?

Mr. LAWRENCE. That is barely possible; but if you want to represent counties or districts according to the business they do and to the amount of money engaged in manufactures or any department of trade, then, of course, you see at once that you must give the city of Philadelphia, with its vast manufacturing interests, a separate representation and a very disproportionate one, because they produce more money in a territory per mile square in one month than all Elk county would in five years.

I say again if you want to be just to the people of this State, you must fix the representation in your House of Representatives on the ratio of population or taxable inhabitants. If you were to base it on territory, then you would have to

give Washington county twice as many representatives as you give Elk, because land is twice as valuable in Washington as it is in Elk.

Mr. S. A. PURVIANCE. Can not you base it on population first, territory next?

Mr. LAWRENCE. Territory has nothing to do with it. I have contended over and over again before the people and in public assemblies that all this idea of territorial representation is wrong. A representative in Congress represents a district, and does not represent a particular county of that district. If you get an able man in Congress to represent your district, what difference is it from what county he come if he represents the district properly?

The PRESIDENT. The gentleman's time has expired.

Mr. LAWRENCE. I have nothing more to say.

Mr. HOWARD. I understand the question is on the reference of this whole subject to the Committee on the Legislature. If that be correct, I should like to inquire what relevancy the last forty minutes' discussion has had to the question before the Convention, and what rights the Convention has that delegates are bound to respect?

Mr. BOWMAN. I will answer the gentleman's question.

Mr. HOWARD. The gentleman has no right to do so.

Mr. BOWMAN. Then you should not ask questions that you do not want answered.

Mr. HOWARD. Very well. Then when the question is simply whether this shall be referred to a committee to debate the question of minority counties and small counties and everything that relates to that subject, I think is out of order.

Mr. BOWMAN. It contains a proposition—

Mr. HOWARD. I call the delegate to order. He has spoken twice on the same question.

The PRESIDENT. The delegate from Erie is out of order. The question is on the motion of the delegate from Butler.

Mr. J. N. PURVIANCE. I desire to have it read for information.

The PRESIDENT. The Clerk will read the proposition.

The CLERK. The motion is to recommend the subject to the Committee on the Legislature, with instructions to report as early as next Tuesday morning; and the proposition embraces the following principles:

First. That the apportionment shall be on the basis of taxable inhabitants.

Second. That the House of Representatives shall consist of not less than one hundred and fifty members, nor more than one hundred and sixty.

Third. That every county shall be entitled to at least one member.

Fourth. That counties shall not be joined in order to form districts.

Fifth. That the apportionment shall be made septennially.

Mr. J. N. PURVIANCE. I will simply remark that I believe a majority of the Convention favor the reference of the subject to the committee; but a majority may not favor the instructions. Therefore I should like a division of the question so that the vote be taken separately.

The PRESIDENT. The first question then is on the reference.

Mr. J. N. PURVIANCE. On that I call for the yeas and nays.

The PRESIDENT. Is the call seconded? It requires ten gentlemen.

The call was not seconded.

The PRESIDENT. The question is on the reference.

The motion to refer was rejected.

The PRESIDENT. The second question is on the instructions.

Mr. MACVEAGH. I submit that that part of the motion be withdrawn.

Mr. BARTHOLOMEW. It must necessarily fall.

The PRESIDENT. The motion to refer being lost, the instructions fall. The question recurs on the original amendment of the delegate from Philadelphia (Mr. J. Price Wetherill) as amended.

Mr. HOWARD. I offer, as a substitute for that, to strike out and insert the following:

"The House of Representatives shall consist of one hundred and fifty members, who shall be chosen by districts formed of compact and contiguous territory; and in the formation of such districts no township, ward or election district shall be divided. And the first apportionment shall be made by the Legislature at its first session after the adoption of this Constitution, and every ten years thereafter."

Mr. President, we have debated this subject, I think, perhaps altogether two weeks; it was a long time before the Convention prior to the time when it took its recess in the summer. I have listened to the arguments, day after day made here by intelligent gentlemen in favor of the Convention making an ap-

portionment, and by others in reply to them, and others in criticising the various plans and projects that have been offered here, every one of which seems to be objectionable.

Mr. President, the difficulty lies in the subject itself, when we come to the question of making an apportionment that will be acceptable to a majority of this Convention. I do not believe that this Convention will make an apportionment of members that will be satisfactory to itself or satisfactory to the people of the Commonwealth; and I agree with the remark that has been made by various delegates, that we must come back to the hard pan and say that we will leave the question of the apportionment to the Legislature.

Some want a representative from every county of the Commonwealth, no matter whether it has a population sufficient to entitle it to one or not. Others want single districts. Some projects have a plan for dividing just three or four counties of the Commonwealth, by providing that all counties or cities that may have a representation exceeding three shall be divided into single districts. We have had all these different plans. The question of county representation, the question of single districts, and almost every project that could be devised by delegates, has been considered, debated and voted upon.

Mr. President, this morning in listening to the arguments of several of the delegates, and most especially to the argument of the delegate from Allegheny county, (Mr. J. W. F. White,) in criticising the amendment offered by the delegate from Delaware, (Mr. Broomall,) stating the objections that would be made to it by perhaps one-third of the counties of this Commonwealth, my mind was satisfied that if we undertake to make an apportionment here, we shall insure beyond all question the defeat of this Constitution by the people; and it is the very worst thing we can possibly do, and there is no necessity for it. I do not believe it is possible for us to do it satisfactorily, and therefore it is that I have thought proper to offer this proposition leaving the apportionment to the Legislature, only providing that the House shall consist of one hundred and fifty members, and that in arranging the districts they shall make them out of compact and contiguous territory.

The PRESIDENT. The question is on the amendment of the delegate from Alle-

gheny (Mr. Howard) to the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

The amendment to the amendment was rejected.

Mr. LAWRENCE. Mr. President: I offer the following proposition, to take the place of the pending one:

"The House of Representatives shall consist of one hundred and fifty members, to be distributed among the counties and cities of the State in proportion to the population as ascertained by the last preceding census of the United States. Each county having the requisite ratio of population shall form a separate representative district, and any county having less than the ratio of population may be connected with any adjoining county or counties in the formation of a district."

Mr. HARRY WHITE. Mr. President: I want to have the privilege of voting against this proposition, and I wish to give you the reason for that.

The reason of my vote against this is because it does not alter in any respect the present rule on this subject except requiring a county that has the ratio to be made a separate legislative district. Otherwise I think it is not as good as the amendment to the Constitution of 1857, under which apportionments are now made.

Now, if we want to throw this question entirely into the Legislature, let us do so without any mere words of admonition. Those words of admonition will be avoided and evaded. It will be a temptation to dishonesty, if such a thing is possible, in making a legislative apportionment. Mr. President, there is another reason why I oppose it. This proposition ignores that which has been recognized by a fair majority vote of this Convention: It ignores the principle which we adopted yesterday by a fair vote, of separate county representation; and I am earnestly and honestly devoted to separate county representation. I am devoted to it because I find in the old Constitution of 1789 this provision:

"Each county shall have at least one Representative."

And I find by referring to the list of counties that then existed, Allegheny county, Bedford, Berks, Cumberland, Dauphin, Delaware, Fayette, Franklin, Huntingdon, Lancaster, Luzerne, Mifflin, Northampton, Northumberland, Philadelphia, Washington, Westmoreland and

York. Those counties were in existence when this provision was adopted. I find that in the Constitutional Convention of 1838 this provision was re-enacted or allowed to remain, and there existed at the time of the adoption of that Constitution the counties of Adams, Armstrong, Beaver, Bedford, Bradford, Butler, Cambria, Centre, Clarion, Clearfield, Clinton, Columbia, Erie, Indiana, Jefferson, Juniata, Lehigh, M'Kean, Mercer, Monroe, Perry, Pike, Potter, Schuylkill, Susquehanna, Venango, Warren and Wayne. I find all these counties, many of which were inconsiderable in population, existed as separate organizations at the adoption of the Constitution of 1838.

Now, sir, this principle thus enunciated I am in favor of standing by, and experience and observation have convinced me of its propriety.

Gentlemen have stood here and talked about equality of representation. Why, Mr. President, who made your small counties? Who made your Forest county, and your Elk county, and your Sullivan county, and Monroe, and Pike, and Fulton and Cameron? Who made these counties? The people of the Commonwealth, through their constitutionally elected representatives, saw fit to form these counties into separate districts, and I need not remind the intelligent delegates of this Convention of the great power which the Legislature thus gave to the county commissioners in all these municipalities to effect the interests and the rights of the individual inhabitants of those counties.

Why, sir, within my recollection, within my legislative life, I remember a great wrong which was perpetrated upon a county of this Commonwealth; I refer to the county of Forest. I remember when there was an exciting proposition before the Legislature to erect a new county of Chase, with the county seat at the city of Titusville, and some of the authors of that measure sought to make political capital in the county of Venango, and make it physically impossible to erect a new county either by going over into the county of Venango, taking a portion of that county and adding it to the county of Forest, thus making it impossible to take some of the territory for the new county as it was designed by the original mover. That was passed, and the result of that bill was a change in the county seat of Forest. I do not know what the result of the experience has been as

to whether it was wise or not, but permit me to say it was unjust to the people of Forest to have a bill of that kind passed, disjoining and mutilating their county, without their having a local representative on the floor of the Legislature. No man can pretend for a moment that it would have been done if there had been a representative of the county of Forest in the Legislature.

Then, again, I recollect another proposition which was made in the Legislature. A gentleman came there residing in the county of Fulton. He happened to belong to the party which was not in the ascendancy there, and for the purpose of affecting the politics of that county he made a proposition, and he carried it with the majority of the Legislature which was with the party to which I belonged, to take some townships from the county of Huntingdon, add them to the county of Fulton, thus changing it from a Democratic to a Republican county. No voice was raised to utter a protest against it.

Other instances could be added of the gross injustice sought to be practiced through the Legislature from time to time by interested parties upon counties which had no representative upon the floor.

I submit, then, that it is unfair to make a discrimination of this kind against the small counties and allow legislation to be passed prejudicial to their interests, in regard to which they have no voice.

More than all this, I repeat what I said yesterday: Every gentleman who has participated in the passage of legislative apportionment bills knows that these small counties are used by politicians, by interested parties—I speak not disrespectfully of anybody—to advance their own individual interests. I have had the privilege of seeing three apportionment bills passed. I know how difficult it is to frame such a measure. I never saw, and I never expect to see, an apportionment bill passed, among so many diversities of interests as there are in this State, except under the operation of the previous question. I am almost hopeless that we shall be able to agree upon any proposition in relation to apportionment here, but I claim the privilege of raising my voice and casting my vote against any proposition which seeks to invade the right of separate county representation.

MR. J. PRICE WETHERILL. Mr. President: I cannot for a moment suppose that the proposition now presented will

pass this body. We have taken action upon just the opposite of this idea. We have decided, although by a very small majority, that in our opinion each county should have a representative, and now we are desired by the mover of this proposition to say that twenty counties in this State shall not have their own representatives. This proposition makes no provision whatever for unused fractions, but simply says that every county, to be entitled to a representative, must have 23,000 inhabitants; to be entitled to two, 46,000, and so on. All the fractions between the 23,000 and the 46,000 are unused.

Mr. BARTHOLOMEW. No; he does not fix the ratio.

Mr. J. PRICE WETHERILL. He does fix the ratio by dividing the population of the State by 150. Certainly he fixes a ratio, and that ratio is 23,000; and that ratio says to every county below 23,000, "you shall not have a representative."

Now, sir, I must say that the plan which the committee have offered certainly is a compromise between the two extremes. We have one extreme asking that every county shall be represented, and we have the other extreme saying that, without the unused fractions, population should be the basis of representation. Now, let us meet on the middle ground, and it is the fair ground, that population shall be the basis upon which we act, and that unused fractions shall be fairly and honestly consumed.

What experience have we as to the working of the proposition which the committee have presented? We have the experience of the State of Ohio, without a single objection to it for fifteen years. It has worked well in Ohio, and although they may in that State see fit to alter their Constitution in divers ways by the Convention at present sitting, yet, if I am correctly informed, that provision will not be altered except perhaps to use an additional number of unconsumed fractions, but the principle will be the same. In Illinois it has also worked well, and I differ from the gentleman from Columbia (Mr. Buckalew) in saying that this is not the principle which actuated the Illinois Convention. It is the same principle, with this exception; that so keen are they in Illinois that every man shall be represented, that they consumed not only these unused fractions, but the unused fractions for five years, and thereby every one in

the State as near as possible is represented.

Now, sir, we have the experience of other States; we have the views of this Convention; we know that they are about equally divided; this is a compromise, a compromise fairly considered by a committee appointed by this body for that purpose, and I do hope, that being the case, we shall settle the question to-day by voting for the report of the committee.

Mr. BARTHOLOMEW. Mr. President: I hope the pending amendment offered by the gentleman from Washington will be adopted by this Convention. We have given our earnest attention for the last three days to this very important subject, and after unusual exertion we must, I think, confess that we are incapable of making an apportionment for this Commonwealth that will be satisfactory to a majority of this Convention and be adopted by the Convention. My friend from Dauphin (Mr. MacVeagh) says that the main propositions have been passed upon and settled, and that there are but very few yet remaining. I say to him na'! frankness that we are as wide apart this minute as we were when this debate opened. I can see nothing to lead me to believe that we are nearer any result which will be accepted by the Convention.

There is an earnest opposition on the part of many members on this floor to what I shall denominate territorial representation or county representation. Such a representation in the State Senate has some consistency in it. It accords with the principle of our national government. There is some such thing as county representation in the upper branch of the Legislature; but when you come to the popular branch of the Legislature of Pennsylvania it is the people that should be represented, not mere territory, not mere municipalities, not communities; and I take it that when we depart from that principle we depart from the fundamental principle of this government and of republican institutions. I, for one, do not intend to be swayed or driven from the support of that principle, which I consider of so much importance. I believe in it, and I do not think it wise or well for us to depart from the principle which is consistent with democratic government and representative republican government, which is based upon population, and upon that alone, in the lower branch of the Legislature.

Then the other question upon which we are as wide apart is the question of separate or single districts. Have we come any nearer upon that proposition? We are as wide apart this moment upon it as we were the day we started.

Here we have the two propositions that are of importance in this discussion and in the formation of anything that shall be acceptable. I take it the best way to relieve ourselves of the difficulty, which seems to be insurmountable, is to candidly confess that we are incapable of performing this stupendous task, that we cannot make concessions, that we cannot compromise, but must leave it to wiser men than we are to do that which we have utterly failed to do, thus far at least.

My friend from Indiana (Mr. Harry White) says this is not the right kind of proposition because it goes to the Legislature with admonitions. With admonitions! It goes to the Legislature with constitutional provisions, not with admonitions, with provisions that the Legislature dare not violate any more than they dare violate any other constitutional provision. If they would evade it, they would evade any other. It is just as firm and fixed a constitutional provision as any other adopted by this Convention, and they are just as much bound by it.

What are these "admonitions," or rather what are these constitutional provisions? They are, first, fixing the number of the body, that it shall be composed of one hundred and fifty men, that they shall be apportioned upon the true basis, the only basis that a popular government should know in its popular branch, to wit, population; second, it prevents gerrymandering by providing that wherever a county shall have sufficient population to entitle it to a representative it shall not be attached or joined to any other county. It is true, this leaves a few counties to be connected together; but that is an evil that is merely temporary; it will not last for all time, nor for any length of time. It will not be long before they will have the requisite population. Railroads are intersecting the State in all directions; our country is developing; the population in all our counties will increase, and when the several counties have the requisite population, there will be no difficulty about county representation.

It is true that the people who complain that they are not represented on the floor of the Legislature have brought this evil upon themselves by listening to the coun-

sel of bad men or interested men, men who had town lots, men who wanted little county offices, men who broke up counties for the purpose of getting a municipal organization for their own selfish and personal ends; and now you want to add to that what? An additional incentive to induce people to break up counties still further by saving to each little municipal organization in the shape of a county, "Get your county and you shall have a member upon the floor of the Legislature." What does it mean? It means that you have representatives there without constituencies. It means that you have there just what they have in England, rotten boroughs; that you have men in the legislative body without people to back them or anything to stand upon. I believe that to be false in principle. I believe it to be wrong and in violation of every principle of republican government. I believe it to be an incentive to do that which is an evil in this State, the breaking up of old counties and forming these little counties, and I say, for one, that I shall oppose any proposition which looks to territorial representation on the floor of the Legislature.

MR. HARRY WHITE. The gentleman from Schuylkill sneers at county representation and compares it to the rotten borough system of England. Let me ask him if it is not true that the rotten borough system of England allows a member of Parliament to be elected to represent a borough who knows nothing about the interests of the particular borough? The difference here is that we by constitutional provision require the representative to live within the district which he represents.

MR. BARTHOLOMEW. That may be all true. The system may be worse in England than it is here. It may be worse that a man who does not know anything about a district or borough and never saw it should be elected to represent it. It may be worse that a man may own the borough and carry it in his pocket and give it to a man who never looked upon it and never will; yet that is only an additional evil. The evil is nevertheless here that you have a representative without people to back him. Therefore I say that this principle is an additional incentive to break up county organizations for mere political and selfish purposes, and therefore I am opposed to it. When we have fixed the number of representatives, when we have said to them "You shall

not gerrymander," when the evil which will result to these small counties will be but a temporary one, I think the matter may safely be left to the Legislature. The advance of civilization rolling westward to the end of our State will populate those counties; and then they will have their representation in the lower branch of the Legislature as other counties have. Sir, take the calculation of the gentleman from Allegheny, (Mr. J. W. F. White,) and Northampton county, with sixty-one thousand and some hundreds of people, will have two representatives, and eight other counties with 60,000 people in the western part of the State, eight representatives on the floor of the House of Representatives. Who controls the legislation of the State under such an apportionment as that? The men from these small counties have no interest in the great concerns of the counties of the east and southeast, and yet they may have a controlling voice in the legislation that shall govern those interests. It is a monstrous proposition. It is false in principle. I hope this House will adopt the amendment of the gentleman from Washington, and, after having fixed the number of representatives and prevented gerrymandering, will leave this question of apportionment to the Legislature, where it fairly belongs, because we have done here and tried to do from the beginning that which was to elevate the character of the Legislature, that which should make the Legislature pure, and having done that, having purified the Legislature which has heretofore been so corrupt, we ought at least

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

Mr. BARTHOLOMEW. Certainly.

Mr. HAZZARD. Does any proposition which has been submitted to this House make as great a disparity in the constituency as there is now under the old distribution? Are there any two representatives who represent the same number of constituency?

Mr. BARTHOLOMEW. No, and I do not think the apportionment has been a fair one. I do not think it has been the object of the controlling power to make fair apportionments. But I am now speaking upon this subject; I say that after we have purified this Legislature, after we have brought it up to an almost angelical character, because that is our object, [laughter,] we can trust them on this question. We have tried to put in the

Constitution provision after provision so that every member of the Legislature hereafter will be as pure as snow, and there will be nothing to induce him to depart from the true principle, and he will do justice by all men. Whether they be friends or foes, whether they be his partizans or against him, he will do that exact justice that will result in a perfect administration of justice and a correct representation of the whole people of the Commonwealth.

The PRESIDENT. The question is on the amendment of the gentleman from Washington (Mr. Lawrence) to the original amendment.

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

The yeas and nays were ordered, ten members rising to second the call, and being taken, resulted as follows:

YEAS.

Messrs. Ainey, Bailly, (Perry,) Baker, Bartholomew, Biddle, Broomall, Campbell, Carter, Church, Corbett, Corson, Dallas, Dunning, Edwards, Ewing, Hanna, Hay, Hazzard, Hunsicker, Kaine, Lawrence, Lilly, Littleton, MacConnell, McCulloch, M'Michael, Newlin, Palmer, G. W., Patterson, D. W., Pughe, Reynolds, Smith, William H., Wetherill, J. M. and White, J. W. F.—34

NAYS.

Messrs. Alricks, Andrews, Baer, Beebe, Black, J. S., Brown, Buckalew, Calvin, Cochran, Curtin, Darlington, De France, Dodd, Finney, Fulton, Green, Guthrie, Hall, Howard, Landis, Long, MacVeagh, Mantor, Metzger, Minor, Mott, Purviance, John N., Purviance, Samuel A., Sharpe, Smith, Henry W., Stanton, Turrell, Wetherill, John Price, White, David N., White, Harry, Woodward, Worrell and Walker, *President*—38.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Armstrong, Bailey, (Huntingdon,) Banan, Barclay, Bardsley, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Bullitt, Carey, Cassidy, Clark, Collins, Craig, Cronmiller, Curry, Cuyler, Davis, Elliott, Ellis, Fell, Funck, Gibson, Gilpin, Harvey, Hemphill, Heverin, Horton, Knight, Lamberton, Lear, M'Camant, M'Clean, M'Murray, Mann, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purman, Read, John R., Reed, Andrew, Rooke, Ross

Runk, Russell, Simpson, Smith, H. G., Stewart, Struthers, Temple, Van Reed, Wherry and Wright—61.

Mr. WORRELL. I have an amendment to offer.

Mr. MACVEAGH. I should like to suggest to the delegate whether his amendment cannot be made a special amendment to the section?

The PRESIDENT. The Chair cannot tell. The amendment to the amendment will be read.

The CLERK. Mr. Worrell proposes to make the section read as follows:

"In the year succeeding the adoption of this Constitution, and thereafter in the year succeeding the Federal census, representatives to the number of one hundred and fifty shall be apportioned and distributed among the several counties of the State on the basis of population: *Provided*, That any county containing less than three-fifths of the ratio required for a member shall be attached to an adjoining county or counties; but no district shall be formed in a manner so as to entitle it to more than three members. Counties entitled to more than eight members shall be divided into districts of compact territory, to elect not less than three and not more than five members."

Mr. WOODWARD. Mr. President: I do not rise to discuss this amendment, and I have not said a word on the whole subject, either on the second reading of this article or on the previous reading, and I do not propose to do so. But, sir, it is quite apparent that we are involved in an inextricable web of difficulties on this subject. Indeed popular representation has always been the great problem in a republican government; it was one that troubled our forefathers in the Federal Convention, and it has been the subject of embarrassment and difficulty in all our State conventions.

We are now brought by several days' experience full up to the fact that there is no majority of this body in favor of a practical amendment of our Constitution on the subject of representation. We may sit here and discuss amendments and vote them down until the people shall grow weary of it. My friend from Butler county (Mr. J. N. Purviance) moved this morning a reference of all these propositions to a committee, but he accompanied that motion with instructions that look to a particular class of amendments. It was voted down, and I am glad it was. There were two objec-

tions to it; the first was in the fact of instructions, and next that it was referred to one of the standing committees of this House. Now, we have the reports of all the standing committees, and we should make no progress by referring this subject back to a standing committee. But, sir,—

Mr. J. N. PURVIANCE. Will the gentleman allow me to remark that previously I had offered a reference of the same kind to a special committee, and that was voted down. Consequently I could only offer the proposition for reference to a standing committee.

Mr. WOODWARD. Mr. President: What I want to say is this: You have sat here and listened to all these amendments and to the debates to which they have given rise. Now, I assume that the President of this body could appoint a committee that would represent all sections of the State and all interests, and if that committee were compelled to report next Monday morning a plan which a majority of this body would receive with favor, I believe the President would compose such a committee. I think none of the standing committees already appointed are appropriate, because they were appointed before this question arose.

I would propose, if it were in order, the appointment of a special committee, say of nine members, to be selected by the Chair, in view of what he has heard and seen in the discussion of this matter, with instructions simply to bring in a report by next Monday morning, but with no other instruction. I do not know whether it be in order for me to make that motion at this time. ["It is."]

The PRESIDENT. It is in order.

Mr. WOODWARD. If it be in order, I move that all the amendments which have been proposed to this part of the Constitution be referred to a special committee of nine, to be appointed by the Chair, with the single instruction that they report on Monday morning to the Convention.

The PRESIDENT. The question is on the motion to refer.

Mr. MACVEAGH. Before that question is put, I suggest that, as we have yet an hour and a half of the session of this afternoon, the gentleman withdraw his motion for the present. The vote is now on this amendment, and it would have been taken, if the gentleman had not spoken, at once. The vote is coming

down to the report of the committee, and let us get a vote upon that, at least, and have it put out of the way, if it is to be put out of the way. Surely with the report of one committee here, that has never yet been voted upon, a matured report, it is not too much to ask the House to vote it down before you appoint another committee to make another report. I tell the gentlemen just the difficulty; gentlemen have introduced here one individual proposition after another, and the minds of the members have gone after these propositions, and each gentleman is heard, and thinks he could take his pen and get rid of it; and so we have been going on, day after day, and hour after hour. Now we are just at the point of, for the first time, hearing, really, and considering the report of the committee. Let us have that considered in the rest of to-day's session, and if it is voted down and out of the way, then I am perfectly willing to have a special committee appointed. Certainly that is only reasonable.

Mr. KAINE. Mr. President: I should like to suggest to the gentleman from Dauphin who has just spoken, that there is scarcely a quorum of members now present on this floor. There may be just a quorum, or one or two more, but not beyond that.

Much has been said by the gentleman from Dauphin and some others in regard to the report of the committee, which seems to be at the bottom of the subject which we are now considering.

There are members upon this floor who, notwithstanding the several days' discussion which has been gone through here, do not know anything about the report of that committee; do not know which it is, or what it is. The gentleman on my left, (Mr. Hanna,) until a moment ago believed, and perhaps he still believes, that the report is contained upon the files. That part of the report was considered long ago in committee of the whole, and was amended by the adoption of the amendment of Mr. White, of Allegheny, in committee, and when it came into the House on second reading it was voted down, which of course blotted out the section upon which it had been put in committee of the whole. Now, if I understand the gentleman from Dauphin, what is considered here as the report of the committee is the proposition of Mr. John Price Wetherill. Am I right?

Mr. MACVEAGH. I will explain to the gentleman. When the proposition was voted on in committee of the whole, there were several days' rambling discussion of the general subject, and the matter was referred back to the committee and a report made. At a stage of the progress, the amendment of Mr. White, of Allegheny, was proposed. As I said then, it was represented to be generally satisfactory, and I acquiesced, and induced anybody else I could to acquiesce also. That amendment was voted in. Then on the second reading that amendment was reported, of course, as the report of the committee of the whole on this subject. To that amendment of Mr. White, of Allegheny, amendments were proposed and proposed and proposed, and the amendments were all voted down, and finally Mr. White's own proposition was voted down. Then we were left without anything. Then Mr. Wetherill proposed as an independent section, on second reading, the report of the committee. Now, that being an amendment, the Chair having held when we re-assembled that that was an amendment to the article, and that therefore any amendment to it was in order, the report itself could not be considered as long as any individual member had a substitute that he desired to offer. The result is that we have ever since been considering substitutes. Now we are at the threshold of considering that proposition.

Mr. KAINE. The proposition of Mr. Wetherill?

Mr. MACVEAGH. Yes, sir; which was the report of the committee.

Mr. KAINE. That is the way I understand the matter now before the House. The gentleman was satisfied when he was up before that this proposition had not yet been voted upon. Why, sir, if I am correct in my memoranda, two or three times votes have been taken upon it, and parts of it have been stricken out.

Mr. MACVEAGH. This is so.

Mr. KAINE. And it is now in my opinion a very imperfect proposition indeed.

Mr. MACVEAGH. Then let us have it voted down.

Mr. KAINE. I do not see any necessity of voting it down. Unless it would aid a special committee, such as is proposed by his Honor, Judge Woodward, in arriving at something like a fair conclusion upon this subject, I see no necessity for voting it down. I favor the appointment of this committee, as suggested by Judge

Woodward. Members are disposed, they say, to sit here and try, and try, and try. Why, sir, it is like hunting a needle in the dark. No member seems to have any settled notion upon this subject. This is no place for any member, I do not care how talented he may be or what may be the depths of his thought and the breadth of his intellect, to digest a proposition so intricate and so important as this. I conceive that it is the most important question which has been brought to the consideration of this Convention, or that this Convention has to consider in all its labors. Therefore I think it should receive the candid, careful and timely consideration of every member of this Convention and not be hurried through in hot haste. I do not care if it takes a week or a month; whatever we do on this subject, let us do it right. I am therefore in favor of the proposition of the gentleman from Philadelphia (Mr. Woodward.)

Mr. BEEBE. I wish to suggest, that to require a report on Monday morning will be too soon; it will not give sufficient time.

Mr. WOODWARD. I will modify it by saying Tuesday.

The PRESIDENT. The motion will be so modified.

Mr. WOODWARD. While I am up I wish to say one word. I do not see in the remarks of the gentleman from Dauphin any sufficient reason why the amendment of Mr. Wetherill should not, with all the other amendments, go to a special committee.

One other word. In compounding the committee I ask that the Chair, in case any motion be adopted, shall omit me from it. Having made the motion I suppose by parliamentary usage I should be entitled to be chairman of the committee. I do not wish to be upon the committee at all.

The PRESIDENT. The question is on the motion to refer the subject to a special committee of nine with instructions to report on Tuesday morning.

Mr. MACVEAGH and Mr. LILLY called for the yeas and nays.

Mr. LILLY. I desire to ask a question of the Chair. Is the whole subject to be referred without instructions? ["Yes."]

The PRESIDENT. The Clerk will call the names of delegates on the motion to refer.

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

YEAS.

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Baker, Beebe, Bowman, Boyd, Brown, Buckalew, Church, Curtin, Dallas, Dodd, Dunning, Finney, Green, Guthrie, Hemphill, Kaine, Lilly, Littleton, Long, McCulloch, M'Michael, Metzger, Minor, Newlin, Palmer, G. W., Patton, Pughe, Purviance, John N., Purviance, Samuel A., Sharpe, Smith, H. G., Smith, Wm. H., Wetherill, J. M., Woodward, Worrell and Wright—39.

NAYS.

Messrs. Ainey, Alricks, Baily, (Perry,) Biddle, Black, J. S., Broomall, Calvin, Campbell, Corbett, Darlington, DeFrance, Edwards, Ewing, Fulton, Hall, Hanna, Hay, Hazzard, Horton, Howard, Hunsicker, Landis, Lawrence, MacConnell, MacVeagh, Mantor, Patterson, D. W., Reynolds, Smith, Henry W., Stanton, Turrell, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Walker, *President*—36.

So the motion to refer was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bannan, Barelay, Bardsley, Bartholomew, Bigler, Black, Charles A., Brodhead, Bullitt, Carey, Carter, Cassidy, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Cnyler, Davis, Elliott, Ellis, Fell, Funck, Gibson, Gilpin, Harvey, Heverin, Knight, Lamberton, Lear, M'Camant, M'Clean, M'Murray, Mann, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson T. H. B., Porter, Purman, Read, John R., Reed, Andrew, Rooke, Ross, Runk, Russell, Simpson, Stewart, Struthers, Temple, Van Reed and Wherry—58.

ORDER OF BUSINESS.

Mr. S. A. PURVIANCE. I now move that the Convention proceed to consider the articles passed second reading in the order in which they appear in the pamphlet on our desks.

The PRESIDENT. All those articles have been referred to the Committee on Revision.

Mr. MACVEAGH. And that committee has not reported.

Mr. BUCKALEW. I move to proceed to the consideration of the resolution submitted by me yesterday in regard to the forty-third rule. I did not call it up before, at the instance of the gentleman from Dauphin (Mr. MacVeagh.)

The PRESIDENT. The delegate from Columbia moves to proceed to the consid-

eration of the resolution offered by him. The resolution will be read for information.

Mr. MACVEAGH. With the indulgence of the Chair, I beg to suggest that there is a report from a standing committee still that has not passed the committee of the whole. It is in reference to the State Capital. It has not been brought before the committee of the whole.

Mr. BUCKALEW. If the gentleman wants to call up the report of a committee, I will withdraw my motion.

The PRESIDENT. The motion is withdrawn.

Mr. MACVEAGH. I move then that the Convention resolve itself into committee of the whole to consider the article from the Committee on the Legislature on the subject of the State Capital.

Mr. KAINE. That report is not on our files.

Mr. MACVEAGH. If it has not been printed and is not on the files, I withdraw the motion.

The PRESIDENT. The motion is withdrawn.

Mr. S. A. PURVIANCE. In order that we may not lose this day and to-morrow, I move that the Committee on Revision and Adjustment be discharged from the further consideration of the article on the Bill of Rights. That will not be altered in any respect whatever, I believe, by that committee, and we might as well proceed with the consideration of that now.

Mr. MACVEAGH. In order to illustrate the danger of such a proceeding, I have upon my table a letter from a very distinguished lawyer of this State this morning received, who begs me to call the particular attention of the Committee on Revision to the Bill of Rights. He says that it needs their very special consideration. I do not know whether that is so or not, but I have such a letter, received from an eminent member of the bar of this State this morning.

Mr. S. A. PURVIANCE. If we respond to all these applications, petitions and requests, we shall never be done with our business.

The PRESIDENT. The motion is that the Committee on Revision and Adjustment be discharged from the further consideration of the article on the Bill of Rights.

Mr. BUCKALEW. The chairman of the committee is absent, and therefore I have to state that the committee had a meeting

last evening and will meet again this afternoon at five o'clock, and they propose to go on to-night and to-morrow and make a very early report, and there will be some slight modifications proposed in the very article to which the gentleman refers, though not important. But neither now nor hereafter should that particular division of our work occupy more than a few moments of our time, so that we shall gain nothing by taking it up now.

Mr. MACVEAGH. I move that we adjourn until Tuesday morning at ten o'clock. ["No." "No."] This committee cannot report sooner.

The PRESIDENT. It is moved that the Convention do now adjourn until Tuesday morning at ten o'clock.

Mr. D. W. PATTERSON. I move to amend, by striking out "Tuesday" and inserting "Monday."

Mr. DARLINGTON. I hope the gentleman who has made the motion will withdraw it.

Mr. MACVEAGH. Why?

Mr. DARLINGTON. There is a pending motion to reconsider a question that passed while under consideration in the report of the Committee on Revenue, Taxation and Finance. It has never been disposed of finally, and it might just as well be taken up now.

The CLERK. It was discovered to be an error and corrected by us.

Mr. MACVEAGH. We have nothing to do until Tuesday morning. I want to go on and finish; but we have provided for a committee that will take from now until that time to decide and report. Do let us adjourn until that hour.

Mr. J. M. BAILEY. I should like to call the attention of the Convention to the fact that a report was made from a standing committee this morning for the first time, the Committee on Commissions, Offices, Oaths of Office and Incompatibility of Office.

Mr. DARLINGTON. I hope the motion to adjourn will be withdrawn for a moment to allow the President to make up the special committee of nine. Let us wait a few moments.

Mr. MACVEAGH. I move then that the Convention take a recess of ten minutes.

The motion was agreed to, and (at two o'clock P. M.) the Convention took a recess for ten minutes, at the expiration of which time it was again called to order.

THE APPORTIONMENT COMMITTEE.

The PRESIDENT announced that he has appointed as members of the apportion-

ment committee, Mr. Woodward, Mr. MacVeagh, Mr. J. Price Wetherill, Mr. Bowman, Mr. Harry White, Mr. Hall, Mr. Buckalew, Mr. Turrell and Mr. D. N. White.

ADJOURNMENT.

Mr. MACVEAGH. I suppose that the committee will meet immediately after the adjournment.

Mr. WOODWARD. Let that be the arrangement.

Mr. MACVEAGH. Judge Woodward authorizes me to make the statement that the committee will meet in one of the committee rooms immediately after the Convention adjourns. I now renew motion that this House do now adjourn until ten o'clock on Tuesday morning.

Mr. D. W. PATTERSON. I move to amend by striking out "Tuesday" and inserting "Monday."

Mr. COCHRAN. I submit that the motion is not in order, and that the only motion that can be made to be in order on this subject is, that when this House adjourn it be to meet at a certain time. Then the motion can be made that the House do now adjourn.

The PRESIDENT. The gentleman from York is correct.

Mr. MACVEAGH. That is the same thing. It only takes two motions to reach one result.

Mr. D. W. PATTERSON. I rise to a point of order.

Mr. MACVEAGH. Never mind; if anybody will state what we can do on Monday, I shall be content to meet then.

Mr. DARLINGTON. We can go on with the report of the committee.

Mr. D. W. PATTERSON. I will tell the gentleman what we can do. If we adjourn to meet on Monday, it will bring the members here and it will bring the committees here, and we can go on with our work. If we adjourn until Tuesday, they will do no work on Monday.

Mr. COCHRAN. I will answer the gentleman from Dauphin's inquiry. We have a question before this House that it would be very well for us to settle before we take up this apportionment question again, and that is the report of the Committee on Accounts and Expenditures on the subject of printing. We can dispose of that on Monday.

Mr. CAMPBELL. I move to further amend the amendment by striking out "Monday" and inserting "to-morrow."

These repeated adjournments I consider disgraceful to this body.

Mr. MACVEAGH. I suppose that to be hardly in order, for that is the standing order of the House now, and will be reached directly by voting down the proposition. The House having decided that this committee be appointed instead of continuing at this work, and that it should report on Tuesday morning, it seems to me that there is nothing valuable to be accomplished by meeting here. But if there is, let it be done.

Mr. CAMPBELL. I do not press my motion.

Mr. HALL. I have understood from the chairman of the Committee on Commissions, Officers, Oath of Office and Incompatibility of Office, that the report which he has presented will be printed and on the desks of members on Monday morning, and can be considered in committee of the whole. Why then waste Monday unnecessarily?

The PRESIDENT. The question is on the amendment to strike out "Tuesday" and insert "Monday."

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

Mr. ELLIS. I second the call.

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

Y E A S .

Messrs. Ainey, Alricks, Armstrong, Baily, (Perry,) Baker, Beebe, Biddle, Bigler, Boyd, Broomall, Brown, Buckalew, Calvin, Carter, Cochran, Dallas, Darlington, De France, Dodd, Edwards, Ewing, Finney, Green, Guthrie, Hall, Hanna, Hay, Hazzard, Horton, Hunsicker, Landis, Lawrence, Lilly, Long, MacConnell, McClean, Mantor, Minor, Mott, Patterson, D. W., Patton, Pughe, Purviance, John N., Purviance, Sam'l A., Read, John R., Russell, Sharpe, Smith, Wm. H., Stenton, White, Harry, White, J. W. F., Woodward and Wright—53.

N A Y S .

Messrs. Bailey, (Huntingdon,) Black, J. S., Bowman, Campbell, Church, Curtin, Cuyler, Ellis, Fulton, Hemphill, Howard, Kaine, MacVeagh, Newlin, Reynolds, Smith, Henry W., Turrell Wetherill, J. M., Wetherill, Jno. Price, White, David N. and Walker, President—21.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Baer, Bannan, Barclay, Bardeley, Bartholomew, Black, Chas. A., Brod-

head, Bullitt, Carey, Cassidy, Clark, Collins, Corbett, Corson, Craig, Cronmiller, Curry, Davis, Dunning, Elliott, Fell, Funk, Gibson, Gilpin, Harvey, Heverin, Knight, Lamberton, Lear, Littleton, M'Camant, M'Culloch, M'Michael, M'Murray, Mann, Metzger, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Reed, Andrew, Rooke, Ross, Runk, Simpson, Smith, H. G., Stewart, Struthers, Temple, Van Reed, Wherry and Worrell—59.

The PRESIDENT. The question recurs on the motion as amended.

Mr. ALRICKS. Now I move to strike out the hour inserted there, and insert twelve o'clock, to enable all gentlemen to get here.

The PRESIDENT. The question is on the amendment of the delegate from Dauphin, to strike out "nine and a half," and insert "twelve."

The motion was not agreed to, the ayes being eighteen, less than a majority of a quorum.

Mr. LAWRENCE. Now on the original resolution, a negative vote on this question will allow us to meet to-morrow morning. I hope we shall vote nay.

Mr. D. W. PATTERSON. The question is on the resolution as amended.

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

Several delegates called for the yeas and nays.

Mr. MACVEAGH. Let the proposition be read.

The PRESIDENT. The motion is that when the Convention adjourns to-day it be to meet on Monday next.

Mr. LAWRENCE. Let us vote it down and meet to-morrow.

The yeas and nays were taken with the following result, viz :

YEAS.

Messrs. Ainey, Armstrong, Baker, Bidle, Bigler, Bowman, Boyd, Broomall, Buckalew, Carter, Cochran, Curtin, Cuyler, Dallas, Ellis, Green, Hanna, Horton, Hunsicker, Kaine, Lilly, Long, Minor, Newlin, Patterson, D. W., Patton, Read, John R., Sharpe, Stanton, Wetherill, J. M., White, Harry, White, J. W. F., Woodward, Wright and Walker, *President*—35.

NAYS.

Messrs. Alricks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Black, J. S., Brown, Campbell, Church, Darlington, De France, Dodd, Edwards, Ewing, Finney, Fulton, Guthrie, Hall, Hay, Hazzard, Hemphill, Howard, Landis, Lawrence, MacConnell, M'Clean, Mantor, Metzger, Mott, Pughe, Purviance, John N., Purviance, Samuel A., Reynolds, Russell, Smith, Henry W., Smith, Wm. H., Turrell, Wetherill, John Price and White, David N.—39.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, Charles A., Brodhead, Bullitt, Calvin, Carey, Cassidy, Clark, Collins, Corbett, Corson, Craig, Cronmiller, Curry, Davis, Dunning, Elliott, Fell, Funk, Gibson, Gilpin, Harvey, Heverin, Knight, Lamberton, Lear, Littleton, MacVeagh, M'Camant, M'Culloch, M'Michael, M'Murray, Mann, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Reed, Andrew, Rooke, Ross, Runk, Simpson, Smith, H. G., Stewart, Struthers, Temple, Van Reed, Wherry and Worrell—59.

Mr. EWING. I move that the Convention do now adjourn.

The motion was agreed to, and at two o'clock and forty minutes P. M. the Convention adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FORTY-SIXTH DAY.

SATURDAY, *September 20, 1873.*

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. LILLY asked and obtained leave of absence for Mr. Corbett for a few days from to-day.

Mr. CARTER asked and obtained leave of absence for Mr. Cochran until Monday.

Mr. BIGLER asked and obtained leave of absence for himself until next Wednesday.

Mr. EWING. At the request of Mr. Onslow, Sergeant-at-Arms, I ask leave of absence for him for a few days from to-day.

Leave was granted.

Mr. BAER asked and obtained leave of absence for Mr. Metzger for a few days from Monday.

MILEAGE OF MEMBERS.

Mr. HAY submitted the following resolution, which was read twice and agreed to:

Resolved, That the members of the Convention furnish to the Chief Clerk a statement of their respective places of residence, together with the distance of the same from Philadelphia by the shortest traveled route, for the use of the Committee on Accounts and Expenditures.

FURNISHING COPIES OF DEBATES.

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

Resolved, That five copies of the Debates of the Convention and one copy of the Journal be sent to each person who has been a member of this Convention and resigned his position as such, and to the representatives of each deceased member, provided that they have not been otherwise supplied.

Mr. HAY. I move to proceed to the second reading and consideration of the resolution and purpose then to move its reference to the Committee on Printing.

The resolution was read the second time:

Mr. HAY. I desire to explain the reason why this resolution is offered now. It is not proposed to ask its adoption at this time, but merely its reference to the Committee on Printing and Binding. I have been in conversation with the representatives of some of the deceased members of the Convention, and with one or two of the gentlemen who have resigned heretofore, one of whom is now the Attorney General of the State, and they have informed me that they had not received any copies of the Debates, and desire very much to have them. It seems to me that those who have resigned, and the representatives of the deceased members, should have some copies for their own use as well as for preservation in their families. They earnestly desire them. Let this resolution be referred to the Committee on Printing and Binding, that it may make inquiry into the matter and see that they are supplied.

Mr. J. N. PURVANCE. If it is in order I move to amend (and perhaps the delegate from Allegheny will accept it) that a copy be furnished to each of the supreme judges.

The PRESIDENT. The motion now is to refer to the Committee on Printing and Binding. That is the only motion before the Convention. The question is on the motion to refer.

The motion was agreed to.

STATE SEAL AND COMMISSIONS.

Mr. KAINE. Mr. President: I move that the Convention resolve itself into committee of the whole on report number twenty-five, being the article "On the State Seal and Commissions," which has just been printed and laid on the table of members, and it would be as well to go through with it to-day.

The motion was agreed to; and the Convention resolved itself into committee of the whole on report, number twenty-five, from the Committee on Commissions, Offices, Oaths of Office, and Incompatibility of Office, Mr. MacVeagh in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article, entitled "Of the State Seal and Commissions." The first section will be read.

The CLERK read the first section, as follows:

SECTION 1. The present Great Seal of Pennsylvania shall be the seal of the State.

Mr. HAY. I do not suppose there is any objection to the present Great Seal of the State being continued as the Great Seal; but it seems to me a question of very doubtful propriety whether we should adopt a section of this kind in the Constitution of the State, by which any alteration of the seal, whether such alteration is desirable or expedient or not, will be prevented in future. It appears to me to be a matter which ought to be left entirely to the executive and legislative authority of the State. It might be found advisable to change the tokens upon the Great Seal of the State. I cannot see anything absolutely sacred in the present emblems and signs upon it, and if it is found advisable to change it hereafter, why not leave the power to do so to the Legislature and Executive of the State? The power is always left in the charter of every corporation to change its corporate seal as it may be deemed advisable or necessary from time to time to do so; and why should it be fixed in the Constitution of the State that the seal of Pennsylvania shall always remain as it is at present? I can see no great reasons why this provision should be inserted in the Constitution, nor why the matter may not be left to the judgment of the legislative authority.

Mr. KAINE. Mr. Chairman: The reason given by the gentleman who has just spoken upon this question is the very reason why an article of this kind should be placed in the Constitution of the State. The seal of the State has never been altered.

Mr. HAY. And I do not think it ever will be.

Mr. KAINE. The Legislature never undertook to alter the seal. The first act of Assembly which was passed by the Legislature of this State after the adoption of the Constitution of 1790, was an act upon the subject of the State seal, and to that act was prefixed a preamble complaining of the Convention of 1790 for not having placed in the Constitution an article upon the subject of the seal. If, this morning when I left my room, I had

supposed that this article would be taken up this morning, I would have brought with me the act of Assembly upon that subject, which I have there. The Legislature then provided for the greater and the lesser seal. The lesser seal has become obsolete by reason of a separate seal having been given to the several departments of the State government.

The origin of the seal of Pennsylvania cannot be found; that is, how it was established or when; but the act of Assembly of 1790 provided that the seal of the State should be the seal of the Executive Council, so that whatever seal was adopted by the Executive Council was continued by that act as the seal of the State. Nothing whatever is said in that act in regard to the devices of the seal or anything more than that the seal should be the seal of the State thereafter. It so remained until 1809, when the Legislature passed a law directing the Secretary of the Commonwealth to have the seal renewed with the same devices that it had before, and to have a record thereof made and placed in the office of the Secretary of the Commonwealth, which was done by him, with a complete description of the seal, which I have in my possession, and a copy of the seal also, and that has remained so from that day to this. Therefore, I think it highly important that something should be put in the Constitution to make the seal, which represents the State, a part and parcel of the Constitution.

The CHAIRMAN. The question is upon the adoption of the first section.

The section was agreed to.

The CLERK read the next section, as follows:

SECTION 2. All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be sealed with the State seal and signed by the Governor.

Mr. KAINE. That is the present Constitution.

The section was agreed to.

The CHAIRMAN. The article having been gone through with, the committee of the whole will now rise.

Accordingly the committee of the whole rose, and the President having resumed the chair, the Chairman (Mr. MacVeagh) reported that the committee of the whole had had under consideration the article entitled "Of the State Seal and Commissions," and had adopted it without amendment.

OFFICERS AND INCOMPATIBILITY OF OFFICE.

Mr. KATNE. I move that the Convention resolve itself into committee of the whole on report No. 26, being the article entitled "Of Officers and Incompatibility of Office," as reported from the Committee on Commissions, Offices, Oaths of Office and Incompatibility of Office.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Alricks in the chair.

The CHAIRMAN. The committee of the whole have had referred to them article No. 26. The first section will be read.

The CLERK read as follows:

SECTION 1. No person but an elector shall ever be elected or appointed to any office in this Commonwealth.

Mr. MACCONNELL. It strikes me that that is directly in conflict with the eleventh section of the article on suffrage. That section provides that "women of the age of twenty-one years or upwards shall be eligible to any office of control or management under the school laws of this State." They are not electors, and under this section they could not be elected to the offices spoken of in the eleventh section of the article on suffrage, and consequently it seems to me the two sections would be directly in conflict.

Mr. BOWMAN. It seems to me that in view of the action of the Convention on another article, this section will hardly do. We have provided that females may hold the office of school director, though the Convention has not yet decided that females shall exercise the right of suffrage, and this would be undoing that. I am in favor of allowing women to be school directors, and I think this section should not be adopted. You have got to undo either the one or the other.

Mr. EWING. I can see no necessity for this section. I think there are many cases where a minor might possibly hold an office properly, and, as is suggested by the gentleman from Erie, we have already determined, on two test votes, that women may be elected school directors. No injury has ever occurred, so far as I ever heard, for the want of such a section as this, and it seems to me to be useless, and, it may be, injurious, to have this section adopted in the Constitution. It is not called for, and it is burdening the Constitution with that which is not necessary.

Mr. LILLY. This section is in direct conflict with an article which has already been passed.

SEVERAL DELEGATES. That has been stated.

Mr. LILLY. I did not hear it, but if that has been stated I have nothing more to say.

Mr. KATNE. I have no doubt this section would come in conflict with a section that has already passed through committee of the whole, allowing women to be school directors. That has also passed second reading, it is true, but it has to be acted upon again. There is to be another vote on that, and it may be voted out, as I hope it will be; but if this section be passed and it is in conflict with that, the Committee on Revision and Adjustment can fix that matter, and when it comes into the House, if there should be still a majority in favor of making women school directors, that section can be retained, and this one can be rejected or altered. I hope, therefore, the committee will pass this section, so that we shall have the thing fairly and squarely before the Convention.

Mr. BOWMAN. I move the following amendment, to come in at the end of the section: "Except as otherwise provided in this Constitution."

The CHAIRMAN. The question is on the amendment.

Mr. W. H. SMITH. I hope the amendment will not be adopted, and I trust that the effect of our vote will be to entirely wipe out that absurd proposition that women shall be school directors, after we have deliberately and by a large majority of votes refused to make them electors. I looked upon it as very strange that such a provision as that should pass after the action of the Convention on the attempt to make them voters. It was simply absurd, ridiculous and inconsistent in every way. I trust that this section will pass, and that the effect of it will be to repeal the other.

Mr. DARLINGTON. I trust that no such indirection as this will be resorted to in order to get rid of what has been solemnly adopted, not only in committee of the whole, but also on second reading in Convention by a full vote of the whole body.

The CHAIRMAN. The pending question is on the amendment.

Mr. DARLINGTON. I am aware of that.

Mr. KATNE. I desire to say that there was not a full vote on the subject.

Mr. DARLINGTON. There was a majority vote both in committee of the whole, with a fuller House than this, and a full vote also in Convention, and more were present then than now. If gentlemen wish to raise that question again, let them raise it directly when we come to third reading; let them move then to go into committee of the whole for the purpose of striking out the provision that allows females to be school directors; but do not let us by a side-blow in this manner impair a provision of the Constitution, which was after due consideration reported by a committee of the House, adopted in committee of the whole, and by the Convention itself on second reading. Mr. M'Allister, no longer here, was chairman of the committee that reported it. That committee, after careful consideration, reported the section, and it was agreed to by a very large majority, for there were scarcely ten votes against it in committee of the whole.

Now, sir, I trust that unless this amendment is adopted this whole section of the article will be rejected. It would present a beautiful spectacle indeed for this Convention to-day, indirectly, to undo, in a small and thin house, that which was solemnly done by almost unanimous vote of the body on another occasion!

Mr. CARTER. Mr. Chairman: I concur fully with what the gentleman from Chester has said. I think that is very wrong indeed to attempt this indirectly. I dislike the manner of approaching this subject to defeat a well considered measure. I recollect distinctly the discussion of this matter and the vote in committee of the whole and also on second reading, and the clause which has been spoken of passed if I recollect aright, on second reading by a large majority. You know, sir, that there was quite a large number of members who were interested, as well as a numerous body of our citizens, in getting suffrage for females, which was rejected by the Convention, and perhaps properly. This proposition was regarded somewhat as a concession to that numerous and respectable class of people. But whether the decision of this Convention on female suffrage be right or not, I think this indirect mode of attacking the right of women to hold office in school matters, is wrong—to attempt here, when we have barely a quorum, to defeat the expressed wish of this body when the House was comparatively full. I think it will give much dissatisfaction and en-

list an element of hostility against our work, and I do not think, so far as I have heard, that that section enabling females twenty-one years of age to serve as school directors is objectionable to many persons, on the contrary is very well received by the people at large. I dislike exceedingly the indirect manner in which this thing has been approached. It is unfair—I characterize it as such—and unjust. It seems to me to procure by indirection what could not be done by a fair and direct vote, which was had on two separate occasions in this body.

Mr. W. H. SMITH. I think it is a mere assumption that there is anything intended indirect or unfair in this proposition. It comes up in regular order—

Mr. DARLINGTON. Mr. Chairman: I rise to a point of order. The gentleman has already spoken.

Mr. W. H. SMITH. I will simply say this matter can be attended to in proper order, as gentlemen want when we come to the third reading of the article containing the section to which reference has been made.

Mr. KAINE. I desire to explain as the chairman of the committee—

Mr. DARLINGTON. The gentleman has made a speech.

Mr. KAINE. But I have a right to explain. I know as much about the rules as the gentleman from Chester. The gentleman from Lancaster (Mr. Carter) has indirectly, if not directly, attempted to impugn the motives of this committee, in reporting this article. I desire to say to the Convention that the report was well considered by the committee, and has been presented here in good faith by a majority of a regular committee of this Convention. Let the gentleman attack the article itself, directly and squarely, but let him not make it the basis of an attack on the members of that committee.

Mr. CARTER. I disclaim any intention of disrespect to the committee whatever.

The CHAIRMAN. The question is on the amendment of the delegate from Erie (Mr. Bowman.)

The amendment was agreed to, there being on a division ayes thirty-eight, noes twenty-five.

Mr. NEWLIN. That is not a quorum.

The CHAIRMAN. There was a majority of a quorum in favor of the amendment, the ayes being thirty-eight. The question recurs on the section as amended.

The section as amended was agreed to. The second section was read as follows:

SECTION 2. All officers whose election is not provided for in this Constitution shall be elected or appointed as may be directed by law. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long created, but if it shall not have been so long created, then within the limits of the county or counties out of which it shall have been taken.

Mr. KAINE. That is from the old Constitution.

Mr. MACVEAGH. There is one difficulty I should like to have removed. I do not see the necessity of this provision at all. I do not think the tendency now is to go outside the county lines for officers. But may not this work badly in some cases? Suppose a district wants a judge, why should it not be allowed to go outside the county lines to get him?

Mr. J. M. BAILEY. In answer to the gentleman from Dauphin, I will state that we do not use the word "elected," but "appointed."

Mr. MACVEAGH. I know that, but suppose there is a vacancy and the Governor is to appoint?

Mr. J. M. BAILEY. It is the provision of the present Constitution exactly, *verbatim*.

Mr. NILES. Then it has been violated.

Mr. MACVEAGH. Judicial appointments have repeatedly been made out of the district, and that may have occurred where the district consisted of but one county.

Mr. NILES. It occurred in Schuylkill.

Mr. MACVEAGH. Yes, sir; and I do not know how this provision has been avoided. On first reading it seemed to me that it was unwise in that it would tend to prevent the appointment of a judge outside of the county in which the judicial district is created, so that Judge Warren Woodward, if a vacancy had occurred, could not have been appointed to Berks, however unanimous might have been the desire of the bar there for him, and so that Judge Pearson could not have come to Dauphin, if that county had been a separate district. I know that in the old judicial district in which I lived, it was at one time a matter of very great difficulty to get an appointment, and every member of the bar united in asking Governor Shunk to appoint his son-in-law, Judge Chapman to that district. Why is it not permitted to be done? In a debate re-

cently in the English House of Commons upon a treasury order cutting off allowances for county judges who lived outside of their county, the entire bar of England rose and insisted that it was better that the judge should not be of the county, should not know the individual suitors, the parties to litigation. Whether that extreme position is well taken or not, certainly it is unwise to require that in every case the appointee shall come from within certain county lines. Now the tendency is not to run wild after strangers. The tendency is not to go to the ends of the earth to find a man. County pride, the pride of a bar, the pride of a community—all these are strong conservative tendencies to prevent going beyond it even for a better man. But why should it not be possible to do so? Why should the right of the people be restricted in a matter of this character?

Mr. S. A. PURVIANCE. I would suggest that the objection which has been presented by the gentleman from Dauphin can be obviated by making the section read in this way: "No person shall be appointed to a county office who shall not be a citizen," &c.: instead of providing that "no person shall be appointed to any office within any county."

Mr. MACVEAGH. "Any office other than judicial" will meet my views just as well.

Mr. S. A. PURVIANCE. I make that suggestion.

Mr. EWING. Allow me to suggest —

The CHAIRMAN. Does the gentleman from Dauphin make a motion?

Mr. MACVEAGH. Yes; I move the amendment indicated by the gentleman from Allegheny (Mr. S. A. Purviance) unless the other gentleman from Allegheny (Mr. Ewing) has some other suggestion. I do this in order to bring the question up.

Mr. EWING. I would have very much preferred that the gentleman from Dauphin had moved to amend by striking out all after the word "law," at the end of the first sentence. I agree with him very fully in regard to this provision being entirely unnecessary. There is no tendency to select men for county officers outside of the county; but it is entirely prevented by this section. I believe it has been construed to apply only to county officers as it now stands; therefore it does not apply to a judicial office; but there are some offices that, to my certain knowledge, it has been applied to, where it has

prevented, in different cases, the selection of men outside of a county who could have been very judiciously chosen. For instance, the office of superintendent of schools is a county office, and under this provision you cannot go outside of the county to make a selection. He must have been a citizen and an inhabitant for one year in the county where he is appointed. I know, myself, of several cases in which if it had not been for this provision, selections would have been made to the very decided advantage of the county, of gentlemen outside of the county, well known in the county, who would have given general satisfaction. But they were prevented from making that selection under this provision. There is no evil likely to arise by leaving this provision out, and I think that its being in here is entirely unnecessary and must result in injury in occasional cases.

I hope, therefore, that the gentleman from Dauphin will modify his amendment by moving to strike out all after the word "law." Otherwise his amendments will accomplish nothing, as it will only make the section mean that which it has always been construed to mean.

Mr. MACVEAGH. I will modify my amendment to that effect.

The CHAIRMAN. The question is upon the amendment to strike out all after the word "law," in the second line.

Mr. DARLINGTON. I find myself compelled to oppose this amendment, and for the reason that I think a misapprehension exists in the minds of gentlemen here as to the effect of the provision as it now stands. It certainly never was intended to preclude the appointment of a gentleman outside of a county to a judicial office, because a judicial office never was understood to be a county office. It is a State office in a judicial district; and a judicial district is generally composed of more counties than one. What the Constitution intends to do is to prohibit the appointment to office within any county—that is, to a county office—of any one who is not a citizen and inhabitant within the county. I think this provision of the Constitution of 1837 has never worked injuriously in practice. It has never been understood in practice, by our Executive, to extend to judicial offices. Indeed, we know of many cases in which the Governor has appointed gentlemen residing outside of a judicial district to exercise the office of judge within such district. One instance that I now call to my mind is the

case of Judge Barrett, who was taken from the county of Clearfield and appointed to preside over a district in the eastern part of the State. Nobody ever supposed he was appointed to a county office.

Before I take my seat, I wish to call the attention of the chairman of the committee to a single matter. In the fifth and sixth lines I see that the committee have introduced the word "created." The word in the old Constitution is "erected," and I think that "erected" is the better word. Probably this is a misprint.

Mr. KATNE. It is a misprint. The word should be "erected" in each instance, and I request the Clerk to make the correction now.

I think this section ought to be adopted as it now stands. It has never been construed to apply to the office of a judge. Sometimes judges have been appointed from other counties to preside over judicial districts. This has, in fact, been done frequently, and this section of the old Constitution has been construed to apply to county offices only. I think it ought to be retained, because, suppose a sheriff of a county dies or resigns, or a recorder of deeds, or a prothonotary, or any other of the county officers; the position has to be filled by appointment by the Governor, until after the next general election, and it is unfair to allow the Governor to go into any other county of the State and appoint some person to go into that county to fill the vacancy and hold the office for an unexpired term. The people of Dauphin county would not admire the appointment by the Executive of a sheriff for them from Fayette county, nor would the people of Allegheny desire a sheriff or a prothonotary or a register or a recorder to be appointed from the county of Dauphin. It was to prevent such a state of things that this section was adopted in the Constitution of 1838. It has worked well there, and I think we ought to make no change in this regard.

Mr. MACVEAGH. I ask the gentleman from Fayette whether he ever knew of the existence of an abuse of this kind.

Mr. KATNE. I do know of one instance, a very particular one, but I do not desire to name it upon this floor.

Mr. MACVEAGH. I never heard of one.

Mr. J. M. BAILEY. I will answer the gentleman from Dauphin. Perhaps the reason why there never was any instance of abuse of this kind known, was because the Constitution of 1838 did not

permit its occurrence. We do not know, however, how wildly things would have run in that direction if it had not been for the restraints of the present Constitution.

MR. WOODWARD. Will the gentleman from Huntingdon inform me whether he desires to retain the language of the old Constitution?

MR. J. M. BAILEY. Yes, sir. The section now under consideration is a copy of the present Constitution, transcribed *verbatim*. It is not intended to apply to judges.

MR. BOYD. I think this is rather a late day to criticise the actions of the Convention of 1837-8.

MR. D. W. PATTERSON. Certainly it is. The gentleman from Montgomery is correct in that view.

MR. BOYD. I think that we have work enough on hand ourselves without going into an examination and criticism of what was done in the preceding Convention. It seems to me to be a sufficient answer against any objection to this section, that it has been found to work well since its adoption, and is within the apprehension of every man in this Commonwealth, and therefore it would be wise for us to adhere to that which has stood the test of years to the entire satisfaction of everybody. I presume there is no lawyer on this floor, except the gentleman from Dauphin, who has ever called in question a president judge appointed by a Governor, as being a county officer. That it has never been so understood by the different Executives of this Commonwealth, and their Attorneys General, is perfectly manifest from the fact that they have frequently, time and again, appointed judges from adjoining or distant counties; and no man has ever questioned it, for the simple reason that this does not mean a judicial officer; that when you speak of county officers that term does not include a judge. That has been the construction and interpretation given to the Constitution of 1837-38, without anybody calling it in question, and I, as one of this committee, voted for reporting this section just because it is a transcript of the section we have in the present Constitution. As I said before, we have tried that; we think we understand it; and let us adhere to what we do understand, or think we do at least without carving out any new difficulties for the future.

MR. LILLY. Mr. Chairman: I arrive at the same conclusion with the gentleman from Montgomery, but from a very dif-

ferent sort of reasoning. I think we are here to criticise the old Constitution; I think that that is our business here entirely, and wherever it is defective we ought to alter it; but I think in this regard it is altogether right and proper. I should be very sorry, and I presume every other member, representing a rural county at any rate, would be sorry to see, in case of the death of one of its county officers, a man from another county sent into the county to fill that place until the next election.

MR. BOYD. That is just what we want to prevent.

MR. LILLY. I say I should be very sorry to see it; hence I arrive at the same conclusion that the gentleman from Montgomery does, and I shall vote for the section.

MR. BOYD. Then we agree. Now I am happy. [Laughter.]

MR. MOTT. The gentleman from Montgomery says that no lawyer here except the gentleman from Dauphin doubts the construction of the Constitution of 1838. We had a case in our district in point. We elected a judge who lived outside of the district; he never came in to reside with us. On a certain occasion some person, wishing to get a writ for something to be done, and not finding him, applied to the Attorney General for a *quo warranto* to know by what authority he exercised the office of president judge of that district. In consequence of it, instead of standing up and fighting that question and having it settled, he resigned his place.

MR. BOYD. All I have to say in reply to that is that that judge, who was appointed under those circumstances, was bound to live in the district, and I suppose he did, did he not?

MR. MOTT. No.

MR. BOYD. Did he never come into the district?

MR. MOTT. No.

MR. BOYD. Then I suppose it was because there was nothing to do in that district. [Laughter.]

MR. LILLY. In reply to the gentleman from Montgomery I will say that I think I reside in the same district, and there was a good deal to do in the district, and the judge was driven from the bench because he did not reside there.

MR. BOYD. I think it was a good thing for the judge. [Laughter.]

THE CHAIRMAN. The question is on the amendment to strike out all after the

word "law," in the second line of the section.

The amendment was rejected, there being on a division, ayes, eighteen—not a majority of a quorum.

The CHAIRMAN. The question recurs on the section.

Mr. BUCKALEW. Mr. Chairman: I think the true objection to this section is that it is unnecessary. Certainly the first branch of it, to which no objection has been made, is clearly unnecessary. When you have vested the whole legislative power of this Commonwealth in the General Assembly you have conferred upon them all the power that is contained in the first division of this section; that is, where the Constitution does not prescribe particular officers and the terms for which they shall be elected to hold their office, it is a matter for regulation by law. That part of the section is entire surplusage.

Then as to the second branch, it is open to this remark, that human nature is such everywhere that there is a prejudice against outsiders, and that men outside of a judicial district will not be called upon to serve in office within it unless under very extraordinary circumstances; and when no very extraordinary circumstances exist, in an occasional or exceptional case, as an appointment by the Executive is always for a short period of time no inconvenience can result from the omission of this provision in the Constitution. I am in favor of making our instrument a little shorter than we already have it, instead of lengthening it, and our Committee on Revision and the Convention, in acting upon their work, I hope, will shorten materially what we already have.

I am opposed to this section, therefore, because it is unnecessary in either of its divisions, and its omission from this proposed article will abbreviate our work and render it more acceptable if adopted.

Mr. KAINE. Mr. Chairman: I am sorry I cannot concur with the gentleman from Columbia. He might as well say that a Constitution was unnecessary at all as to say that this section is not necessary in the Constitution. It has always been necessary heretofore, and I think it still remains so. He says that human nature is always the same everywhere, (which may be true as a maxim,) and that the people will not go outside of their county to select an officer. It is not the people that the section prevents from going outside in the selection of officers, but it is to

prevent the Executive of the State, the appointing power, from foisting upon a county somebody from a distance, some pet of his own, somebody they do not want, some person that is unfit or not qualified for the office to which he may have been appointed by the Governor. It is things of that kind that the section was intended first, as it is intended still, to prevent.

I hope, therefore, the gentleman's suggestion will not be taken, but that the committee will adopt this section as it is.

The CHAIRMAN. The question is on adopting the second section as reported.

The section was declared to be rejected, there being on a division ayes twenty-seven, not a majority of a quorum.

Mr. KAINE. I want the other side to be counted. Let us see that there is a quorum.

The CHAIRMAN. Those opposed will rise.

Mr. MACVEAGH. No, Mr. Chairman, I protest against it. The decision is final.

The CHAIRMAN. The section is lost. The next section will be read.

Mr. LILLY. Then I ask for a call of the Convention to see if we have a quorum.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 3. No person (except notaries public, commissioners of deeds, and officers of the militia not in actual service,) shall at the same time hold or exercise more than one office in this State to which a salary is or fees or perquisites are by law annexed; but the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds, and clerk of the courts, and how many and which of said offices shall be held by one person.

Mr. BUCKALEW. I should like to inquire if the latter part of this section is not already provided for in the judiciary article. My impression is that we have it there.

Mr. S. A. PURVIANCE. I would state for the information of the Convention, that in the article on county, township and borough officers, in the first section, this provision is made, which appears in the article reported and now under consideration, in these words, on page thirty-four of the proposed Constitution, as printed in pamphlet form:

"The Legislature shall declare what offices are incompatible, and no sheriff or

treasurer shall be re-eligible for the term next succeeding the one for which he may be elected."

Certainly that covers all that is necessary in this section.

Mr. KAINE. I did not hear the gentleman from Allegheny.

Mr. S. A. PURVIANCE. On the thirty-fourth page of the pamphlet copy of the Constitution, the first section of the article on county, township and borough officers makes the provision which is embodied in the article now under consideration.

Mr. KAINE. Yes, Mr. Chairman, but the article under consideration is in part very different from the one that has been adopted. It reads:

"No persons (except notaries public, commissioners of deeds, and officers of the militia not in actual service) shall at the same time hold or exercise more than one office in this State to which a salary is or fees or perquisites are by law annexed; but the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds and clerk of the courts, and how many and which of said offices shall be held by one person."

The latter part of the section is intended to allow one person to hold the offices of register, recorder, clerk of the orphans' court and prothonotary, if it might so happen. The first part of the section is imperative, and puts it in the Constitution at once that certain offices shall not be held by the same person in place of leaving it to the Legislature. The Legislature may never pass anything of the kind, and I think it is the sense of this Convention that something of that kind should be adopted in this Constitution. Sir, this is the proper place for something of the kind, and it comes from the proper committee, because this committee was appointed to take charge of the subject of commissions, offices, oaths of office and incompatibility of office. It therefore is in the right place and comes from the right committee, and I think embraces the subject a great deal better, more clearly, and more properly than the section which has already been adopted.

Mr. S. A. PURVIANCE. I move to amend the section by striking out all after the word "annexed," in the fourth line.

Mr. BUCKALEW. Mr. Chairman: It is only necessary to read this part proposed

to be stricken out, and the section in the article referred to by the gentleman from Allegheny, to see that they are identical. The first section of the article on county, township and borough officers reads:

"County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerk of the courts, district attorneys and such others as may from time to time be established by law; the Legislature shall declare what offices are incompatible," &c.

The section before us reads:

"But the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds, and clerk of the courts, and how many and which of said offices shall be held by one person."

It is identical with the article to which the gentleman from Allegheny has referred. But sir, if you strike out this part then the first portion of the section will be objectionable, will be in conflict with the section in the article on county, township and borough officers, for this section will then provide that no person in this State shall hold two offices at the same time although in the other provision to which I have referred the Legislature is authorized to determine what county officers are incompatible with each other and what offices may be united in the same official.

I call attention to this because all this will come up presently on revision, and I do not want the Committee on Revision to have before them two articles in conflict with each other, utterly inconsistent. They would be obliged to report them back again just as they are or attempt to decide which of them shall be adopted. Now, I think this section ought to be in this form: That, except as otherwise provided for in this Constitution, no person shall hold more than one office at the same time. Something of that kind I would be willing to vote for, and it would leave our instrument in harmony with itself. I suppose really that is what the gentleman desires.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny, (Mr. S. A. Purviance,) to strike out all after the word "annexed," in the fourth line.

Mr. KAINE. I suggest to gentlemen to let this article go through committee

of the whole and then on second reading we can have the yeas and nays and the proper sense of the Convention.

Mr. BUCKALEW. I suggest to the delegate from Fayette that if we leave the first branch of this section we can amend that hereafter. This part certainly might be stricken out.

The amendment was agreed to.

The CHAIRMAN. The question now recurs on the section as amended.

The question being put, the ayes were thirty-one, less than a majority of a quorum.

Mr. KAINE. Let the other side be counted to see if there is a quorum present.

The CHAIRMAN. The Chair begs to state that if any gentleman objects that there is not a quorum present, he can ask that the committee rise.

Mr. KAINE. I ask that the committee rise for want of a quorum.

The CHAIRMAN. It is moved that the committee rise for want of a quorum.

The question being put, it was declared that the noes appeared to prevail.

Mr. DARLINGTON. Allow me to suggest that if I understand the rule, whenever it appears in committee of the whole that there is not a majority of a quorum, the chairman will state that fact to the committee and the committee will of course rise.

Mr. KAINE. Yes, sir, that is a matter of course.

The CHAIRMAN. There is not a quorum present. The committee will do as they think proper.

Mr. KAINE. The committee will rise as a matter of course.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Alricks) reported that the committee had had under consideration the article on "officers and incompatibility of office," and had risen for want of a quorum.

Mr. MACVEAGH. Mr. President: I move a call of the roll to ascertain whether there is a quorum present.

The PRESIDENT. A call of the roll is asked for. The Clerk will call the roll.

The roll was called, and the following delegates answered to their names:

Messrs. Achenbach, Addicks, Alricks, Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Black, J. S., Bowman, Boyd, Brown, Buckalew, Calvin, Campbell, Carey, Carter, Church, Collins, Curry, Curtin, Dallas, Darlington, De France, Dunning, Edwards, Ewing, Guthrie, Hall, Hanna, Hay, Haz-

ard, Hemphill, Horton, Howard, H. H. Landis, Lawrence, Lilly, MacConnell, MacVeagh, McClean, McCulloch, McMichael, Mantor, Minor, Mott, Newlin, Niles, Patterson, D. W., Patton, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Russell, Smith, Wm. H., Stanton, Temple, Turrell, Wetherill, Jno. Price, White, David N., White, J. W. F., Woodward, Wright and Walker, President—66.

The PRESIDENT. There is not a quorum present.

Mr. J. M. BAILEY. I move that we do now adjourn.

Mr. HOWARD. I move that the Sergeant-at-Arms be instructed to bring in the absentees.

The PRESIDENT. The question is on the motion to adjourn.

The motion was was not agreed to.

Mr. HOWARD. I move that the Sergeant-at-Arms be directed to bring in the absent members.

The motion was agreed to.

The PRESIDENT. The Sergeant-at-Arms will close the doors and proceed to summon absentees.

After some time spent in waiting for the return of the officer—

Mr. DALLAS. Is there a quorum present now?

The PRESIDENT. There is not.

Mr. LILLY. It appears to me there is no use of our being here inasmuch as the doors are not locked, and the Sergeant-at-Arms has gone for members, and there are more going out than there are coming in. In that state of affairs I suggest an adjournment.

Mr. DALLAS. I move that we take a recess of one hour to give the Sergeant-at-Arms an opportunity to bring in the absentees.

Mr. ADDICKS. We had better take a recess untill Monday morning at ten o'clock.

Mr. WRIGHT. I move that the Convention do now adjourn.

The PRESIDENT. [At fifteen minutes past eleven o'clock.] There is a quorum of members present.

Mr. CAMPBELL. I call for the yeas and nays on the motion to adjourn.

Mr. CARTER. I second the call.

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

YEAS.

Messrs. Addicks, Bailey, (Huntingdon,) Black, J. S., Bowman, Buckalew,

Carey, Church, Curtin, Dallas, Dunning, Hall, Hanna, Hemphill, Kaine, Lilly, MacVeagh, McClean, McMichael, Minor, Mott, Pughe, Stanton, Temple, White, David N., White, J. W. F., Woodward, Wright and Walker, *President*—28.

N A Y S.

Messrs. Achenbach, Alricks, Andrews, Baer, Baily, (Perry,) Biddle, Brown, Calvin, Campbell, Carter, Darlington, De France, Edwards, Ewing, Fulton, Gilpin, Guthrie, Hay, Hazzard, Horton, Howard, Landis, Lawrence, MacConnell, McCulloch, Mantor, Newlin, Niles, Patterson, D. W., Patton, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Russell, Smith, William H., Turrell and Wetherill, John Price—38.

So the motion was rejected.

ABSENT.—Messrs. Ainey, Armstrong, Bannan, Barclay, Baker, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Bullitt, Cassidy, Clark, Cochran, Collins, Corbett, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Elliott, Ellis, Fell, Finney, Funck, Gibson, Green, Harvey, Heverin, Hunsicker, Knight, Lamberton, Lear, Littleton, Long, McCamant, M'Murray, Mann, Metzger, Mitchell, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Read, John R., Reed, Andrew, Ross, Runk, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stewart, Struthers, Van Reed, Wetherill, J. M., Wherry, White, Harry and Worrell—67.

Mr. BUCKALEW. I inquire if there is a quorum present.

The PRESIDENT. There is. The gentleman from Mifflin (Mr. Andrew Reed) and the gentleman from Philadelphia, (Mr. Worrell,) who did not vote, are in the House.

Mr. BUCKALEW. Then I move that the order of the House directing the Sergeant-at-Arms to be sent for absentees be rescinded.

The motion was agreed to.

ORDER OF BUSINESS.

Mr. LILLY. I move that the Convention again resolve itself into committee of the whole on article twenty-six.

Mr. MACVEAGH. Before that motion is put, I beg to suggest that while I am opposed to a considerable portion of this report, nevertheless it is unfair to a committee of this body to have its work put through with a bare majority of a quorum,

because you cannot get members to rise in sufficient numbers to escape defeat under the rule requiring a majority of a quorum to pass sections, and they fall by the mere thinness of the House. I do not think this is fair toward a standing committee of this body. I speak the more freely on this subject because really I do not believe in the necessity of these sections, but I do believe in the desirableness of giving a standing committee of this Convention, that has devoted thought and attention to its duties, an opportunity to be heard in a House where there is a reasonable chance of their work being approved.

Mr. LANDIS. How are you going to do it?

Mr. MACVEAGH. I have no doubt whatever that this House will be full on Monday morning.

Mr. S. A. PURVIANCE. I will say in answer to the gentleman from Dauphin, that much of the work, and I might say almost all the important work that we have completed up to second reading has been done in a House having barely a quorum. That is true, I believe.

Mr. MACVEAGH. I do not dispute it. I am willing to work at any time, no matter how full or empty the house may be; but I do not deem it fair to the chairman of the Committee on Commissions, Offices, Oath of Office and Incompatibility of Office, to proceed with his report with so slim a House as this.

Mr. Kaine. I desire to be heard upon this motion. I do not know that I can add anything upon this subject beyond what has been already so well said by the gentleman from Dauphin. The gentleman from Allegheny has just said that articles were passed through second reading when there was not more than a mere quorum present. Now, sir, during the entire session of this Convention this week up to to-day, I think there have not been less than eighty and sometimes more than ninety members present. The committee that reported this article considered it of some importance or they would not have made the report to the Convention, and they do not desire to have it considered where it is utterly impossible, as it has been this morning, to pass a single article upon an affirmative vote. Upon the question being put by the chairman of the committee of the whole, "Will the committee agree to the section?" the vote is taken by voices; some member calls for a division; not thirty-

four members rising the section is lost. I submit that that is no fair way of considering the report of a committee. If a majority of a quorum voted against any section, I should be content; but to have a section lost by reason of no quorum voting for it, I submit is unfair to any committee of this Convention.

I am therefore opposed to the motion of the gentleman from Carbon. I do not see why there should be such hot-house upon a question of this kind. It will be some time before the Committee on Revision and Adjustment are ready to report. The other committee that has the subject of the Legislature under consideration are not to report until Tuesday. Then why not let this report (and that was my own opinion at the time) go over until Monday, when we shall have certainly a much fuller House than we have now? So far as we have been doing any good here this week, so far as we are doing any good now, perhaps the members of this Convention might as well be pelting each other with paper-balls. When I work, I want to work for some purpose and to some end. Therefore I hope, as I said before, that the motion of the gentleman from Carbon will not prevail. If there is any other business, let us do it. The gentleman from Washington (Mr. Lawrence) was exceedingly anxious yesterday that we should have a session today for the purpose of considering a report from the Committee on Accounts,

which he said was lying on the table. If so, that might be considered here now, and let this report of the Committee on Offices, &c., go over until Monday.

Mr. LAWRENCE. I think the motion is not debatable.

The PRESIDENT. The Chair is aware of that.

Mr. LAWRENCE. The gentleman from Fayette himself was the man to make the motion to go into committee of the whole this morning, and he insisted on considering his report. Now, when he thinks that his article is likely to be amended, he wants it postponed.

Mr. KAINE. I admit I made that motion, but it was at the solicitation of members on this floor and against my own judgment.

Mr. LILLY. I insist on the rules of order being enforced.

The PRESIDENT. The Convention will come to order. The question is on the motion that the Convention resolve itself into committee of the whole on report No. 26.

The motion was not agreed to, the ayes being twenty-eight, not a majority of a quorum.

Mr. WRIGHT. I now move that the Convention adjourn until ten o'clock on Monday morning.

The motion was agreed to, and (at eleven o'clock and thirty-seven minutes A. M.) the Convention adjourned until Monday at ten o'clock A. M.

ONE HUNDRED AND FORTY-SEVENTH DAY.

MONDAY, *September 22, 1873.*

The Convention met at ten o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

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

PETITION.

Mr. J. N. PURVIANCE presented a petition of members of the bar of Armstrong county, praying that that county be erected into a separate judicial district, which was read and ordered to lie on the table.

LEAVES OF ABSENCE.

Mr. BROWN asked and obtained leave of absence for Mr. Finney for a few days from to-day.

Mr. W. H. SMITH asked and obtained leave of absence for Mr. Bullitt for a few days from to-day.

Mr. RUSSELL asked and obtained leave of absence for Mr. Armstrong for this day.

Mr. BOYD asked and obtained leave of absence for himself for a few days from to-day.

Mr. TEMPLE asked and obtained leave of absence for himself for to-day and to-morrow.

COPIES OF DEBATES.

Mr. J. N. PURVIANCE. I offer the following resolution, which I shall ask to have referred to the Committee on Printing:

Resolved, That a copy of the Debates be sent to each of the judges of the Supreme Court, except Judge Agnew, already entitled to a copy as a member of the Constitutional Convention of 1837-8, and a copy to each of the judges of the United States courts resident in this State.

On the question of proceeding to the second reading and consideration of the resolution, the ayes were twenty-three, less than a majority of a quorum.

Mr. J. N. PURVIANCE. I call for the yeas and nays.

Mr. WORRELL. I second the call.

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

Mr. J. N. PURVIANCE. I would explain that there are certain copies more—

Mr. HUNSICKER. Debate is not in order.

The PRESIDENT. The question is not debatable.

Mr. J. N. PURVIANCE. I merely wish to make a remark to the Convention. There are some extra copies on hand—

Mr. HUNSICKER. I rise to a point of order. My point of order is that debate is not in order.

The PRESIDENT. Debate is not in order.

Mr. J. N. PURVIANCE. The supreme judges only require four.

Mr. LILLY. I take it if the supreme judges want any copies the delegates can give them.

The PRESIDENT. Debate is not in order.

Mr. J. N. PURVIANCE. Judge Sharswood tells me that the judges will be very glad to have copies furnished.

The PRESIDENT. Debate is out of 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:

YEAS.

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Boyd, Brown, Campbell, Carey, Carter, Corson, Curry, Dallas, Darlington, Dodd, Ewing, Guthrie, Hay, Hemphill, Horton, Howard, Kaine, Landis, Lawrence, Lear, M'Michael, Mantor, Mott, Niles, Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Runk, Russell, Sharpe, Simpson, Smith, Wm. H., Struthers, Temple, Turrell, Wetherill, John Price, White, D. N., White, J. W. F., Worrell and Walker, President—48.

NAYS.

Messrs. Achenbach, Barclay, Brodhead, Calvin, Collins, Curtin, De France, Edwards, Gilpin, Hazzard, Hunsicker, Lilly, MacConnell, M'Culloch, Minor, Patterson, D. W., Rooke, Smith, Henry W. and Stanton—19.

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

ABSENT. — Messrs. Addicks, Ainey, Armstrong Baker, Bannan, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Bowman, Broomall, Buckalew, Bullitt, Cassidy, Church, Clark, Cochran, Corbett, Craig, Cronmiller, Cuyler, Davis Dunning, Elliott, Ellis, Fell, Finney, Fulton Funck, Gibson, Green, Hall, Hanna, Harvey, Heverin, Knight, Lamberton, Littleton, Long, MacVeigh, M'Camant, M'Clean, M'Murray, Mann, Metzger, Mitchell, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purman, Reed, John R., Reynolds, Ross, Smith, H. G., Stewart, Van Reed, Wetherill, J. M., Wherry, White, Harry, Woodward and Wright—66.

Mr. J. N. PURVIANCE. I call for the yeas and nays on the adoption of the resolution.

Mr. HUNSICKER. Mr. President: I am opposed to this resolution, and I trust it will not pass. We have already issued 3,900 extra copies. Every member of this Convention has thirty extra copies to dispose of. There are twenty-four delegates from Philadelphia on the floor of the Convention, and it seems a little strange that when there are 3,990 copies for distribution, the members cannot themselves supply the judges of the Supreme Court with them.

What are these copies issued for? They are issued for distribution; and it will not do for us to be liberal with the State's money when we have already given ourselves these copies for the very purpose of judicious distribution. Who ought to have these copies? Certainly the judges of the courts. I have myself supplied two of the judges of our county. My colleagues have supplied the law library and the other judge.

If we pass this resolution, it will be followed by others, and of these distributions there will be no end.

For these reasons I shall be compelled to vote against the adoption of this resolution.

Mr. J. N. PURVIANCE. It will only take eight copies to supply the four judges of the United States courts, Judge Cadwalader, Judge M'Candless, Judge M'Kennan and Judge Strong, and the supreme judges of the State. It is due to the judges of those courts that they should be furnished with copies, and furnished

through the courtesy of the Convention. They should not be dependent upon the favor of the delegates to get a copy of them, but should be furnished by the Convention as a matter of courtesy to the judges themselves. And I would further remark that there are sixteen hundred extra copies over and above the required number ready for distribution; sixteen hundred copies additional in the hands of the publisher. Every delegate perhaps has observed that all the copies he is entitled to he has not only distributed, but has demands for many more.

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

Mr. J. N. PURVIANCE. Yes, sir.

Mr. HUNSICKER. Did not Mr. Singerly print those extra copies expecting to sell them to members?

Mr. J. N. PURVIANCE. I know not, nor do I care, but I think that the judges of the United States courts and of our Supreme courts should have a copy of our Debates, furnished to them by the Convention.

Mr. HUNSICKER. Allow me to ask another question before the gentleman takes his seat. Who ordered Mr. Singerly to print those sixteen hundred extra copies?

Mr. J. N. PURVIANCE. I do not know, but suppose it was his own act, without orders from any one.

Mr. BRODHEAD. I move to amend by adding the president judges of the courts of common pleas and the associate judges throughout the State.

Mr. RUSSELL. The sixteen hundred copies that the gentleman from Butler speaks of belong to Mr. Singerly and he desires the Convention to buy them. Unless this Convention buys them we have no control over them. I move, since the gentleman from Butler desires it, that the subject be referred to the Committee on Printing.

Mr. TURRELL. I suppose, as is well known to a large number of members here, that the judges of the court of common pleas have already received these reports from their district representatives, and it is carrying this thing entirely too far to buy this additional number of Debates. The judges should receive their copies in the way I have indicated, and probably all of them have.

The motion to refer was agreed to.

OFFICERS AND INCOMPATIBILITY OF OFFICES.

Mr. CORSON. I move that the Convention resolve itself into committee of the

whole on the article on "officers and incompatibility of office," reported by the Committee on Commissions, Offices, Oaths of Office, and Incompatibility of Office.

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

The CHAIRMAN. The committee of the whole have again referred to them the article entitled "Of Officers and Incompatibility of Office." The third section as amended is before the Convention and will be read.

The CLERK read as follows:

"SECTION 3. No persons (except notaries public, commissioners of deeds, and officers of the militia not in actual service) shall at the same time hold or exercise more than one office in this State to which a salary is or fees or perquisites are by law annexed."

Mr. KAINE. Will the Clerk be so good as to read the residue of that section?

The CLERK. The remainder of the section was stricken out by a vote of the committee.

Mr. KAINE. But I want it read.

The CLERK read as follows: "But the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds, and clerk of the courts, and how many and which of said offices shall be held by one person."

Mr. KAINE. Mr. Chairman: I do not think that part of the section which was voted down on Saturday was understood by the Convention. I hope, therefore, that some gentleman who voted in the negative will move to reconsider the vote by which it was rejected.

Mr. DALLAS. I voted in the majority and I move the reconsideration, because it is requested by the chairman of the committee.

Mr. JOSEPH BAILY. I second the motion.

The CHAIRMAN. Did the gentleman from Philadelphia vote in the affirmative?

Mr. DALLAS. I did, and I make the motion, as I stated, at the request of the chairman of the committee.

The CHAIRMAN. The question is on the motion to reconsider.

Mr. D. W. PATTERSON. It was voted down on Saturday, because it was found to be in conflict with the article on county, township and borough offices. Certainly if that is the case we ought not to pass it twice. That is the reason we voted

it down, and there was great propriety in that action.

Mr. KAINE. If the gentleman from Lancaster will let the question be reconsidered, I think I can satisfy him that this clause is right.

The CHAIRMAN. The question is on the motion to reconsider the vote taken on Saturday.

The motion to reconsider was agreed to.

The CHAIRMAN. The question recurs on the amendment to strike all after the word "annexed," in the fourth line.

Mr. KAINE. The question is to strike out that portion of the section after the word "annexed," in the fourth line, the words being "but the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds, and clerk of the courts, and how many and which of said offices shall be held by one person."

It was supposed that that part of the section was covered by the latter part of the first section of the article on county, township and borough officers, which is to be found on the thirty-fourth page of the printed Constitution as passed second reading. I will read the whole of the section:

"County officers shall consist of sheriffs, coroners, prothonotaries, register of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys, and such others as may from time to time be established by law."

Then comes what is supposed to be in conflict with that now before the committee:

"The Legislature shall declare what offices are incompatible, and no sheriff or treasurer shall be re-eligible for the term next succeeding the one for which he may be elected."

Now, sir, I apprehend upon an examination and comparison of this with the other, that they will be found not to be incompatible at all. That part of the section reported by this committee, now under consideration, was intended to limit the offices that should be held by one person, and, for instance, prevent a sheriff from being elected treasurer or anything of that kind. The language is: "But the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds, and clerk

of the courts, and how many and which of said offices shall be held by one person." In many of the counties of this Commonwealth the offices of register of wills, recorder of deeds, and clerk of the orphans' court are held by the same person. I suppose in at least one half of the counties of the State that is the case. In some counties it may be that the prothonotary holds all the other offices. I remember very well when the prothonotary of Fayette county was clerk of the orphans' court also. There is no conflict between this section and the section in the article on county, township and borough officers. That provides that the Legislature shall declare what offices are incompatible. Will that enable the Legislature to say that the offices of register and recorder, and clerk of the orphans' court shall be held by one person? It does not come in conflict with this provision, because this says specifically that the Legislature may provide by law the number of persons in each county who may hold these offices. If that be one, all right; if three or four are to be held by one person, the same thing. Therefore I think the insertion of this provision in the Constitution is absolutely essential and necessary. It is the provision of the old Constitution precisely, word for word, and I think the other section which has been referred to does not conflict with it at all. I therefore hope that the amendment will not prevail, and that the section as reported by the committee will be adopted.

Mr. NILES. I hope nothing will be left for intendment in this section. About all there is good in the section is contained in that portion which is now proposed to strike out. I agree entirely with the remarks of the chairman of the committee, that in a majority in the counties in this State these different offices are held by the same person. In each of the four counties that I have the honor in part to represent on this floor, the offices of prothonotary and clerk of the orphans' court are held by one person, as are also the offices of register of wills and recorder of deeds. I hope that we shall leave nothing for the future action of the Legislature on this subject; that we shall put it in the Constitution squarely and explicitly that these offices are not incompatible. We shall be doing a great wrong to the smaller counties if we do not have this thing fairly understood.

Mr. D. W. PATTERSON. That does not appear to be the object of the provision proposed to be stricken out. It gives the Legislature the power to say how many offices any one individual may fill and exercise. So does the other provision, on page thirty-four of the pamphlet edition of the Constitution. It provides that the Legislature shall declare what offices are incompatible, and it may therefore declare how many offices any one individual may hold or may not hold, which is identical with the idea expressed in that portion of the section which is now proposed to be stricken out. We have to leave that to the Legislature, because, as has been remarked by the gentleman from Tioga and Fayette, in many counties one person fills these offices, sometimes the clerk of the court of quarter sessions and sometimes the prothonotary. This provides for that and leaves it to the Legislature, and so does the other provision leave it to the Legislature. If my friend from Tioga does not wish the Legislature to have anything to do with it, he ought to object to both provisions. One means exactly what the other does.

Mr. KAINE. Allow me to explain. The gentleman says that this provision leaves it to the Legislature, and that the one already adopted leaves the matter to the Legislature. So it does, and this partially leaves it so; but if he reads it carefully, he will see that it provides that "the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds and clerk of the courts, and how many and which of said offices shall be held by one person." Therefore it limits them.

Mr. D. W. PATTERSON. "What offices may be incompatible" and what "may be held by one and the same person," they mean identically the same thing.

Mr. S. A. PURVIANCE. Mr. Chairman: I made this motion to strike out all after the word "annexed," because, in the first place, I considered that all the substantial parts of this section are covered by the first section of the article on county officers referred to by the gentleman from Lancaster, (Mr. D. W. Patterson,) and again, because this amendment greatly curtails the present section. The section referred to by the gentleman from Fayette (Mr. Kaine) contains about nine or ten lines. That part of the section in the article on county and town-

ship officers contains but three and a-half lines. Now, if the same purpose is accomplished by the one, certainly it ought to be preferred to the other. It will be seen that in all probability if we vote this down, the whole section should go out. Then it leaves the Legislature to declare what offices are incompatible, and therefore, of necessity, what offices might be connected and what ought not to be connected. I trust, therefore, that this clause will be voted down, and then that the section itself will be voted down, and let the section of the other article stand as covering the whole ground.

The CHAIRMAN. The question is on the amendment to strike out all after the word "annexed," in the fourth line.

The amendment was rejected, the ayes being twenty-three less than a majority of a quorum.

The CHAIRMAN. The question now recurs on the section.

Mr. HOWARD. Mr. Chairman: It seems to me that the latter part of the section is unnecessary. It may be very plain, but I do not understand it. The provision of the article on county, township and borough officers which says that the Legislature shall declare what offices are incompatible certainly gives the Legislature power to say how many offices may be held by one person by declaring that certain offices are not incompatible. That is very clear. Then when we look at this provision, it seems to me that it reads singularly, although it may be very clear when explained. "The Legislature may provide by law the number of persons in each county who may hold the office of prothonotary," &c.; that is to say, the number of persons who may hold the office of prothonotary or sheriff. I do not know that I understand it. If it does not mean that, it is certainly a singular use of language I think. "The Legislature may provide by law the number of persons who may hold the office of prothonotary." Hence they may provide that six persons may be prothonotary at the same time.

Mr. KAINE. The gentleman must read the rest of the section and take the language together.

Mr. HOWARD. I do read the rest. If the rest is necessary, that certainly is not; that is "how many and which of said offices shall be held by one person." The first part that I have quoted, as to the number of persons in each county cannot be necessary if the latter is. That is certain.

There seems to be confusion about this section. In the first place, it certainly is not necessary to be incorporated in the Constitution here, because we have incorporated it in another place, and in better language, where we have said that the Legislature may determine what offices are incompatible; that is, what offices are incompatible to be held by the same person. The Legislature may declare that a man may hold half a dozen offices, and it will not be incompatible for him to hold all those offices.

I think therefore that this section as it now stands, with this clause in it, is objectionable, and it will surely lead to great confusion. I do not understand it. We have a declaration that the Legislature may provide by law the number of persons in each county who may hold the office of prothonotary or sheriff; that is, I take it to mean that the Legislature may give the office of prothonotary or sheriff to one, two, three, four, or half a dozen persons. It must mean that for this reason: The last line says that the Legislature may determine how many and which of said offices shall be held by one person. I can understand why that provision should be introduced into the Constitution, but I cannot understand why it should be introduced here, because it has already been provided for in another article where we have declared that the Legislature may determine what offices shall be incompatible and what shall not be.

Mr. DARLINGTON. I think that the whole object of the gentleman from Fayette may be accomplished by a slight modification of this section. I move therefore to strike out the whole of the fifth line, the sixth line, and the first word of the seventh line, so as it will then read:

"But the Legislature may provide by law how many and which of said offices shall be held by one person."

Mr. J. M. BAILEY. I hope this section will pass the committee of the whole exactly as it has been reported by the standing Committee on Commissions, Offices, Oaths of Office and Incompatibility of Office. It is certainly important that this Convention should declare the general principle that no more than one office shall be held by the same person at the same time. It is true, as has been suggested by my friend from Tioga, (Mr. Niles,) that more than one of the county offices, such as prothonotary, register, recorder and clerks of the courts, especially in the smaller counties of the State,

should be held by the same person. But while that is true, the committee desires to preserve the general principle that should obtain in all democratic governments, that too much power should not be entrusted to one person, and they have therefore reported this section, still preserving, however, that the Legislature might authorize one person to hold more than one of the county offices mentioned in the section itself.

It is said this section is inconsistent with the first section of the article on county, township and borough officers. I admit that is so. It will be observed that the section in that article leaves the whole question of incompatibility of office to the Legislature, and this section now under consideration limits the power of the Legislature in this matter and confines its discretion to certain of the county offices.

This section limits the Legislature in that power. It declares that they may provide which of some specified offices may be held by one person, and declares all others incompatible with each other. I believe there is not a member of this Convention who would say that any one person should hold more than one office except those that are mentioned in the section that is now before the Convention.

I hope, Mr. Chairman, that the amendment suggested by the gentleman from Chester (Mr. Darlington) will not prevail. If it should the section will be inconsistent with itself. What the Convention should do, in my opinion, is to declare as a general principle that no more than one office shall be held by the same person at the same time, and then except from that general principle these county offices, just what this section does.

If this section be adopted when we come to third reading of the article on county, township and borough officers, by unanimous consent the clause in that article relating to incompatibility of office can be stricken out, which was put into it for the very purpose of meeting these offices in the smaller counties; but I think the Convention have gone further in that section than they intended to at the time and I hope they will now modify it by the adoption of the present section as it stands.

Mr. NILES. Mr. Chairman: It seems to me, and I desire to call the attention of the delegate from Chester to the fact, that if his amendment is adopted by the committee, it will be entirely out of place.

Will he be kind enough to tell this committee what the words "how many and which" refer to, if his amendment is adopted? He strikes out the words "prothonotary, register of wills, recorder of deeds, and clerk of the court," and if that be done, then what do the words "how many and which" refer to? It simply seems to me to destroy the whole force and effect of the section. We might as well vote it down in whole as in piecemeal by this process.

Mr. DARLINGTON. I withdraw that amendment. It strikes me, upon further reflection, that we can amend the first section of the article on county, township and borough officers so as to make it right, and reject this whole section.

The CHAIRMAN. The amendment is withdrawn. The question recurs on the third section as reported by the committee.

The question being put, a division was called for, and the ayes were twenty-five, less than a majority of a quorum.

The CHAIRMAN. The Clerk will make a count and see whether there is a quorum present. It is due to the chairman of the committee who made this report that that fact should be ascertained.

It was ascertained, upon a count, that there were sixty-two delegates present.

The CHAIRMAN. The Clerk reports that there is not a quorum of members present. The committee will rise for want of a quorum.

The committee accordingly rose, and the President having resumed the chair, the Chairman (Mr. Alricks) reported that the committee of the whole had had under consideration the article on "officers and incompatibility of office," and having found itself without a quorum had risen to report that fact to the House.

Mr. DARLINGTON. I move that the Sergeant-at-Arms be sent for the absent members.

Mr. HOWARD. I think something more should be done by this Convention to protect itself.

The PRESIDENT. The roll will be called to ascertain the presence of a quorum.

The CLERK called the roll, and seventy-three delegates answered to their names.

The PRESIDENT. There is now a quorum present.

Mr. DARLINGTON. I move that the Convention again resolve itself into committee of the whole on article No. 26, which was before under consideration.

Mr. KATNE. Mr. President—

The PRESIDENT. The motion is not debatable. The question is on the motion that the House resolve itself into committee of the whole.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole on the article "of officers and incompatibility of office." Mr. Alricks in the chair.

The CHAIRMAN. The committee of the whole have before them article No. 26, reported from the Committee on Commissions, Offices, Oaths of Office, and Incompatibility of office. The fourth section as reported by the committee is now before the committee of the whole.

Mr. LILLY. It is evidently impossible to get an affirmative vote here on any question, and therefore, for the purpose of putting this article on second reading immediately, I move that the committee rise, report progress, and ask leave to sit again.

Mr. KATNE. I second the motion, and I desire to say a word in explanation. The purpose of this motion is, when the committee rise, that the House shall refuse to give them leave to sit again. Then the article will come up on second reading, when we can consider the sections and call for the yeas and nays upon them, and vote them up or down, as the Convention sees proper. With that I am content.

The CHAIRMAN. The question is on the motion of the delegate from Carbon (Mr. Lilly.)

The motion was agreed to, ayes forty-nine, noes not counted.

The committee accordingly rose, and the President having resumed the chair, the Chairman (Mr. Alricks) reported that the committee of the whole had had under consideration the article entitled "of officers and incompatibility of office," and had instructed him to report progress, and ask leave to sit again.

The PRESIDENT. Shall the committee have leave to sit again?

The question being put, leave was not granted.

Mr. LILLY. I now move to proceed to the second reading and consideration of article No. 26, reported by the Committee on Commissions, Offices, Oaths of Office, and Incompatibility of Office.

The motion was agreed to.

Mr. KATNE. The amendments made in committee of the whole all fall now, I believe?

The PRESIDENT. They do. The article stands as reported. The first section will be read.

The CLERK read as follows:

SECTION 1. No person but an elector shall ever be elected or appointed to any office in this Commonwealth.

Mr. BOWMAN. I move to amend by adding at the end of the section these words: "except as otherwise provided in this Constitution."

Mr. W. H. SMITH. I trust the Convention will not stultify itself by adopting such an amendment as that. The section as it stands, I think, is entirely proper and right. If there is any other section contradictory of it in any other article, when we reach it on third reading, we can pass upon it. I hope the section will be allowed to stand as it is.

Mr. BOWMAN. One word. I do not see the necessity of passing this section at all, in view of what has been done by the Convention upon another article. It has already been decided by this Convention that females of the age of twenty-one and upwards may be elected to the office of school director. The amendment that is proposed now on second reading was adopted in committee of the whole, but as the committee have been discharged and refused leave to sit again, we have this question now before the Convention. If we pass the section as it now stands, I think it will be undoing what the Convention have already done. The gentleman from Allegheny talks about stultifying ourselves. We should be stultifying ourselves if we passed this section without this amendment. That would be stultification, and I hope the Convention will vote in this amendment, and if not, vote down the section. Why, sir, the proposition to allow females in this Commonwealth to hold the office of school director has been before the people of the State for two months, during our recess, and I should like to know what paper that is published, from the Delaware river to Lake Erie, has found any fault with the action of the Convention on that subject. It was an almost unanimous thing. It was a sort of compromise. Week after week we debated the question here whether the right of suffrage should be extended to women or not. It was decided that they were not in a fit condition to vote, but that they were in a condition to hold the office of school director. I think we were very wise in coming to that conclusion.

ly taken by this Convention will be sustained and that this amendment to the section will be adopted or the section itself voted down.

The PRESIDENT. The question is on the amendment of the delegate from Erie (Mr. Bowman.)

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

Mr. BOWMAN. So do I.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken, resulted as follows:

YEAS.

Messrs. Achenbach, Bowman, Brown, Buckalew, Calvin, Campbell, Carey, Carter, Corson, Curry, Curtin, Darlington, De France, Dodd, Edwards, Fulton, Funck, Hazzard, Horton, Howard, Hunsicker, Knight, Landis, Lilly, MacConnell, M'Michael, Mantor, Mott, Niles, Patterson, T. H. B., Patton, Purviance, Samuel A., Reynolds, Rooke, Runk, Russell, Stanton, Struthers, Wetherill, John Price, White, David N., White, Harry and White, J. W. F.—42.

NAYS.

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Boyd, Church, Collins, Dallas, Guthrie, Hay, Hemphill, Kaine, Lawrence, Littleton, M'Culloch, Minor, Patterson, D. W., Purviance, John N., Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Turrell, Woodward and Walker, *President*—28.

So the amendment was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Armstrong, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Brodhead, Broomall, Bullitt, Cassidy, Clark, Cochran, Corbett, Craig, Cronmiller, Cuyler, Davis, Dunning, Elliott, Ellis, Ewing, Fell, Finney, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Heverin, Lamberton, Lear, Long, MacVeagh, M'Camant, M'Clean, M'Murray, Mann, Metzger, Mitchell, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purman, Read, John R., Reed, Andrew, Ross, Smith, H. G., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry Worrell and Wright—63.

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

The section was agreed to, there being, on a division, ayes thirty-six, noes thirty-one.

The second section was read, as follows:

SECTION 2. All officers whose election is not provided for in this Constitution shall be elected or appointed as may be directed by law. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Mr. KAINE and Mr. J. M. BAILEY called for the yeas and nays on the adoption of the section.

Mr. DARLINGTON. I ask for a division of the question, the first division to end with the word "law," in the second line. The first clause is necessary.

The PRESIDENT. The question is on the first division, including the first and second lines, excepting the word "no," at the end of the second line.

The first division was agreed to.

The second division was read, as follows:

No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Mr. KAINE. Mr. President: That is precisely the old Constitution; I can see certainly no objection to placing it in the new one. It has worked well in the past, and I have no doubt it will be useful in the future. I hope the Convention will adopt it. I have no notion of making so many innovations upon the old Constitution. We shall not know where we are if they are adopted by the people. This is a salutary provision, and I hope it will be adopted. I call for the yeas and nays.

Mr. D. W. PATTERSON. Will the gentleman allow me to ask him in what part of the old Constitution the section is found?

Mr. KAINE. In the sixth article.

The PRESIDENT. The yeas and nays are asked for. Is the call seconded?

Mr. J. M. BAILEY. I second the call.

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

Y E A S .

Messrs. Achenbach, Alricks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Boyd, Brown, Calvin, Collins, Curry, Curtin, Darlington, Fulton, Funk, Guthrie, Hay, Hazzard, Horton, Hunsicker, Kaine, Knight, Lawrence, Lilly, Littleton, MacConnell, M'Culloch, M'Michael, Mantor, Mott, Niles, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Rooke, Runk, Russell, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Struthers, Turrell, Wetherill, Jno. Price, White, Harry, White, J. W. F., Woodward and Walker, *President*—51.

N A Y S .

Messrs. Biddle, Bowman, Buckalew, Campbell, Carey, Carter, Church, Corson, Dallas, De France, Dodd, Edwards, Hemphill, Landis, Minor, Newlin, Patterson, D. W., Patterson, T. H. B., Patton and White, David N.—20.

So the second division of the section was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Armstrong, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Brodhead, Broomall, Bullitt, Cassidy, Clark, Cochran, Corbett, Craig, Cronmiller, Cuyler, Davis, Dunning, Elliott, Ellis, Ewing, Fell, Finney, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Heverin, Howard, Lambertson, Lear, Long, MacVeagh, M'Camant, M'Clean, M'Murray, Mann, Metzger, Mitchell, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purman, Reed, Andrew, Ross, Smith, H. G., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, Worrell and Wright—62.

The PRESIDENT. The third section will be read.

The CLERK read as follows:

SECTION 3. No persons (except notaries public, commissioners of deeds and officers of the militia not in actual service) shall, at the same time, hold or exercise more than one office in this State to which a salary is or fees or perquisites are by law annexed; but the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds, and clerk of the courts, and how many and which of said offices shall be held by one person.

Mr. HOWARD. I ask for a division, the first division to terminate at the word "annexed," in the fourth line.

The PRESIDENT. A division of the section is asked. The first division will be read.

The CLERK read as follows:

"No persons (except notaries public, commissioners of deeds, and officers of the militia not in actual service) shall, at the same time, hold or exercise more than one office in this State to which a salary is or fees or perquisites are by law annexed."

Mr. DARLINGTON. Mr. President: I am not sure that I understand exactly the meaning of this, and I should be glad to have an explanation from the chairman. Here is an exception of "officers of the militia not in actual service." Is it meant to be understood that officers of the militia in service may hold two offices? [Laughter.]

Mr. BUCKALEW. I move to amend the first division as follows: By inserting at the commencement, "except in cases provided for in this Constitution;" by making the word "persons" read "person;" by making the parenthesis read, "except a notary public, commissioner of deeds, or an officer of the militia not in actual service;" and then in the third line by striking out "in this State." Now, I ask the Clerk to read the provision as it will stand if amended as I propose.

The CLERK. "Except in cases provided for in this Constitution, no person (except a notary public, commissioner of deeds, or an officer of the militia not in active service,) shall at the same time hold or exercise more than one office to which a salary is or fees or perquisites are by law annexed."

Mr. BUCKALEW. The changes I propose are all formal except the words to be inserted at the commencement of the section, which are, "except in cases provided for in this Constitution."

Gentlemen will remember that in another part of the Constitution we have required that the Legislature shall make provision by law as to what county offices may be held by one person—recorder of deeds, clerk of the orphans' court, clerk of the court of quarter sessions, and so on. In small counties several of these offices are united; very many of them are county offices which are united. I am in favor of the object of this section; that is, to limit the authority to hold of-

fice in this Commonwealth to a single office at one time, except in those cases where the Convention have made provision for the union of two or more county offices by the Legislature. If the amendment which I propose is adopted, we have a general prohibition against pluralities in office, and at the same time we should not make this provision inconsistent with other parts of the Constitution.

Mr. J. M. BAILEY. I wish to ask the delegate from Columbia a question before he takes his seat. Would not the general declaration of the principle that no person shall, at the same time, hold more than one office, be inconsistent with the clause the gentleman refers to? It would read as follows:

"The Legislature shall declare what offices are incompatible.

Would it not, then, be inconsistent?

Mr. BUCKALEW. No, sir; not with the amendment. I insert the words, "except in cases provided for in this Constitution."

Mr. J. M. BAILEY. I understand that; but what cases are provided for in this Constitution?

Mr. BUCKALEW. The very one the gentleman refers to.

Mr. J. M. BAILEY. That the Legislature shall declare what offices are incompatible?

The PRESIDENT. The question is on the amendment of the delegate from Columbia.

The amendment was agreed to; ayes forty-four, noes not counted.

Mr. J. M. BAILEY. Mr. President: I rise to a question of order. Is this section susceptible of division? If the first division be voted down there is nothing left in the section; we stop right in the middle of a sentence. The proper way to reach the point the gentleman is reaching after will be to move to amend by striking out the last part of this section.

Mr. HOWARD. I have no objection to the first part.

The PRESIDENT. The question is on the first division as amended.

The first division as amended was agreed to.

The PRESIDENT. The question now is on the second division of this section, which will be read.

The CLERK read as follows:

"But the Legislature may provide by law the number of persons in each county who may hold the offices of prothonotary, register of wills, recorder of deeds, and

clerk of the courts, and how many and which of said offices shall be held by one person."

Mr. HOWARD. I move to amend by striking out all of the division and inserting:

"But the Legislature may provide by law how many and which of the offices of prothonotary, register of wills, recorder of deeds and clerks of the court may, at the same time, be held by one person."

I believe, Mr. President, the second division of this section entirely unnecessary, because of a provision already made in the Constitution, that has been referred to before. But if it is considered better for greater certainty that it should be inserted here, I think the substitute is far better than the division as reported by the committee, because these words seem to lead to confusion. They allow the Legislature to provide by law the number of persons who may hold certain offices. I referred to that before. The idea seems to me to be, not that they shall provide the number of persons who may hold these offices, but provide how many of the offices may be held by a single person. The substitute provides clearly that the Legislature may determine how many of these offices, and which of them may at the same time be held by one person.

The PRESIDENT. The question is on the amendment of the delegate from Allegheny (Mr. Howard.)

The amendment was rejected, the ayes being thirty, less than a majority of a quorum.

The PRESIDENT. The question recurs on the second division of the section.

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

The yeas and nays were ordered, ten delegates seconding the call.

Mr. BUCKALEW. Now I ask for the reading of the first section of the article on County, Township and Borough Officers, and if anybody will vote for this after that, I shall be surprised.

The PRESIDENT. It will be read.

The CLERK read as follows;

"County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys, and such others as may from time to time be established by law; the Legislature shall declare what offices are incompatible, and no sheriff or treasurer shall be

re-eligible for the term next succeeding the one for which he may be elected."

The question being taken by yeas and nays, resulted as follows:

Y E A S .

Messrs. Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Boyd, Brodhead, Collins, Curry, Fulton, Guthrie, Hanna, Hay, Hazzard, Kaine, Landis, Lawrence, Littleton, Niles, Purviance, John N., Sharpe, Smith, William H., White, J. W. F. and Woodward—23.

N A Y S .

Messrs. Alricks, Andrews, Biddle, Bowman, Brown, Buckalew, Campbell, Carter, Cassidy, Church, Corson, Dallas, Darlington, De France, Dodd, Edwards, Funk, Hall, Hemphill, Heverin, Horton, Howard, Hunsicker, Lilly, MacConnell, M'Culloch, Mantor, Minor, Mott, Newlin, Patterson, D. W., Patterson, T. H. B., Patton, Purviance, Samuel A., Reynolds, Runk, Russell, Simpson, Smith, Henry W., Stanton, Turrell, Wetherill, John Price, White, David N., White, Harry and Walker, *President*—45.

So the second division of the section was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Armstrong, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Broomall, Bullitt, Calvin, Carey, Clark, Cochran, Corbett, Craig, Cronmiller, Curtin, Cuyler, Davis, Dunning, Elliott, Ellis, Ewing, Fell, Finney, Gibson, Gilpin, Green, Harvey, Knight, Lamberton, Lear, Long, MacVeagh, M'Camant, M'Clean, M'Michael, M'Murray, Mann, Metzger, Mitchell, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purman, Read, John R., Reed, Andrew, Rooke, Ross, Smith, H. G., Stewart, Struthers, Temple, Van Reed, Wetherill, J. M., Wherry, Worrell and Wright—65.

The CLERK read the next section as follows:

"SECTION 4. No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall, at the same time, hold or exercise any office in this State to which a salary is or fees or perquisites are by law attached."

Mr. LITTLETON. I move to amend the section in the second line by inserting after the word "exercising," the words, "by commission," so that it will read,

"No member of Congress from this State, nor any person holding or exercising by commission any office," &c.

Mr. NEWLIN. I ask my colleague from Philadelphia to let us know the effect of his amendment, what it is proposed to do.

Mr. LITTLETON. There may be a great many appointments, trivial in their nature, from which these persons would be excluded by this general provision, and therefore I think it should be limited to those offices which are of sufficient importance for the holder to receive a commission from the government.

Mr. KAINE. If there are offices of that kind that are so trivial as the gentleman remarks, they will not have any fee or salary or perquisite of office attached to them, I suppose, and if they have not, then they are not embraced in this section. This section provides that "no member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States shall, at the same time, hold or exercise any office in this State to which a salary is or fees or perquisites are by law attached."

Mr. HAY. Mr. President: I do not think that the amendment offered by the delegate from Philadelphia ought to be agreed to for this reason: His amendment would cover a very large class of Federal appointees that we ought carefully to exclude by this section from holding any office under the State. I could ask the delegate from Philadelphia whether his amendment would not permit any person holding an appointment in the custom house of this city to hold office under the State government. They hold offices of trust and certainly of profit, and yet I believe none of the minor officers hold commissions under the United States.

The PRESIDENT. The question is on the amendment of the delegate from Philadelphia (Mr. Littleton.)

The amendment was rejected.

The PRESIDENT. The question recurs on the section.

The section was agreed to.

The fifth section was read, as follows:

"SECTION 5. All officers shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well, and shall be removed on conviction of misbehavior in office or of any infamous crime."

Mr. DALLAS. Mr. President: I desire to read from the thirty-third page of the pamphlet that contains articles passed to

second reading, the fourth section of the article "of impeachment and removal from office," which I think covers exactly the ground proposed to be covered by the section now read by the Clerk. That section in the article on impeachment and removal from office is this:

"SECTION 4. All officers shall hold their offices only on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime."

I think delegates will see that we passed precisely this section. I ask that the Clerk may read it, as his voice will probably be heard better than mine.

The CLERK read section four of the article on impeachment and removal from office.

Mr. DALLAS. The Convention will observe that there is hardly a change of a single word between the two sections. The meaning is precisely the same.

Mr. KAINE. I merely desire to say that this report was copied from the old Constitution without adverting to the fact that the same thing had been adopted in the article referred to.

The CHAIRMAN. The question is on the section.

The section was rejected.

Section six was read as follows:

SECTION 6. Prothonotaries, clerks of the peace and orphans' courts, recorders of deeds, registers of wills, county surveyors, and sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers, unless when the Governor shall for special reasons dispense therewith for any term not exceeding five years after the county shall have been erected.

Mr. KAINE. That is the old Constitution.

Mr. J. M. BAILEY. I desire to move an amendment, to strike out the words "county surveyors." They are not in the old Constitution.

Mr. KAINE. I should like the delegate from Huntingdon to give a reason why county surveyors should not keep their offices at the county seat as well as other officers.

Mr. J. M. BAILEY. The office of county surveyor is one of very small emolument, and it will not remunerate any good surveyor to open an office at the county seat for the purpose of the official business. It has never been required

heretofore, and the omission of it has never been found to work badly, and I can see no good reason for inserting it. If the county surveyor must have his office at the county seat, it will follow as a matter of course that all county surveyors will have to be elected from the county seat; they will have to be residents of the county seat at the time of their election, because no good surveyor will, after his election, for the mere fees of the office, open an office there.

Mr. KAINE. There is no necessity for the county surveyor removing to the county seat. He can keep his office there without removing there himself. I should like to know where the records of the county surveyor are to be kept, if not at the county seat? Why, sir, in some of the counties they are the most valuable records belonging to the county. The surveys of all the lands in the county, from the origin of the government down to the present time, are there. Innumerable books belong to most of the county surveyors' offices in this State, and a great many persons desire and have frequent occasion to call there and examine them. In my own county the office is kept at the county seat; the books there are kept in the vault of one of the other officers, the register and recorder, and with him the key of the vault is left by the surveyor, and any person can come at any time to the county seat and examine any survey or plat of land that he may desire to look at. It is well known that three or four years ago an act of Assembly was passed on this subject, and the law of the State now is that the county surveyors are bound to keep their office at the county seat. Whether they regard it or not, I do not know; but the thing had become so intolerable, of having county surveyors keep their offices away in distant parts of the county, where persons could never have access to the records, that it became necessary for the Legislature to pass a law on that subject. I think it should be a constitutional provision in regard to the surveyor as well as in regard to other county officers.

Mr. DARLINGTON. Mr. Chairman: In our part of the State the county surveyor is an exceedingly unimportant office. In the two counties of my district, no man living at the county seat could afford to live there and hold that office; it must be held by somebody that can live cheaply on the far side of the country, and it would be a great burden to impose on the officer

to require him to keep his residence at the county seat.

Mr. KAINE. I wish to ask the gentleman from Chester where are the surveyor's records of his county kept.

Mr. DARLINGTON. There are none.

Mr. KAINE. The survey books?

Mr. DARLINGTON. Nobody ever heard of any.

Mr. KAINE. Are there no surveys of your county?

Mr. DARLINGTON. No, sir; nothing to survey.

Mr. KAINE. You must be in a very bad condition. [Laughter.]

The PRESIDENT. The question is on the amendment to strike out the words, "county surveyors."

The amendment was rejected, the ayes being twenty, less than a majority of a quorum.

The PRESIDENT. The question recurs on the section.

Mr. DARLINGTON. I move to amend this section, in the first line, by striking out the words, "peace and orphans," so that it will read: "Prothonotaries, clerks of the courts, recorders of deeds," &c. That will embrace them, the clerks of the oyer and terminer, quarter sessions and orphans' court.

Mr. KAINE. The section is the old Constitution as it is.

Mr. DARLINGTON. It is very awkward if it is there.

The PRESIDENT. The question is on the amendment of the delegate from Chester.

The amendment was agreed to.

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

Mr. DODD. I call for a division of the question, the first division ending with the word "officers," in the fourth line.

The PRESIDENT. The question is on the first division.

The division was agreed to.

The next division was read as follows:

"Unless when the Governor shall for special reasons dispense therewith for any term not exceeding five years after the county shall have been erected."

Mr. HOWARD. I desire to ask the chairman of the committee, although I know the clause is in the present Constitution, what is the special use of the last two lines and a half, beginning with the words "unless the Governor shall for special reasons?"

Mr. KAINE. That is just what has been voted down, is it not?

Mr. HOWARD. No, sir. It has not been voted on at all. The delegate from Venango (Mr. Dodd) asked for a division of the section terminating at the word "officers," in the fourth line. That has been adopted; but what is the use of the remaining words? I know they are in the old Constitution, but I cannot see any propriety in retaining them now.

Mr. KAINE. I think the clause originated from the fact that the yellow fever was in Philadelphia at one time and the Governor removed the offices from this county to some other county. I do not know any other reason for it in the world.

The second division was rejected.

The PRESIDENT. The seventh section will be read.

The CLERK read as follows:

SECTION 7. Any person who shall fight a duel, or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and shall be punished otherwise in such a manner as is or may be prescribed by law; but the Executive may remit the said offence and all its disqualifications.

Mr. HOWARD. I ask for a division of this section at the word "law," in the fifth line.

Mr. BUCKALEW. I intend to vote against this whole section, and am strongly in favor of striking it out of the Constitution, on the ground that it is wholly unnecessary. In the earlier stage of society, it was possible that duels would take place in this Commonwealth, and in States adjoining ours; but we have outgrown that condition of things. The habits of society have changed, and the fighting of duels is now almost morally impossible in this State, and it is not to be expected that it will be an evil hereafter requiring constitutional provision or even a statute to provide against it. I am afraid that we are getting, along with a large amount of very valuable matter in the Constitution, a considerable number of sections that are wholly unnecessary. The community has outgrown the customs that required such provisions, and they will now only take up space in an instrument already long. The habits and fashions of society, if I may so express myself, have entirely done away with the possibility of duels in Pennsylvania, and it is therefore unnecessary, if not absurd, to retain a grave

provision in the Constitution upon this subject.

For this reason I shall vote against this section; and it is not a sufficient reason to me that a particular provision is found in the old Constitution. We might just as well say that we should not adopt a new provision because it has not existed heretofore, as to say that any provision is to continue simply because it is old. We are making a new instrument and we ought to incorporate in it only such provisions of the old instrument as have utility and merit, and we should discard those that do not have utility and merit.

Mr. KAINE. I am not any more wedded to this section because it is to be found in the old Constitution than is the gentleman from Columbia. A provision of this kind was not contained in the Constitution of 1776, nor in that of 1790; but it was placed in the Constitution of 1837-8, I presume by the gentlemen who formed that Convention, for good and sufficient reasons. The gentleman from Columbia says that the community has outgrown the practice of the fighting of duels. Few, if any, duels were ever fought on the soil of Pennsylvania, but they are now fought in some of the neighboring States. The system of duelling still prevails in some of the neighboring States with as much virulence as ever. It is only within the last two or three months that a most horrible duel was fought in the State of Louisiana and one of the best men in that State was slaughtered. It is but recently that another most horrible duel was fought in Richmond, Virginia, and a most estimable young man killed. Even within the last twenty days a challenge passed between two gentlemen in the city of New York, and they went to Canada to fight a duel. Whether they fought or not I do not know, but I believe they did not.

Who can tell but that this provision in the Constitution of 1837-8 has not prevented like occurrences in Pennsylvania? It is not to be disputed that the people of Pennsylvania are just as brave and just as chivalrous as those of any other State in the Union, and just as liable to the temptation of violating the law not only of God but of man as are the people of any other State. "An ounce of prevention is worth a pound of cure" is an old and very sound maxim. If we can retain anything in this Constitution that was of value in the old, let us do it. There can be no objection to this section, in my opinion, and I am opposed to the amend-

ment offered by the gentleman from Allegheny because I think that the Governor ought to have a right to remit the penalty imposed by this section, preventing a man from holding an office if he has been engaged in fighting a duel. If the amendment prevails, then the man who has fought a duel will be forever excluded from holding any office of trust or honor in this Commonwealth. If we vote down the latter clause of this section, he will be cut off entirely and forever shut out; but if we retain the provision the Executive may remit the penalty for the offence and restore the person who has been guilty of the crime under the Constitution to his former position and entitle him to hold any office in this Commonwealth.

Mr. DALLAS. I trust that this Convention will not add another half dozen unnecessary words to the Constitution, by the adoption of this section. At the time it was adopted in 1837-38, there was a very strong public sentiment in Pennsylvania, not a majority public sentiment, but the sentiment of a great many people of this State, and by no means insignificant people, who looked with favor upon the practice of duelling. It was then, therefore, necessary that there should be something fixed in the fundamental law that should put a stigma upon those who indulged in that practice to counteract a very prevailing notion—mistaken notion though it was—in the minds of many, and, as the gentleman from Fayette seems to think still, that it rather indicated a superior chivalry on the part of a man to fight a duel. I think the present existing public sentiment of this Commonwealth is a unanimous sentiment, that we should leave this like all other offences, to the people to prescribe its punishment, through their legislators.

Mr. WOODWARD. The gentleman from Fayette has stated correctly the manner in which this provision came into the Constitution of 1838. It was in none of our previous Constitutions, but duels had taken place in this city and several in this State, and there was in that Convention a gentleman, now deceased, who had fought his duel in New Orleans and had killed his man. This provision was placed in the present Constitution to put an end forever to this barbarous practice of duelling. My belief is (and I have had some occasion to watch the matter) that this provision recommended the other amendments to the people of Pennsylvania and

that because this provision was in the Constitution of 1838 the entire instrument was possibly adopted, because throughout the State there was a very large body of moral people who regarded duelling as shocking to mankind, and I think that a provision in our fundamental law prohibiting it commended the other associated amendments to their adoption.

I think now that it would be a great mistake to strike that out of our Constitution as we are about to go before the people with other amendments. The same feeling that induced the people to adopt those amendments in 1838 would incline them to reject this instrument if we now strike out this provision against duelling. I believe that we have a statute on the subject, but a statute is not firm enough on such a subject; it belongs to the fundamental law. I repeat that this provision recommended the present Constitution to the people of Pennsylvania, and the retaining of it now will recommend the amendments we are framing, while the rejection of it will endanger our amendments. The section is right, and it is a mistake to suppose that the spirit of duelling has died out in our land. We have had in the last few days several instances in surrounding States of very cruel duels, and I do not know any reason why a bad passion in Pennsylvania may not express itself in that form as well as in Virginia and Louisiana.

I trust that this provision will be retained, not only because it is here put in the fundamental law, but because it has recommended itself to the best portion of the people of Pennsylvania.

Mr. DARLINGTON. I wish merely to add a word to what has been so fittingly said by the gentleman from Philadelphia, as to what took place in the Convention of 1837 and 1838. Not only was there a gentleman there by whose hand a fellow-man had fallen, but there was another, equally high in society, who had been invited to the field and who had shown his alacrity to follow, but the duel was arrested by the intervention of friends. None in that Convention voted with more readiness for the putting in of this clause than those two gentlemen.

Mr. TURRELL. I am in favor of retaining this section in our Constitution, and I agree on this point most fully with the gentleman from Philadelphia (Mr. Woodward.) We cannot count upon it as a fact that the spirit of duelling has died out, and if we eradicate this provision we

shall find that there are still people in the community who are wicked enough to give and accept challenges. Therefore I am in favor of retaining this clause.

I will not repeat the reasons which have been so ably given by the gentleman from Philadelphia, nor will I take up the time of the Convention further upon the subject. I am opposed to the amendment which has been offered by the gentleman from Allegheny.

The PRESIDENT. There has been no amendment offered.

Mr. TURRELL. I understood that he moved to strike out the last clause.

The PRESIDENT. No, sir. There is no motion to strike out pending. The gentleman from Allegheny asked for a division.

Mr. TURRELL. That would be equivalent to an amendment, because if the second clause be not adopted, it will take away from the Executive the right to remit the penalties incident to the commission of this offence. I am in favor of retaining that right with the Executive, but I would place it upon the same basis as the right to pardon for other criminal offences. Therefore I will either offer an amendment, or suggest to the chairman of the Committee on Commissions, Offices, Oaths of Office and Incompatibility of Office a modification something like this: After the word "disqualifications," insert "in the manner provided in this Constitution for the granting of pardons in criminal cases." I think that would be the proper way to express it, and with that condition I would give the Executive the power to remit the penalty incident to the commission of this offence.

The PRESIDENT. The question now is on the first division of the section.

Mr. HOWARD. I asked for the division of this section because I am very decidedly in favor of the first division, and just as decidedly opposed to the latter division. I believe that the passions of men now are about the same that they always have been. I believe that we have men in this State who, if there were no penalty attached, would still send challenges. I believe that we have men of that bullying and overbearing disposition who would do it, and I believe we have cowardly and weak-kneed men who would accept a challenge sooner than be branded as cowards.

Mr. President, I believe some such provision as this is to be found in all the American Constitutions; and of all the

people in this world, those most given to this practice are the American people. Instead of endorsing one word that fell from the delegate from Columbia, I will say what I believe to be the true history of the times, that human life is held in less value to-day in America than it ever was. And, Mr. President, duelling partakes of that wilful, that deliberate, that planning character to take human life that I would never pardon it. I would never give the Executive power to pardon any man who wilfully, deliberately and coolly, against the Constitution of his State, and against the life of a fellow-citizen, plotted for human blood. I would never give the Executive the power to pardon him, I say that this Convention should put the strongest possible stamp that they can put upon this miserable, bullying practice of duelling.

No, Mr. President, let us stand by the old Constitution in this respect, and let us say that the Executive shall not have power to relieve men who will deliberately, not only in defiance of the law of the State, but against the life of a fellow-man, engage in this miserable practice of aiding in the business of a duel; and it is for that reason that I asked for a division of this section, so that I might vote for so much of the section as I am in favor of, and against the residue of the section.

Mr. HAY. I should like to ask the gentleman from Allegheny one question, whether he considers that duelling is a worse crime or a more heinous crime than deliberate midnight assassination?

Mr. HOWARD. I consider duelling one of the very worst crimes under Heaven, because it requires more than one man; it requires a plot—an arrangement. It has to be prepared in writing; it has to have a friend to carry the message asking that he may have a chance to take the life of another human being.

Mr. HAZZARD. I move to insert after the word "duel," in the first line, the words: "or shall habitually carry concealed deadly weapons, except marshals, sheriffs, constables, policemen and watchmen or such other persons as shall be authorized by law."

I wish to say Mr. President, that more deaths occur from the acts of boys in this practice of carrying concealed weapons than on account of duelling. Now, instead of doing as we did in old times, when we just used the implements that God provided, and hammered each other manfully, every little whipper-snapper in

the country will whip out a gun from a pocket, carried for that purpose. If a young man goes to a tailor to get a pair of pantaloons he gets his pistol pocket stuck in some place behind, and if he is insulted in a lager beer saloon or any other place, instead of knocking the insulter down, as he ought to do, perhaps he will whip out his gun and shoot him through the head.

I say that there is more need of restraining the carrying of deadly weapons in this State than there is of restraining duelling, for there is more damage done in that way. I hope we shall put in this provision. I like the other in regard to duelling; but if we put this in it is not a bit more legislation than that concerning duels, and we shall thereby save the lives of a great many persons. There is a law applicable to Philadelphia in regard to this very practice, but it only spreads over a part of the State, including also York, I believe, and one other county; but there is no law against carrying deadly weapons in other counties of the State. I think this will restrain murder fully as much as the provision in regard to duelling.

I do not know that I have heard of any duels in this State, but I have heard of a great many persons being wounded, maimed and killed by young fellows carrying pistols in the pockets they get made on purpose.

Mr. HAY. And dirks.

Mr. HAZZARD. No; there are very few dirks used here. Pennsylvania does not know anything about the dirk. Dirks and bowie knives are used south of Mason and Dixon's line; but Pennsylvania boys, almost every one of them, carry pistols. I saw a boy coming from school who had a pistol packed by the side of his family Bible. It is a very common thing for them to carry slung-shot and things they can kill with, instead of fighting in the good old way as we used to do when we went to the races, I think this is a very proper thing to put in here.

Mr. KANE. The gentleman from Washington is mistaken about the law in regard to carrying concealed deadly weapons being local. They have more stringent laws perhaps in Philadelphia than the general law of the State, but there is a law on the statute book against carrying concealed deadly weapons of any kind.

Mr. HAZZARD. I think not. I think the member is mistaken; there is

such general law. I ascertained so by looking at the book yesterday. It applies to Philadelphia and to York and to one other county.

Mr. KAINE. If the gentleman will get Purdon's Digest I will show him.

Mr. BUCKALEW. I have the Digest here. The existing statutes make provision against the carrying of concealed weapons in the city of Philadelphia, in the county of York, and in the county of Schuylkill—three acts. I have the volume before me.

Mr. KAINE. A suggestion was made by the gentleman from Susquehanna (Mr. Turrell) in regard to adding something to this provision as to the power of the Executive to pardon this offence. I do not think it is at all necessary.

The PRESIDENT. That division is not before the Convention.

Mr. KAINE. There is an amendment pending somewhere or other, I believe.

The PRESIDENT. The amendment of the gentleman from Washington (Mr. Hazzard) to the first division. The question is on that amendment.

The amendment was rejected.

The PRESIDENT. The question recurs on the first division.

The division was agreed to.

The PRESIDENT. The second division will be read.

The CLERK read as follows:

"But the Executive may remit the said offence, and all its disqualifications."

Mr. KAINE. Now, I desire to make an explanation in reference to a remark of the gentleman from Susquehanna (Mr. Turrell.) The provision is, that

"The Executive may remit the said offence, and all its disqualifications."

He thought that would not come within the provisions of the Constitution, as already adopted. The tenth section of the executive article, to be found on page fourteen, provides:

"He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentences and pardons,"—

This would be a pardon as a matter of course.

—"Except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Secretary of the Commonwealth, Attorney General," &c.

This can only be remitted by a pardon, and it is undoubtedly embraced in this

section. Therefore I think it is unnecessary to add anything more to it.

The PRESIDENT. The question is on the second division.

Mr. BUCKALEW. I desire to mention one thing. By the act of 1808 any person fighting a duel or sending or receiving a challenge was disqualified from citizenship for a period of seven years. Perhaps that was the best form of penalty that could have been provided; but that was superseded by the amendment in the Constitution of 1838, which made the disqualification for holding office unlimited, and at the same time conferred on the Governor the right to restore the civil privileges of the party at his discretion. The commissioners who revised the penal code in 1860 did not insert in our existing statute a disqualification for holding office as part of the punishment for this offence, and they said in their report that they omitted that because a provision to that effect was contained in the Constitution. Therefore, sir, our existing statute law does not disqualify a man who has fought a duel from holding office in this State. The statute left the disqualification as it existed in the Constitution without re-enactment. It only provided that this offence should be punished by fine and by imprisonment. You will find that the act of 1860 is very elaborate on this subject. It consists of four sections. It provides for every conceivable aspect of this offence. It punishes all who are directly or indirectly concerned in its commission, or in fomenting the fighting of a duel, or who may be considered as participants in it in any way whatever. But the act is defective, as a matter of course, in regard to the punishment. There is no disqualification of the right to hold office, because the commissioners accepted the existing Constitution as sufficient on that subject.

Now, sir, this changes my view to some extent. I see the statute does not provide for the specific disqualification which is now done in the Constitution, which it would be very well to retain; but I submit that instead of an unlimited right to the Governor of the Commonwealth to pardon this offence, there ought to be, as the act of 1808 provided, a positive disqualification for a period of seven years, beyond the reach of Executive pardon. Otherwise the Executive of the Commonwealth will pardon his friends and will not pardon his enemies, and this punishment ought to be the same for all

parties, especially when it is unlimited. However, sir, I shall consume no more time.

Mr. Kaine. At the suggestion of the gentleman from Columbia, I move to amend by adding at the end of the section "after seven years," so that the clause will read: "But the Executive may remit the said offence and all its disqualifications after seven years."

The President. That amendment is before the Convention.

Mr. Darlington. I think we must determine whether we are for or against the practice of duelling. If we are for duelling, then vote down the section. If we are against it, if we consider it an evil, one that ought to be wholly eradicated from the land, then let us make the most stringent provisions possible in order to keep it out of society. Let every man know, when he either gives or accepts a challenge or participates by carrying one, that he must no longer hope to hold an office of trust or profit in the Commonwealth. Have we not enough law-abiding citizens in this Commonwealth to fill all the offices without calling in the aid of those who take or are willing to take the lives of their fellow-men? If those citizens become scarce and there are no men left to fill the offices except men who are willing to violate all law, human and divine, then remove the disqualification, but I would not allow such a man to hope that at the end of seven years his offence will be atoned. I would not allow him to consider for an instant that he is ever to be relieved from the penalty of taking human life. You hang your common criminal upon the tree as unfit to live; your gentleman who goes out with his pistol to take the life of another gentleman you wish to say may be allowed to hold office hereafter. I am willing to go as far as he who goes furthest in placing the ban of public opinion upon every man in the Commonwealth who would either be enticed into the field or who would invite another there. Let us put a stop to this barbarous practice of duelling by everything that we can do in a Constitutional Convention. Let us proclaim it throughout all the land that no man who thus violates this law shall ever hold office under the Commonwealth.

Mr. J. N. Purviance. I move to strike out "seven" and insert "thirty" years.

The President. That amendment to the amendment is before the Convention.

Mr. Howard. I sincerely hope that this amendment will not be adopted and that the Convention is prepared to vote down the latter division of this section. The section, as I understand, is designed for the preservation of life. The intention of it is that the seal of this Convention may be set upon the wretched, criminal, and terrible practice of duelling. It seems to me that we should say to any man who will send a challenge to a fellow-man to meet him in mortal combat, and to the man who will stand up as a second, and perhaps whisper the infernal thing in his ear, perhaps will stiffen up his courage to do it, the man who will go with him out to the field and stand by in safe distance while he points the fatal shot at the life of his fellow-being, that the Governor shall never have the power to pardon that offence. He has deliberately attempted to take the life of a member of society, aided by those who have stood by him; and shall that society ever take the red-handed murder back again and touch that bloody hand? I say, no; they should never touch it; he never should be recognized again as a member of society so far as to be allowed to participate in its honors. The fact that he is allowed to live is clemency enough; but that he should be taken back into society and permitted again to hold offices of honor and profit in the Commonwealth is asking too much. Sir, if we put this brand upon duelling, let us do it in the most effective manner; let men know that if they will deliberately, against the highest law of their Commonwealth, go out into the field to fight, they will be disfranchised; and let them understand that the punishment is to be as sure as fate and that the penalty shall follow them down to the grave.

Mr. MacConnell. I do not like this division as it stands. We have heretofore provided for a court of pardons. This provision would seem to give the pardoning power in these cases not to that court, but to the Executive alone. I think we ought not to do that. If it is in order, I will move—

The President. There is an amendment to an amendment now pending.

Mr. MacConnell. Then I will read what I intended to offer, if it was in order, for information: "But the said offence may be pardoned after seven years." That covers the ground and leaves the power to the pardoning court. When the other amendments are out of the way, I shall offer that amendment.

The **PRESIDENT**. The question is on the amendment to the amendment, striking out "seven" and inserting "thirty."

Mr. J. N. PURVIANCE. I merely wish to state that I moved that amendment as more acceptable to my feelings in regard to this matter, although I will go as far as the gentleman from Allegheny (Mr. Howard) and take away all power to pardon any person engaged in a duel. I believe it is one of the most heinous crimes that can be committed, and it is done with that deliberation that admits of no palliation or excuse whatever. I wish to be understood, therefore, as going as far as any other member of this Convention in expressing my unqualified disapprobation of extending any terms of leniency whatever to any person engaged in duelling. I merely made the motion for thirty years as a better period of time, if pardon should ever be extended to such offenders, than seven, not that I prefer either.

The amendment to the amendment was rejected.

Mr. MACCONNELL. I now move to amend the amendment by striking out the whole of the division and inserting: "But the said offence may be pardoned after seven years."

The amendment to the amendment was rejected.

The **PRESIDENT**. The question recurs on the original amendment, to add the words "after seven years."

The amendment was rejected.

The **PRESIDENT**. The question now recurs on the second division of the section, which reads as follows: "But the Executive may remit the said offence and all its disqualifications."

Mr. KAINE. I call for the yeas and nays on that.

Mr. HOWARD. I second the call.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Bowman, Boyd, Calvin, Cochran, Corson, Curtin, De France, Gilpin, Hanna, Hay, Hazzard, Kaine, Landis, Lawrence, Mott, Niles, Patterson, D. W., Patton, Purviance, Sam'l A., Reynolds, Rooke, Stanton and Walker, *President*
—25.

NAYS.

Messrs. Achenbach, Alricks, Baer, Baker, Beebe, Brodhead, Brown, Buckalew,

Campbell, Carter, Church, Collins, Curry, Darlington, Edwards, Fulton, Funck, Guthrie, Hall, Horton, Howard, Hunsicker, Lilly, MacConnell, M'CLean, Mantor, Minor, Newlin, Patterson T. H. B., Purviance, John N., Read, John R., Runk, Russell, Sharpe, Simpson, Smith, Henry W., Struthers, Tarrell, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Woodward—43.

So the division was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Armstrong, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Broomall, Bullitt, Carey, Cassidy, Clark, Corbett, Craig, Cronmiller, Cuyler, Dallas, Davis, Dodd, Dunning, Elliott, Ellis, Ewing, Fell, Finney, Gibson, Green, Harvey, Hemphill, Heverin, Knight, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Michael, M'Murray, Mann, Metzger, Mitchell, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purman, Reed, Andrew, Ross, Smith, H. G., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, Worrell and Wright—65.

Mr. KAINE. The article being now gone through with, I move that it be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

STATE SEAL AND COMMISSIONS.

Mr. HAY. I move that the Convention proceed to the consideration of the report of the Committee on Accounts made last week on the accounts of the Printer. The report has been printed and laid on the tables of members.

Mr. J. M. BAILEY. I ask the gentleman to withhold that motion until we proceed to the consideration on second reading of report No. 25.

Mr. HAY. I withdraw my motion for that purpose.

Mr. J. M. BAILEY. I move to proceed to the consideration on second reading of report No. 25, being the article on the "state seal and commissions."

The motion was agreed to, and the Convention thereupon proceeded to the consideration of the article on second reading.

The first section was read as follows:

SECTION 1. The present great seal of Pennsylvania shall be the seal of the State.

The section was agreed to.

The second section was read as follows:

SECTION 2. All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be sealed with the State seal and signed by the Governor.

The section was agreed to.

Mr. Kaine. Now I move that this article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

PRINTER'S ACCOUNTS.

Mr. HAY. I now renew my motion to proceed to the consideration of the report of the Committee on Accounts and Expenditures.

Mr. J. W. F. WHITE. I appeal to the chairman of the committee—

Mr. HAY. I wish to state that this report was printed and distributed on Friday or Saturday last to such members as were then present. I feel it my duty to ask that the matter be taken up and disposed of at this time.

Mr. J. W. F. WHITE. I would request the Convention not to take up this report at this time. Every one knows that the report is very strongly against the Printer, Mr. Singerly. He desires to present a paper to the Convention. He had to go home on Saturday evening, expects to be back here to-day or to-night, and by to-morrow morning will be able to present a paper to the Convention on the subject, which I think the Convention should receive at least before they take action on this report. The former report of the committee was made on the 14th day of July, the day before our adjournment, was printed that night in Philadelphia, not by the regular State Printer, was called up by the chairman of the committee on the next day in the Convention, and passed by the Convention without the State Printer knowing anything whatever about it.

Mr. HAY. I desire to correct the gentleman, and to explain that the State Printer was informed a week before that report was present, that it was being prepared and would be presented the very first moment that it was completed; and he then stated that if he could not be back during the succeeding week he would have his friends on this floor to attend to his interests for him.

Mr. J. W. F. WHITE. Very well. That does not deny what I said.

Mr. HAY. He knew that the report would be presented the very moment it should be ready, and that it would be ready in a few days.

Mr. J. W. F. WHITE. I asserted that that report was presented on the 14th of July, was printed by some other printer, was brought up in the Convention.

Mr. HAY. I desire to explain. It was printed by the printer that Mr. Singerly himself has to do the work which he requires to be done promptly, and which cannot be done at Harrisburg. It was printed here in order that it might be correctly printed, under the supervision of the committee as it contained a very large number of figures, and there might be danger of mistakes if there was nobody to read the proof carefully.

Mr. J. W. F. WHITE. All of which is not any contradiction of what I said, that it was not printed by the State Printer, was brought up the very next day, the day of adjournment, and passed, as I said, and the State Printer never saw it until after it had passed the Convention. We adjourned that day until the sixteenth of September. Now, this report was brought in last week, and was printed, I believe, by the Printer, and put on the desks of members on Saturday morning. Mr. Singerly had to go away, and requested of me, if it was called up in his absence, to have it deferred until he could return, to-day or to-night, and he will be here to-morrow, and the Printer certainly ought to have some opportunity of being heard before this matter is pressed upon the Convention. I requested my colleague, the chairman of the committee, a few moments ago, to lay this over until to-morrow. I think he might have done that in deference to the State Printer. I hope the Convention will defer it, because who is injured—

Mr. WOODWARD. Will the gentleman allow me to state that the special committee charged with a subject that has interested the Convention very much is now ready to report, and if the matter in dispute between these two gentlemen could go over until to-morrow, the committee could make their report now.

Mr. J. W. F. WHITE. I will just make an additional remark, that no person is interested in this matter except the State Printer himself. Why, therefore, press it upon the Convention at this time?

Mr. HAY. Mr. President: It is a very singular accusation to be made that this report is being pressed on the Convention

at this time. Certainly nothing is further from the fact. This report was taken to Harrisburg by the State Printer himself, was prined in his office, was returned here I think on Friday morning last. He has had full opportunity of knowing everything that is in it, and could have presented his statement to the Convention at any time; but he now merely asks the Convention to wait for his convenience. Why this statement could not have been presented on Friday or Saturday last, I cannot understand. Indeed, so far was I from desiring that any statement he could possibly make should be withheld, that I offered myself to present any statement he had to make.

I have no desire to press this upon the Convention now or at any time. The committee has simply discharged its duty in reporting. The committee asks of the Convention to consider its report. It makes no difference to me at what time it is considered. If it is deemed desirable, I will withdraw my motion to proceed to its present consideration.

The PRESIDENT. The motion is withdrawn.

THE LEGISLATURE.

Mr. WOODWARD. Now I ask leave to present, at this time, a report from a special committee.

Leave was granted.

Mr. WOODWARD. The special committee has instructed me to present a report.

The report was received and read as follows:

To the President and members of the Constitutional Convention:

The undersigned, appointed a committee, to whom was referred so much of the article reported by the Committee on the Legislature as relates to the apportionment of the State into representative districts, and all propositions of amendment submitted thereto, respectfully report:

That immediately after their appointment the members of the committee met and proceeded to consider the matter referred to them. Appreciating the difficulty the Convention has heretofore experienced in coming to any satisfactory conclusion on this very important question, your committee realize, as well as the Convention, that they could only agree to any proposition by some concession and surrender of peculiar views to each other. In this spirit your committee have approached the consideration of

the question referred to them, and have unanimously agreed to and report the following section:

SECTION —. The Legislature at its first session after the adoption of this Constitution, and at its first session after each United States decennial census thereafter, shall apportion the members of the House of Representatives according to population, on a ratio to be obtained by dividing the whole population of the State, as ascertained by the most recent United States census, by one hundred and fifty. Any county, including the city of Philadelphia, having more than one ratio, shall be entitled to a member for each full ratio, but each county shall be given at least one member, and counties shall not be joined to form a district. Any county having less than five ratios shall have an additional member for her surplus exceeding one-half a ratio over one or more full ratios. Any county, including the city of Philadelphia, having over two hundred thousand inhabitants, shall be divided into representative districts, but no district shall elect more than four members.

All of which is respectfully submitted.

GEO. W. WOODWARD,
HARRY WHITE,
D. N. WHITE,
C. O. BOWMAN,
CHAS. R. BUCKALEW,
J. PRICE WETHERILL,
WM. J. TURRELL,
JNO. G. HALL.

Mr. BUCKALEW. I move to recommit that report to the committee which has just reported it, to correct an error. The gentleman who sits beside me (Mr. Hall) and myself protest against having our names attached to that report. There is a clause in it which was not contained when we signed it, and I therefore make the motion to recommit, in order that the correct report may be presented and printed this afternoon.

Mr. HARRY WHITE. Allow me to explain, as the secretary of the committee. I wrote the report which has just been read as I was authorized to do, as I understood, by the vote of the committee. We certainly agreed to say that the members of the House of Representatives shall be apportioned among the several counties according to population on a ratio to be obtained by dividing the whole population, &c., going on as has been read. The desire was to get a report at this time so as to have it printed, and before we left

the committee room—no difference what occurred—at all events we had not agreed upon the tribunal which was to make the apportionment; but by the authority of members of the committee the clause as read from the desk was put in for the purpose of raising that question. I read the report over to the chairman of the committee and to several other members. That was their understanding. Any gentleman, of course, can raise the question by moving to strike the clause out.

Mr. WOODWARD. This thing has only to be explained to be understood. The gentleman from Columbia (Mr. Buckalew) asked the committee to authorize him to draft a plan for apportioning the State. The committee thought proper to leave the gentleman free to move his amendment in Convention, but did not authorize him to submit his plan to the committee. Our report as agreed to, and as signed, did not provide for the first apportionment at all. After our report had been signed, the secretary (Mr. Harry White) called my attention to that omission. I reflected that Mr. Buckalew intended to bring forward a comprehensive plan for apportioning the representatives, both in the next Legislature, and in all future Legislatures, and I did authorize Mr. White to add to the report a provision for the apportionment of the State for the next Legislature, in order that Mr. Buckalew's amendment might be made to come before the Convention as a substitute for the provision which was in the report.

That clause of our report got in in that way. It was inserted by the secretary by my entire sanction since the committee dispersed at their last meeting, with no intention whatever of forstalling the amendment of the gentleman from Columbia; on the contrary, with the intention of making way for his amendment. Now, when that report is accepted, if it be accepted, and is taken up he will only have to move to strike out that provision and insert his scheme, which scheme I am altogether in favor of myself and intend to vote for. He has only to move to strike out that portion of our report and to insert his scheme, and the whole thing will be properly before the Convention; but without that provision there was no arrangement for the first appointment by the next Legislature of our State under this section, and therefore that amendment was necessary to give effect to the report as it stood. There was no fraud

and no underhand business intended by this to be practiced upon the gentleman from Columbia or anybody else. This is simply an explanation of the manner in which that clause came into our report; and I say now that it is right and that it will give the gentleman from Columbia a full opportunity to bring his substitute before the Convention whenever the subject is brought up.

Mr. HALL. The objection to this report is, that it is upon its face signed by every member of the committee, and therefore seems to commit every member to positions to which in point of fact some of us are opposed. To those who disagree to the clause objected to, it seems to me to be due as a matter of justice to re-commit the report, that the section as really agreed to should be reported, and neither the committee nor any member of it placed in the false position they now are. The subject submitted to us had complications enough for us to harmonize without adding to them the further question as to how and by whom apportionments shall be made. Upon all other points involved by mutual concession and compromises, the committee have come to an accord and did agree to report a section drawn and signed by every one of us. But upon this question of apportionment we did not and could not agree, and it was therefore our desire, and I think the wish of a majority, that this question should be left to the Convention, and that the section we agreed to should be presented unembarrassed. We all felt it to be of the highest importance that our report should be unanimous, and therefore we were careful to exclude any clause upon apportionment about which it was manifest we could not agree. That the report read is not the report agreed to is admitted on all hands. I do hope that it may be re-committed, that the section may be reported as agreed to, and thereby justice done to all.

Mr. J. PRICE WETHERILL. I entirely agree with the remarks of the last speaker on this subject. Two members of the committee, the chairman of the committee, and the delegate from Indiana, may have understood the matter, and I have no doubt did think with reference to it what they have here stated. I have no doubt they came to the conclusion that the report which they presented would be entirely acceptable to a majority of the committee. But every member of the committee signed a report simply stating

that the members of the House of Representatives shall be apportioned among the several counties of the State, according to a specific plan which they presented. The question of who shall make that apportionment was left open purposely. The delegate from Columbia, in committee desired to have an opportunity of presenting a plan of his own for apportionment either by a commission appointed by the Legislature or by a commission elected by the people. That the committee considered, I think very wisely, was a matter which did not belong to them, because that subject had been referred to the Committee on Suffrage, Election and Representation, and members of that committee had presented schemes and plans to the Convention looking in that direction. Therefore, as that matter had been handled by another committee and had not been specially referred to us, in the opinion of a majority of our committee it was desirable to have no action taken thereon; but I think an opportunity was agreed to be given the gentleman from Columbia to present, as an additional section, his matter, in the way he believes to be best.

But I regret, after our full consideration with all the members of the committee present, and after all the members of the committee had signed a paper in that respect, it was not reported as signed. The paper which I supposed would be presented by the chairman of the committee was a provision that "the members of the House of Representatives shall be apportioned among the several counties, according to population, on a ratio," &c., leaving the method of apportionment open, as to whether it shall be done by the Legislature, by a commission elected by the Legislature or by the people, or by a commission elected by this body, as has been variously suggested, to be considered on the amendment of the gentleman from Columbia.

Mr. HOWARD. I hope that the report will be referred back to the committee without any further debate. I do not think that at the present time we have anything to do with this report. We certainly shall have enough to do, as it is, with the merits of the case when we get it before us for our consideration, without now stopping to consider whether the committee has acted properly or not.

The motion to refer was agreed to.

Mr. WOODWARD. I move that the spe-

cial committee have leave to sit during the session of the Convention.

The motion was agreed to.

Mr. LILLY. I desire to call the attention of the Convention to the fact that it must be evident there is not now a quorum here, and if this committee leaves the room we shall not have enough members to attend to business.

Mr. DARLINGTON. I move that the Convention take a recess for twenty minutes.

The motion was agreed to; and the Convention accordingly took a recess for twenty minutes.

The PRESIDENT resumed the chair at the expiration of the recess.

Mr. WOODWARD. I am now prepared to make the report which all the members of the committee have signed.

The PRESIDENT. The report is now made.

Mr. WOODWARD. I ask that it be printed and laid on the desks of members by to-morrow morning.

The section reported was read as follows:

"The members of the House of Representatives shall be apportioned among the several counties according to population, on a ratio to be obtained by dividing the whole population of the State, as ascertained by the most recent United States census, by one hundred and fifty.

"Any county, including the city of Philadelphia, having more than one ratio, shall be entitled to a member for each full ratio, but each county shall be given one member; and counties shall not be joined to form a district. Any county having less than five ratios shall have an additional member for her surplus exceeding one-half a ratio over one or more full ratios. Any county, including the city of Philadelphia, having over two hundred thousand inhabitants shall be divided into representative districts, but no district shall elect more than four members."

Mr. STANTON. I move that the report be received, printed and laid on the table.

The motion was agreed to.

Mr. CALVIN. As we have no business before us, I move that the Convention do now adjourn.

The motion was agreed to, and (at one o'clock and twenty-two minutes, P. M.) the Convention adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FORTY-EIGHTH DAY.

TUESDAY, September 23, 1873.

The Convention met at half-past nine o'clock, A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

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

LEAVE OF ABSENCE.

Mr. J. N. PURVIANCE asked and obtained leave of absence for Mr. Corson for to-day.

PRINTER'S ACCOUNTS.

The PRESIDENT laid before the Convention the following communication, which was read :

To the Hon. John H. Walker, President of the Constitutional Convention :

The undersigned respectfully begs leave to submit the following statement to the Convention :

In compliance with the resolution of the Convention, I have submitted to the Committee on Accounts and Expenditures, statements of my accounts for printing and binding for the Convention. The first was to May fifteenth, the second from May fifteenth to July first, and the third from July first to July fifteenth.

These statements were made out, as I believed, in accordance with the law and my contract on the subject. The committee by rejecting some items and reducing others, reduced my claim nearly one-half. They did not deny that the work was done and properly done, nor claim that the prices charged (except in a few small items) were actually too high ; but they contended that the prices were higher than authorized by the schedule of the act of Assembly of March twenty-seventh, 1871. The main item was the price per one thousand ems for the composition of the Debates and Journal. They contended that this work was regulated by the price fixed in the schedule. I claimed it was not, but was to be regulated by the sixth division of section second of the same act.

We differed as to the true construction of that act. At the time the resolution

under which I made the contract was under consideration, it was openly stated by one of the leading lawyers of the Convention, and not controverted by any one, that the act did not fix the price for such work. I so understood the law myself, and with that understanding made the contract.

The Debates and Journals are altogether different from any work done by the State Printer for the State. The kind of work embraced in the schedule was well known. The sixth division of the second section provided for other kinds of work, and prescribed a mode for ascertaining the price. I notified the committee, or their chairman, in April last, that I claimed compensation for this work as above stated.

While the report of the committee does me great injustice (not intentionally, for I believe they were actuated by pure motives) in several respects, yet on this point—the composition of the Debates and Journal—the difference between us is so vital, and the amount involved so great, that I feel constrained to protest against the report.

I claimed seventy-five cents per one thousand ems for the composition. The actual cost to me was sixty cents per one thousand ems. The committee have allowed me only thirty-five and a quarter cents per one thousand ems. I pay the compositor for putting up the type alone, forty cents per one thousand. If I had supposed for one moment that this work was to come under schedule prices, I never would have made the contract.

The former report of the committee, made July 14, was read in Convention that day, printed in Philadelphia that night, and passed Convention the next day in my absence and without me seeing it or knowing what it was. As the Convention adjourned on that day, I had no opportunity of being heard on that report. But I now protest against it as well as this report. My contract is with the Commonwealth. I do not know whether the action of the Convention will be conclusive upon me. But I certainly have a right to

have all the facts in the case fairly presented, and the benefit of legal counsel on the questions of law involved. If the report of the committee should be adopted, and be conclusive against me, I shall suffer an actual loss of several thousand dollars on my contract.

I therefore pray the Convention before taking final action in the matter, to give me an opportunity of presenting all the facts in the case, and of being heard by legal counsel on the questions of law involved.

BN. SINGERLY,
Printer.

The PRESIDENT. What order will the Convention take on this paper?

Mr. LILLY. I move it be referred to the Committee on Accounts.

Mr. HAY. Mr. President: I do not know whether the reference proposed would be considered a fair reference for the reason that the Committee on Accounts have very fully considered the subject, and are very clear and very decided in their convictions of what the law applicable to this contract really is; so that the reference of this memorial to the Committee on Accounts would result in making no practical difference in their report. They have fully considered the subject—have laboriously and thoroughly examined the Printer's Accounts—and could come to no other conclusion than that which they have reported to the Convention. I have no suggestion to make as to the reference, if a reference is thought to be necessary at all; but I do not wish to be considered as desiring the reference which is proposed to be made. The law applicable to these accounts and by which the contract with the Printer is to be construed and governed is fully stated in the reports of the committee, and as well those sections upon which the Printer relies for the sustenance of his claims. This was done that the whole subject might be brought fully and fairly before the Convention.

Mr. LILLY. I made this motion because the Committee on Accounts are our financial committee and this is a financial subject. I have confidence in the committee that they will do justice to the State Printer and to the Commonwealth, and give full consideration to the case. If the Committee on Accounts are willing to hear Mr. Singerly before them, I take it the Convention will hear him by counsel. I think it is proper this matter

should go back to the Committee on Accounts. I am unwilling to have any reference of the subject to any other committee, because I think it would be over-riding and doing injustice to the Committee on Accounts to refer the subject to any special committee to be raised. I take it the Committee on Accounts have no personal feeling against Mr. Singerly. I know them to be honorable, high-minded gentlemen, as much so as any committee in this Convention, and we have found them to be as pains-taking as any committee we have got. Hence, I am for leaving the whole subject to them, and when they report finally, I shall be governed very much in my vote by what they say.

Mr. DARLINGTON. Would it be in order to move that this communication be laid on the table and printed, so that we may be able to see what it is? If so, I make that motion.

Mr. JOSEPH BAILY. That is the proper motion.

The PRESIDENT. It is moved that the memorial be laid on the table and printed for the use of the Convention.

Mr. HAY. I desire to make one statement, the propriety of which is suggested to me by the remarks of the delegate from Carbon, (Mr. Lilly,) and that is that it might be understood from what he has said that the Printer has not been already fully heard; or that the Committee on Accounts and Expenditures have not expressed a willingness that he should be fully heard, either before them or in such manner as the Convention might determine. I desire to state that I informed the Printer repeatedly, that the committee earnestly desired to hear any arguments that he had to make upon the question of law involved either by himself or by his counsel, and that the Printer replied that he did not desire to make any further argument than was contained in his oral statements to the committee and its chairman.

The reference to this statement of the Printer to the Committee on Accounts and Expenditures would be simply like the filing of exceptions to an auditor's report. The auditor has of course made up his mind before his report is presented and exceptions are formally over-ruled, and the report stands as originally made.

The Committee on Accounts and Expenditures have, as was their duty, reported in full upon this whole subject to the Convention, explaining in their report

the ground of the State Printer's claims, in order that the whole matter—his views and assertions as well as the construction of the committee, might be brought fully and in detail before the Convention. I do not think there are any facts stated in the memorial that are not stated in the report of the committee itself. Our aim was to bring up the whole matter to the notice and attention of this body.

Mr. LILLY. I am willing to withdraw so much of my motion as will be necessary to allow this memorial to be printed for the use of the members; but I believe the reference should still be made to the Committee on Accounts and Expenditures, instead of laying the memorial on the table. I suggest to the gentleman from Chester that he accept that modification.

The PRESIDENT. If the gentleman from Carbon would withdraw his motion for the present, it would probably facilitate the disposition of the subject.

Mr. LILLY. I am willing that the report should be printed for the use of the members; but I do think the report should lie on the table. It ought to go to the Committee on Accounts and Expenditures. I suggest that the gentleman from Chester accept that modification.

Mr. STANTON. Mr. President: What is the motion of the gentleman from Chester?

The PRESIDENT. That the memorial of the Printer lie on the table and be printed.

Mr. STANTON. That is the right motion.

The PRESIDENT. The Chair has difficulty in putting the question, because it virtually over-rides the motion of the delegate from Carbon.

Mr. LILLY. If the gentleman from Chester will only think upon the matter for a moment and allow my modification of his motion to be made, the report can be printed for the information of members and at the same time it will have its proper reference to the Committee on Accounts and Expenditures.

The motion to lay on the table and to print the report was agreed to.

THE LEGISLATURE.

Mr. WOODWARD. I move that the Convention now proceed to consider the report of the special committee on the subject of representation.

The motion was agreed to.

The PRESIDENT. When the Convention last had under consideration on second reading the article on the Legislature, the question was on the nineteenth section. Upon that section a special committee was appointed to make a report. That report was made and is now upon the tables of members.

The section reported by the committee will be read.

The CLERK read as follows:

"The members of the House of Representatives shall be apportioned among the several counties according to population, on a ratio to be obtained by dividing the whole population of the State, as ascertained by the most recent United States census, by one hundred and fifty: any county, including the city of Philadelphia, having more than one ratio, shall be entitled to a member for each full ratio; but each county shall be given at least one member, and counties shall not be joined to form a district. Any county having less than five ratios shall have an additional member for a surplus exceeding one-half a ratio over one or more full ratios.

"Any county, including the city of Philadelphia, having over two hundred thousand inhabitants, shall be divided into districts; but no district shall elect more than four members."

Mr. WOODWARD. Mr. President: If the Convention are disposed not to discuss this amendment I am not inclined to discuss it. It is very plain; it speaks for itself. It is signed by every member of the committee except Mr. Mac Veagh, who was absent necessarily, else I think his name would have been appended to it. I am not aware of any objection to it.

Mr. President, the Spaniards have a proverb, "If you cannot get what you like, like what you can get;" and like all old sayings and proverbs, there is great truth wrapt up in this. I suppose that some of the best verdicts ever rendered by juries were verdicts that did not express the views of a single juror; and this report is something like that. The Convention have been beating about for days, if not weeks, to find that common ground upon which a majority could stand. How sadly they failed everybody knows. They then referred the whole subject to a committee composed by yourself, and probably representing as many diverse views as the Convention contained. They came together with the deter-

mination, if possible, to agree, to find that common ground, and to give up individual preferences and opinions for the common good—and this report is the result.

That committee made their report in, I think, the best spirit, and if it be not exactly what it ought to be, it is the best you can get; and now the question is whether the Convention will adopt it. No doubt gentlemen on the right hand and the left will suggest amendments, and we can go on debating it from day to day, voting down amendments, moving to strike out and insert; but I take it that here is the best that can be got from this Convention, and according to the philosophy of the proverb, "If you cannot get what you like, like what you can get." I do not believe that a committee could have been appointed that would reflect the various opinions of the Convention more truly than the one which was appointed.

Now, let me hope that the Convention will consider it in the same spirit in which the committee framed it; and if they do, without much debate, probably without any amendment, this section will either be adopted or rejected.

I do not enter into the details of the report because I do not know that they require any explanation. It is brief, and the language explains itself. Every county in the Commonwealth is to have a representative. That is in accordance with our previous Constitutions, and I think there are good reasons for it. But some of the committee did not think so, though they gave up their opinions for the sake of harmony. Then the population of the State is to be divided by one hundred and fifty to get the ratio; and then every county that has that ratio must have a member; and if a county has more than one ratio, it is to have a member for each ratio. That is fair and reasonable; but then there will remain some fractions. We say that those fractions belong to the small counties. Those counties that have five or more members can best afford to let the fractions go to the counties that have fewer members; and therefore we provide that these counties that have less than five members, shall have a member for every half of a ratio. They have a member because they are a county in the first place. They have a member for every ratio. Then they shall have a member for every half a ratio.

Now, sir, this is our report. It speaks for itself, and without further remarks, so

far as I am concerned, I submit it to the consideration of the body.

MR. DARLINGTON. I move to amend by inserting in the first line, after the word "apportionment," the words "by the Legislature."

MR. PRESIDENT, when the report of the committee was made yesterday, it seemed that they were divided on this question, the majority of them evidently being in favor of an apportionment by the Legislature, while the minority were averse to it. This amendment presents the question to this body, whether the Legislature shall apportion the State for senators and representatives, or shall it be done by some new and untried scheme. I do not think we are prepared to go in advance of any other State of the Union by trying any experiment of this kind. The apportionment by the Legislature is known and well understood. It will vary, of course, somewhat with the complexion of the Legislature itself, and it is liable to be influenced, I am aware, by party considerations, and therefore we provide here by this report for an apportionment of the members according to population. There is to be a division, according to this project, into districts in some counties, and the question is, who are best qualified to make that distribution? I know that in New York State, the division of counties into single districts is made by a body known as the county supervisors, corresponding, I believe, very nearly to our county commissioners. That system is not entirely satisfactory to them and probably it would not be satisfactory to us here. After all, with the information which the members of the Legislature from all parts of the State possess, I apprehend we can entrust this duty to that body better than to any other.

It would be strange indeed if we were to provide, as the gentleman from Columbia (Mr. Buckalew) at one time suggested, for the choice of say ten commissioners of apportionment by the Legislature themselves, thus declaring that we would not trust the Legislature, but would trust those whom the Legislature may select. I am opposed to that scheme or any other which provides for any apportionment except by the Legislature. I submit that this is the proper place to settle that question. The amendment may just as well be made here as anywhere else. It comes rightly in here to say who shall apportion the Legislature, be its number

what it may be. The Legislature are the proper body, I submit, and therefore it is that I offer this amendment now. A vote upon it will settle the question one way or the other, and I ask that the vote be taken.

Mr. CURTIN. Mr. President: I have not participated in the debate on this vexatious question and had not intended to do so; but generally we are affected most by that which most affects the neighborhoods in which we live. I observe that this amendment to the Constitution will give one member to Elk county, with 8,000 people; one member to Forest county, with 4,000 people, and it will give one member to Centre county, with a population of 35,400.

Mr. J. N. PURVIANCE. No; you would get two members.

Mr. CURTIN. No, sir; I have made the calculation; we are just outside the bar; 30,000 people in the county in which I live are debarred representation, and that principle which lies right down at the foundation of republican representative government is ignored.

I have listened to the debates on this subject with great interest indeed, and not without a large measure of instruction. Even the protracted debate of last week was instructive, although sometimes it descended almost into a wrangle. Each member who has paid attention to this important subject seems to have a scheme of his own, and we heard discussions on the various projects of the members of this body. My friend, the delegate from Mercer county, (Mr. De France,) tells me that he got on very well at school in arithmetic until he struck vulgar fractions, and that they confused all the remainder of his school boy life. [Laughter.] If it were not for the clearness with which he expresses his opinions here, I would be very much afraid that that confusion had followed him and many of the members of the Convention into this body.

Early in the proceedings of the Convention I voted with a small minority, so small that the compliment may not be ill placed to say an intellectual minority—in favor of electing the Senate by a ticket at large and not enlarging the body, and making the number of members of the popular branch of the Legislature three hundred, and electing them in the ordinary way, submitting the apportionment every ten years to the legitimate and proper authority, the Legislature itself.

The plan, however, had too much simplicity; it had about it too much of the odor of precedent, and law, and usage in this and other States of the Republic, as well as in the national government, to meet the approbation of this Convention, and immediately we fell into this system of arithmetic to regulate the representation of the people.

Sir, if this is a representative democracy, then we should represent the people of that democracy. As the people cannot all assemble to make their own laws, we must, from necessity, send men to represent them. Whenever this Convention has attempted to depart from that great fundamental principle of our theory of government, upon which the whole fabric is based, we fall into endless discussion, difference of opinion, and sometimes almost into absurdities.

The fact is, Mr. President, that if you take up the article on the Legislature, you will find that we leave members of the Legislature very little to do. We have made such stringent limitations on the power of that branch of the government that the position of a member of the Legislature is to be an almost nominal office hereafter. Ah! he takes that heavy oath. That is true. He swears when he goes into the Legislature and he swears when he goes out of it, and one would suppose, from the pains and penalties we visit on the head of the poor member of the Legislature who does wrong, and the dread of eternal punishment if he perjures himself as he goes in or comes out, that this Convention was seeking to put some one of the citizens in that unfortunate office into the penitentiary. Then, as the only business of a member of the Legislature each ten years, by these amendments we give him the puzzling sums of arithmetic by which it shall be ascertained how a free people shall be represented, when a free people are to be represented, according to their numbers, by apportionment made by the legitimate and properly constituted authorities of the State; that is, we take from the member of the Legislature all his legitimate and proper powers, and we set him to hard swearing and ciphering. Now, Mr. President, I fear if we keep wrangling on this question much longer, and continue our calculations, and run it into arithmetic by vulgar fractions—a word I do not use with any disrespect to this enlightened body—before we get a member of the Legislature into

the penitentiary for a violation of his duty, under our pains and penalties, or down into a place harder to get out of, half of us may be in the lunatic asylum. [Laughter.]

But, Mr. President, I am in hopes that the question is to be settled. A majority of this Convention have decided more than once that the number of members of the House of Representatives shall be one hundred and fifty. I do not know what magic there is in that number. I have not found one hundred and fifty running through the calculations of members here so as to control the legal proceedings to ensure just representation, but yet it seems to be the will of the majority of this body, and to that will I am ready to bow. Then a majority of this Convention have decided that the State shall be arithmetically apportioned. I am perfectly satisfied with that if it is the will of the majority; and I only rose to say that against taking away the representation of the county I live in I solemnly protest as a member of this body. I will vote against this amendment or any other amendment that moves the fabric of this free government of Pennsylvania from its great fundamental and ever living principle, that we are a representative democracy and that the representatives represent the people and not territory alone. But if it is the pleasure of this Convention, as it seems to be of a majority, to adopt some such system as this, I will make no factious opposition and will be very happy to give any amendment they propose, even of that kind, my active support.

Mr. LILLY. Mr. President: I am opposed to this report out and out —

The PRESIDENT. The amendment of the gentleman from Chester is now before the Convention.

Mr. MACCONNELL. I rise to a question of order, Mr. President.

The PRESIDENT. The gentleman will state his question.

Mr. MACCONNELL. It is that the amendment proposed by the gentleman from Chester is not germane to the section. The gentlemen of the Convention will observe that the committee confined itself exclusively to the manner in which the apportionments should be made and that alone. Its report does not touch at all in any way the power that shall make apportionments. It manifestly intended to keep those two subjects separate: First, to settle the manner in which the apportionment should be made, and then to

settle, as a subsequent and distinct proposition, the power that should make the apportionment. They pursued that course, and I think they acted wisely in so doing. Now, the gentleman from Chester proposes to introduce the power that shall make the apportionment into a section treating exclusively and solely of the manner in which the apportionment shall be made. I submit, therefore, that his amendment is not in order.

The PRESIDENT. The Chair does not sustain the point of order.

Mr. DARLINGTON. At the suggestion of several friends, I am induced to withdraw the proposition now, so as to introduce it at another place.

The PRESIDENT. The amendment is withdrawn.

Mr. LILLY. Mr. President: As I said before, I am opposed to the section reported because there is no justice in it, and it strikes at the foundation of representative government. There are several counties that will be most grossly wronged by it. Forest county will have a member with 4,010 people. You wrong the county of Adams 26,305 by it; you wrong the county of Bedford 25,625 by it; you wrong the county of Carbon 24,134; you wrong the county of Centre 30,408; you wrong the county of Clarion 22,527; you wrong the county of Clearfield 21,731; you wrong the county of Columbia 24,756; the county of Greene, 21,878; the county of Huntingdon, 27,241; the county of Lawrence, 23,288; the county of Lebanon, 30,086; the county of Perry, 21,437; the county of Somerset, 24,216; the county of Wayne, 29,178; the county of Tioga, 31,087.

These are a few of the counties that are wronged; and the other counties that will have two members or more are equally wronged, as will be seen if the table is worked out. I am opposed to any such unjust and improper kind of apportionment of members of the Legislature. I believe that the representation in the Legislature of Pennsylvania should be based on population, and that representation should be brought down as close as possible to the people. I think the counties having over three members should be divided into single districts so as to bring the members close to the people. I should be in favor of single districts all over the State, cities and all, if it had not worked badly here in Philadelphia, as was said by our late lamented President and others here with whom I have consult-

ed on the subject. Consequently I am willing to give it up as far as the cities are concerned. But the only just and fair way the representation of this State can be made in the Legislature is upon the basis of population, and let that population be brought near the representative and divide counties into single districts if you please. It should be done, and it is the only just way it can be done. I am opposed to this tinkering around by which one gentleman figures his county two members by some two hundred votes and consequently he is for it, and this man figures himself a few votes just over the line, and persons representing counties away below the proper proportion find that their county does not come in. This report does a great many counties injustice, and I am opposed to it, and I think the good sense of this House ought to vote it down.

Mr. J. W. F. WHITE. Mr. President: I shall certainly vote against this report. I have several objections to it. As I said on a former occasion, my mind for a while inclined to give each county of the State one representative; but reflection and trying to see how that operated have brought my mind to the conclusion that it would be unjust to other portions of the State, and cannot be sustained on any sound principle. Any member of this Convention who will take this report and try to work it out on the present population of the State, will find that the eight small counties that have together a population of only sixty thousand, will have the entire control of the Legislature and of the entire legislation of this State. Forest county, with only a population of four thousand and ten, has the same voice in the Legislature as Centre county, with over thirty-five thousand inhabitants, or as Tioga county, with over thirty-five thousand inhabitants. So with Cameron. Forest and Cameron counties, with only eight thousand two hundred and eighty-three of a population together will have as much voice in the Legislature as Tioga and Centre counties, with over seventy thousand inhabitants. Now, on what principle can that apportionment be sustained? You may carry it out in several other districts, and, as I showed on a former occasion, these eight counties, with a population of sixty thousand, will have the same voice in the Legislature as eight other counties that have only eight members, with two hundred and eighty-four

thousand of a population. We have heard for years past great complaints of the Legislature, because of the injustice of their mode of apportionment; that some portions of the State have been deprived of their just representation by the system of gerrymandering. I appeal to the members of this Convention if they ever knew an apportionment in the State of Pennsylvania, or ever heard of an apportionment, that did as great injustice as this one; as great inequalities in the basis of representation in the Legislature. In all probability, when the next apportionment takes place, or any future apportionment, on the basis of this section, any party that can carry these eight counties, of sixty thousand population, will have control of the Legislature, of the entire legislation of the State, and of all the offices to be elected or appointed through the Legislature.

This is one feature of the report that I cannot sustain. Then there are other features. Take the concluding portion of this section: "Any county, including the city of Philadelphia." I am opposed to criticising the language of this, as it was no doubt hurriedly written by the committee, but I think it is very awkwardly worded. However, passing that, "Any county, including the city of Philadelphia, having over two hundred thousand inhabitants, shall be divided into districts; but no district shall elect more than four members." There is but one county in the State, Allegheny, that has over 200,000 inhabitants. That section then applies solely to Philadelphia and Allegheny. They are not permitted to elect more than four members in a district; yet other counties in the State, if they have a population appropriating 200,000, might elect eight members on a joint ticket. Luzerne now could elect six with her population of, I think, 160,000, and if you figure it out you will find there may be eight members in a county to be elected on a single ticket, without division, and yet in Philadelphia and Allegheny counties we are restricted to not more than four in a district. Why that feature in this report? If it is wise, prudent or proper to divide Philadelphia into districts not exceeding four, or Allegheny into districts not exceeding four, why not extend the same principle to other counties in the State? I certainly should favor an amendment to this section if there is any danger of its passing, to the

effect that every county election more than four members shall be divided into districts.

That, at present, would embrace Luzerne, Schuylkill, Lancaster and Berks, these four counties electing more than four members. If the principle that you put into your Constitution be a good one as applicable to Philadelphia and Allegheny counties, why not extend the plan to others and make the rule uniform? Why not make your section somewhat symmetrical?

Besides that, I call attention to another feature of this report, which says;

"Any county, including the city of Philadelphia, having over two hundred thousand inhabitants, shall be divided into districts, and no district shall elect more than four members."

There is no rule, no limit whatever as to the mode or manner of division. It opens the door to the worst kind of gerrymandering. In Philadelphia or Allegheny county there may be districts of any shape or size. There is no restriction whatever as to the population of those districts. There might be a district of half a ratio, another with one and a half and another with one ratio and three-quarters. Any kind of a district whatever that might be formed in Philadelphia or Allegheny county would be within the letter of this section. I want the matter better guarded, so that no county or city shall be divided into districts, unless it be imperative that they shall contain a proper proportion of inhabitants. This section, it seems to me, opens the door for the wildest kind of gerrymandering, and in the very portions of the State, to, where it will be most injurious, as bad as any combination of counties and probably far worse.

I call attention to these features of this section because I know, and we all know, that the committee drew it up hastily yesterday in order to bring it before the Convention; but I submit it would be unwise for us to pass it in its present form, and it ought to be, if the principles are here adopted, put into better language and more guarded. As it stands I cannot vote for this section.

Mr. DE FRANCE. Mr. President: I hope the chairman will explain the exact meaning of this report. Some of the members seem to be under a different impression from what I am in regard to what it means.

The way I have figured it out, I make it that where a county has population enough for a member, where its population amounts to a quota, twenty-three thousand four hundred and seventy-nine, then it gets a member on population; but where it has not the population it gets it anyhow. For instance the way I figure it, Adams county will get only one member. I understand the chairman says it would get two under his idea.

Mr. J. PRICE WETHERILL. No.

Mr. DE FRANCE. Allegheny county would get eleven. Armstrong county would get one under the full ratio and it has nineteen thousand nine hundred and three over, being more than half a ratio, and consequently would get one for its fraction and one for the full ratio, which would be two. Beaver county would get two on the same principle, it having twelve thousand six hundred and sixty-nine of a fraction over. Berks county would get five on that principle; but Centre county, only having a fraction over ten thousand nine hundred and thirty-nine, would get but one member. Mercer county would get two members only; and in the way that I figure it there would be one hundred and fifty-six members in the Legislature.

This plan evidently, Mr. President, is all in favor of the small counties. There is nothing in favor of the medium counties or of the large cities; it is all in favor of the small counties. There are seventeen small counties, if I count rightly, that would get a member without having the necessary population at all. Wherever the population comes up to a ratio, then we go upon that basis; but whenever it does not, then the small counties have the advantage.

It seems to me that there might be a better scheme than this adopted, although I am not certain of it. I admit that to leave it to the Legislature would be jumping from the frying-pan into the fire. The last apportionment that was made was enormous; it was awful. No person could imagine upon what basis in the world the apportionment was made by looking at it. Warren county, with twenty-three thousand inhabitants, got as many members as Mercer county, which lacks twenty-three of having fifty thousand. Now, can there not be, in some way, a better apportionment made than that? So it is with Washington county, that has forty-eight thousand or forty-nine thousand people, and Greene

county has as many members in the Legislature as Washington county; and so it is all over the State. Then Susquehanna and Wyoming are in one district, with less taxable inhabitants than Mercer county, and have two members. It has been monstrous, there is no doubt of it, Mr. President, but this system, it seems to me, would work nearly as unfairly as any plan that has been adopted by the Legislature.

I hope the report will be amended and changed somewhat, although if it is passed we will try to do the best we can under the circumstances; but it would work very unfairly and all in favor of the small counties.

Mr. MACVEAGH. Mr. President: Before the vote is taken I should like to say that I agree with the main idea of this report, for it is identical with the idea underlying the first report I had the honor to make to this body by the authority of the Committee on the Legislature. It accepts the same divisor, and of course it produces the same ratio. It accepts the principle adopted by this Convention by repeated votes of giving each county a member. It annexes the amendment with reference to the division of cities or counties having over 200,000 inhabitants which I proposed in the committee, and which I purposed to propose to that section if it had come before the Convention.

There are but two particulars in which it differs from that report, and in those particulars I have endeavored strenuously to bring my mind to accept it as a compromise. Those particulars are, first, that it gives a fraction of one-half a representative, instead of two-thirds; and, in the second place, that it gives the benefit of the fraction to counties having less than five members instead of to counties having less than three members.

I confess, however, that I am entirely unable to see the slightest possible advantage in these changes. They look to me as if they were made simply to meet certain arithmetical results obtained by gentlemen by ciphering this problem. I cannot believe that it is wise to increase the disproportion existing between the counties entitled to one member by the ratio, and the smallest counties that get one member as a community; for this Convention has from the beginning, I insist, misunderstood the effect of giving one member to the smallest counties. It is not to the injury of the large communi-

ties, it is not to make their representation disproportionate. It bears most severely upon the counties entitled to only two members and it bears only with severity upon those counties. It never was a severe measure of apportionment as to Philadelphia. It was "full measure heaped up and overflowing" as to Philadelphia, from the beginning. It never was a severe method as to Allegheny; it was a full and generous treatment of Allegheny; but it was, and is, and will continue to be, in my judgment, always a very severe method of apportionment for some dozen or fifteen counties in this State which are each entitled to a member by the ratio.

Now, in order to equalize that, the Committee on the Legislature originally proposed to give to those counties, and those counties only, because they only were severally afflicted by this method, a member upon a fraction. This special committee in compromising the matter has utterly lost sight of the principle which was at the basis of it, and has carried the apportionment not only beyond its legitimate results, but to a point where it produces the original injustice in still greater proportion. Surely gentlemen are able to understand and to see at a glance that this must be so, that this injustice is aggravated by trying to arrange for accidental fractions here and there throughout the State by a general system giving the benefit of it to the counties that never were seriously harmed by the method, and thereby diminishing the relief afforded to those counties that are entitled to relief. It is, therefore, a mistake, I submit, and a mistake as to which no sufficient answer has yet been given, and as to which I challenge any member of this special committee to give a sufficient answer for enlarging the number, so that every county entitled to up to five members shall have the benefit of this fraction. I do not care much whether the fraction is one-half or two-thirds, but the fraction of two-thirds seemed to me to be the juster fraction, because it required a proportion that seemed to the committee more equitable in the distribution of the members. In the next place, having done that, it also makes it harder by the mere change of the fraction. If you limit it to the counties having two members only, that is, one member by the full ratio, and one member by the fraction, I do not have very much objection to the change of the fraction from two-thirds to one-half; but when you take it up to counties

having four full ratios, and then propose to saddle upon these smaller counties that are intermediate between the smallest and the largest another member to the large counties, for half a ratio, you do flagrant injustice without any adequate necessity.

I do not deny that you may take up the figures, and some member may get up and say, "Why, my county is in a very unfortunate position;" and I call this Convention now to witness that there is no county in this State that would have suffered by the accident of its population so grievously as the county I have the honor to represent on this floor, by the report I originally made. The fraction of one-half saves a member to Dauphin county, but it is an iniquitous and unjust fraction as now applied, whether it gives Dauphin county an additional member or not. If the Convention see fit to give it, Dauphin county, doubtless, will cheerfully accept it; but it is not such counties as Dauphin that suffer most by the apportionment as now proposed, but it is the small community that has not the sufficient population; it is the counties ranging from twenty thousand to thirty thousand that suffer, and those counties only, in my judgment, should be allowed the benefit of the fractions.

Mr. CURTIN. If there is no amendment pending, I propose to offer an amendment.

The PRESIDENT. An amendment is in order.

Mr. CURTIN. I am perfectly convinced by the speech of the chairman of the committee that if we are to apportion the State in this way, and we are to ascertain the measure of representation by these calculations, we should make it two hundred instead of one hundred and fifty. I therefore move to strike out "one hundred and fifty" and insert "two hundred," where it occurs in this report.

Mr. MACVEAGH. I suggest to the gentleman that the difficulty will be reached by striking out "five" and inserting "two," and striking out "one-half" and inserting "two-thirds."

Mr. CURTIN. No; that will make it worse.

Mr. MACVEAGH. No, sir, it will not make the inequality worse.

Mr. CURTIN. The gentleman will understand that I am struggling for Centre county. [Laughter.] We shall never get a member by that.

Mr. MACVEAGH. Centre county gets two.

Mr. CURTIN. No, sir, we are just within 800 of getting two, and for ten years we shall not get two. One county has just eighty-two over the ratio and will get two members. I cannot understand, nor do I think that the plain common sense of the people of the State can understand any such disproportion in representation as that.

Mr. MACVEAGH. The gentleman will allow me to make another suggestion, and that is that there was a method with reference to filling the deficiency by taking the largest fraction which was offered and which I purpose to support, which would have prevented such glaring injustice as those of Montgomery and Centre; but that does not reach the cardinal injustice of this proposition. That will be reached only by striking out "five" and inserting "two" and by changing "one-half" to "two-thirds." Then, with an additional amendment providing that the number shall be made up by utilizing the largest unrepresented fractions, you come as near justice and equality as it is possible in a problem of this kind to come.

Mr. EWING. I rise to a question of order, or rather to ask a question for information. If I understand the business before the House, we have the article on the Legislature before us. An amendment to the article was offered by the gentleman from Philadelphia (Mr. John Price Wetherill.) That was before the House. Now, as I understand, the report of this committee is offered as an amendment to that amendment. If so, is a further amendment in order?

The PRESIDENT. The nineteenth section of the article on the Legislature was referred to a select committee, and that committee have reported it in this form.

Mr. LAWRENCE. This report takes the place of the original section.

Mr. KNIGHT. Mr. President: I have no doubt it is the object of this Convention to secure, if possible, a better class of representatives in future; in other words, that we shall have a Legislature better calculated to represent the people at large. To secure that desirable object, in my opinion, we should largely increase the number of members. That would settle the difficulty with regard to the representation of smaller counties.

As I understand it, one of the causes that led to the calling of this Convention was the desire of the people that something might be done to assist the Legislature to protect themselves from their children, the corporations of this State at present in existence and those that may come into existence hereafter. I know no better way to do that than to send the members from the body of the people, which will insure a better class of men, so that if any corporation of any description or character should have any design upon the Legislature whatever it would be out of their power to accomplish it if it was not proper and just that they should have the legislation sought for. I say to gentlemen, make the number of the House of Representatives three hundred in place of one hundred and fifty. Then there will be no difficulty, as I have said, in giving the small counties separate representation. I am greatly in favor of their having that representation. I have voted constantly, and I intend to do so as long as I am in this Convention, for the highest number that may be named, up to three hundred.

When this question comes up before the Convention there is generally something said by gentlemen showing a fear that Philadelphia will get more than her fair share. They need have no fear whatever on that score. Philadelphia wants nothing more than her share. She can afford to be quite liberal to the balance of the State, taking into consideration the fact that the assessed value of her real estate is \$502,415,000, and the assessed value of the balance of the whole Commonwealth is \$585,377,000. The assessed value of the real estate alone in Philadelphia is nearly one-half the estimate of the whole assessed value of the Commonwealth, and yet she does not ask at any time more than one-fifth of the representation.

I cannot vote for this report, sir, but I hope for the good of this Commonwealth that we shall largely increase the number of the House, and let us have a Legislature that cannot be corrupted even if there should be a disposition on the part of the most powerful institutions in the State to do so.

Mr. D. W. PATTERSON. Mr. President: I cannot give my judgment or vote to this report, and if I was not certain that I could read the English language, after reading the names at the foot of this report, I should conceive that there was either a very great mistake made or that the au-

thors of this report had suffered under an aberration of mind during the past few days. It was proposed and fixed by this Convention that we make the basis of representation *population*, changing it from the old Constitution, which made it *taxables*. After that it was proposed to mix up this basis and give each county, small and great, one member on the ground of territory. There were some pretty strong arguments in favor of that on the basis of community, municipal organization, and there were several gentlemen on this floor who made very strong arguments in favor of such a proposition; but when first introduced to this Convention it was made to apply to *all the counties* upon that basis of territory, including the great and the small. But this committee has departed from the basis of population and also from the equality which was first proposed, of giving each county, on the ground of territory, a member. It gives each county a member whether it has the ratio or not; but it does not give the counties that have one ratio and over any member upon the basis of territory. If they did there would be some ground of equality; there would be some justice in it, with a view to effect a compromise of this matter.

They want to utilize fractions, they say; and how do they utilize them? Why, the large counties, consisting of five or six, and the cities, are not entitled to an additional member until they have a *whole* ratio, but the small counties are entitled to an additional member to the one they have on territory, when they have only half a ratio. Is not this doing injustice to the large communities, to the dense communities, to the counties that pay the taxes of the Commonwealth and support it in its governmental transactions; that pay the school taxes and distribute the proceeds of their taxation among the smaller counties? That the small counties should ask that unequal advantage in representation over the large counties is unusual and unprecedented. It is so in conflict with any fixed principle of representation that I could scarcely believe that seven or nine respectable gentlemen belonging to this Convention could affix their names to such a proposition. It cannot be supported upon any principle of justice or on a basis as fixed. It is not based upon population; it is not based upon taxables; it is not based upon territory, and it discriminates altogether in favor of small communities, the small

counties. The report is, in my opinion, neither based upon principle or justice.

I see, Mr. President, that you fairly, and no doubt considerably, appointed on the committee who made this report three gentlemen representing large counties. Allegheny was represented on this committee, and Philadelphia abundantly represented by two very able gentlemen, both of which are large communities; but after you take off these two large communities thus represented in this committee, you do not find the other counties which have five representatives, consisting of old Luzerne and Schuylkill and Lancaster, and those approaching it, like Berks county, at all represented on this committee, and hence it may be that the interests of such counties, with such large populations were not deemed worthy of consideration by this committee. The discrimination made in this amendment operates against those having more than five, because it says those counties having five are not entitled to an additional member until they have a full ratio of twenty-three thousand five hundred, while all the rest not having that number—all the small counties—are entitled to an additional member when they have half a ratio, viz: eleven thousand seven hundred and fifty people.

This Convention understand the effects of this report of the committee and its unfair provisions as well as I do, and perhaps better. But I must say, without desiring to detain this Convention, that there is so much inequality in this, so much partiality, so great injustice that I cannot conceive for a moment that this Convention can adopt the report, based as it is upon no fixed and uniform principle, but discriminating all the time against large counties or communities. One man is as good as another, governmentally speaking, in this country, thank God, and he ought to be represented and in governmental machinery ought to have the same voice with every other man; but if we adopt this report it can be said of us, and it will be said on account of the injustice of it, by every man of every party, that we are a set of blockheads and that we do not regard the justice of representation in this government. I cannot conceive that this Convention, as calm and deliberate as they are this morning, will adopt this report, and thus cast a reflection on representative government, yea upon our own ability to make a fair and thorough representation and

apportionment of the Commonwealth which we represent. I cannot for a moment think this report will be adopted. It certainly ought not be, and I must condemn and repudiate it on behalf of myself and every man, Republican and Democrat, in this Commonwealth who regards equal representation in this, our representative government.

The PRESIDENT. The amendment is to strike out "one hundred and fifty" and insert "two hundred." That is the question before the Convention.

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

Mr. BEEBE. I second the call.

Mr. STRUTHERS. Before the vote is taken, I desire to say that there is one thing which I have looked for in this report, but have not found. It does not fix the number of representatives. It only provides a sliding scale by which, from time to time, the number of representatives in the State may be increased by the Legislature. I am opposed to this indefiniteness. There should be some positive limit fixed somewhere, and I thought that this Convention had already settled it at one hundred and fifty representatives. That would certainly be the extreme limit to which I would consent. For the reason that the report does not settle the number of representatives, I am opposed to it, and shall offer, at the proper time, an amendment to make the number one hundred and fifty, which I believe to be the largest number that the people will consent to. I do not appreciate the argument of the gentleman from Philadelphia, (Mr. Knight,) who contended for three hundred members or any other large number, on the ground that by such an increase corruption would be prevented. I believe that you will only prevent corruption by restricting the number. With a large Legislature here would simply be a large class of men who would do work cheaper, and the corporations and other bodies who approach legislators improperly would simply have less money to spend for legislation and could buy it cheaper.

Mr. DE FRANCE. It will be recollected, Mr. President, that some time ago I wrote to several of the Governors of the Eastern States in regard to what their experience and opinions were upon the subject of a large number of representatives in a Legislature producing or preventing corruption. They answered me, and I read the letters here. They stated that they

believed a large number of representation would and did prevent corruption, and they were unanimous in that opinion that greater purity was secured in legislation by a greater number than we have in the Legislature. They stated that they believed this because the experiment had been thoroughly tried in their several States, and that several attempts had been made to decrease the number without effect.

I have listened to the arguments of gentlemen upon this floor in regard to that matter. Their principle argument was that the more the representation be increased the weaker will be the representatives. I do not care if the representatives be weak if they be honest and if they will not sell out legislation. If they will not be corrupt, I do not care whether they are weak or not. But I am not prepared to admit that increasing representation will secure weaker representatives. I never knew that in the New England States there are any weaker men than there are in the Pennsylvania Legislature. I never heard of such a matter before. My friend from York (Mr. Cochran) said that perhaps in answering my letters the Governors of these States did not want to ventilate their dirty linen. I have as much confidence in that gentleman's honesty and in his ability as has any man on this floor, but that was a very small argument, in my opinion. Do you suppose that the dirty linen of Pennsylvania and Kansas and all these other States has not been ventilated pretty well? Do you not think that if the Legislature of the New England States had been as corrupt as those of the States in which corruption has become notorious, that their rottenness would not have been exposed by this time? These States were formed several years ago, and there has been no corruption in their legislation to amount to anything. There has been no purchase of legislators when the election of United States Senators has been held or in anything else that I know of.

I am in favor of this amendment simply from the fact—I do not know that I could arrive at it by any long train of reasoning, or by any curious reflection—but from the simple fact that in New England, where the people are as avaricious and as careful about dollars and cents as we are, that their legislators have never become corrupt. Why has this been? There must have been some specific reason for it, and that reason is to be found in

the fact that their Legislatures are large in number, and that is the only reason that I can see. We all know that if you attempt to bribe one hundred men it would be very hard to do it because some of them will be leaky. You can, however, bribe four or five men with comparative ease and safety.

But, Mr. President, I have not the strength to go on and argue this question at length. I merely throw out these ideas. It has never been questioned that New England contains Legislatures that have not been corrupted, and the fact stands that their Legislatures are composed of much larger numbers than ours, and this fact cannot be disputed by the trivial argument that the gentlemen who have tried to answer it have resorted to.

MR. J. PRICE WETHERILL. I desire to say a few words on this subject before the vote is taken. I think the mistake that the Convention will make is this, that we should not fix the number of the House at two hundred, or at any other fixed number, without acting upon a ratio arranging the basis of representation on that number. If we fix the number at two hundred, we will have the same difficulty as to whether there shall be fractions of ratios on that two hundred as we have now. If we look at it we will see that the House will exceed two hundred members. What will be a full ratio of that membership of two hundred? It will be in the neighborhood of eighteen thousand.

MR. GUTHRIE. Of twenty thousand.

MR. J. PRICE WETHERILL. It will be in the neighborhood of eighteen and not of twenty thousand. Now, therefore, you must have, to entitle every county on a full ratio of population, eighteen thousand inhabitants for one representative: or if you give for one-half ratios on that number, then every county must have a population of nine thousand before they can have a representative. Where would the smaller counties be on that calculation? It would not even meet the difficulties as I understand it in the smaller counties, because they must have a population of nine thousand on a half ratio, even in a House of two hundred members, to entitle them to one representative.

Again, where would the counties entitled to two representatives, on one and a half ratios, be on that calculation? If eighteen thousand be a full ratio, and nine thousand be a half ratio, and one and one-half ratios give a county two

representatives, then, on that calculation, a county must have a population of twenty-seven thousand to give it two members. Although that may suit Centre very well, and although that may suit the ten or eleven counties in the State having a population of thirty thousand and over, yet this same complaint, this same bitter invective, this same offensiveness, would be presented in the Convention in this State, from the representatives of every county under twenty-seven thousand in population, and there are a great many between a ratio of eighteen thousand and a ratio of one and a half, or twenty-seven thousand, that would only be entitled to one member. We would have the same difficulty in those counties.

I do not entirely agree with the report of the committee, although I signed it in a spirit of compromise; but when we increase the House from the original proposition of one hundred and fifty, and thereby, by an arbitrary rule based upon territory, and for no other reason, give the smaller counties a representation, in the spirit of peace and harmony, let me say that, instead of settling a question which has already been debated one week, we are just as far from a settlement as ever, unless some suggestion is adopted, and I contend that this question cannot be settled unless there is a spirit of compromise shown among the members of the Convention.

How does it work? Although it does deviate from principle, and therefore I disagree with it, I do not see that it operates as unfairly as the gentleman from Centre would suppose. To entitle a county to two representatives there must be a population of thirty-five thousand two hundred, and although that does not suit Centre, it does suit admirably about eight other counties, and although in this Centre suffers, yet, I do think that Centre should overlook the fact that the accidental fraction places her below two, inasmuch as if you raise that fraction from one-half to three-fifths, you punish ten counties, or in that neighborhood.

What would you gain upon a half ratio without giving a county a representative? Centre would not be any better I think. Centre county would not be entitled to have two representatives on a half ratio without regard to giving each county a member. She must have a population of thirty-five thousand two hundred, and she falls short of that. So that if you

strike out the proposition, and give each county a member by a ratio of one-half, a ratio of three-fifths or a ratio of anything above a half, Centre county would not be in any better position than she is by allowing each county a representative, nor would any county with a population below thirty-five thousand two hundred. It is impossible to have this thing perfect, and to use up all these vulgar fractions to which the gentleman from Centre has alluded. The whole question can only be settled by a spirit of compromise, and let that be exercised in frankness.

Mr. BUCKALEW. By the eighteenth section of this article we have fixed the number of Senators at fifty. It is, therefore, almost a necessity that we fix the number of the lower House in the neighborhood of one hundred and fifty, unless we intend to reverse the action which the Convention has already taken with reference to the constitution of the Senate. Our people have been accustomed to these proportions between the two Houses, the popular branch being three times more numerous than the Senate. Besides this consideration, which is decisive in my judgment, unless we intend to go back and reverse what we have already done, I am of the opinion that the people of the State do not expect us to increase the number beyond one hundred and fifty, and that public opinion, a great part of which is against any increase at all, has finally settled down into an acquiescence in our fixing the number of the House at one hundred and fifty, and if now, near the end of our labors, we disturb this understanding which has obtained heretofore, and go up to a much higher number than that, we shall imperil our work; at least we shall not meet, in my judgment, the present condition of public opinion.

Now, sir, I desire either at this moment or after this amendment shall have been disposed of, to make answer to the two main objections which have been made to this report from the select committee.

The PRESIDENT. It would come in more properly after this amendment shall have been voted upon.

Mr. BUCKALEW. If this amendment be adopted we are, of course, all at sea again; we are just as if we had done nothing on the subject of the constitution of the House of Representatives. The half dozen or dozen suggestions we have had already this morning will be up again *seriatim* for consideration. Therefore, sir

I am obliged now to speak to the report of the committee, or I shall be concluded from speaking upon it in case this amendment shall be adopted; but taking it for granted that a majority of the Convention will not, under the circumstances, vote to increase this number, I will postpone my remarks.

Mr. HUNSICKER. I should like to ask the gentleman a question before he takes his seat. Why will it disturb the plan of the committee to make the number two hundred?

Mr. BUCKALEW. It destroys the harmony of the two Houses as already provided by the Convention. It opens the way to all other propositions of amendment which have been suggested this morning. If we let go the report of the committee, in short, we are at sea.

Mr. LILLY. I ask the gentleman whether it would disturb the harmony of it except in our own minds. I think we can change the proposition without destroying the principle.

The PRESIDENT. The Clerk will call the names of delegates on the amendment of the delegate from Centre, (Mr. Curtin,) to strike out "one hundred and fifty" and insert "two hundred."

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

Y E A S .

Messrs. Ainey, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Bartholomew, Beebe, Biddle, Brodhead, Campbell, Carter, Corbett, Curry, Curtin, Cuyler, Dallas, Darlington, De France, Dunning, Edwards, Gibson, Guthrie, Horton, Hunsicker, Knight, Lamberton, Lawrence, Lilly, MacConnell, M'CLean, M'Michael, Mott, Newlin, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Reynolds, Rooke, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Temple, Van Reed, Wetherill, J. M., Worrell and Wright—52.

N A Y S .

Messrs. Achenbach, Addicks, Alricks, Barclay, Black, Charles A., Bowman, Brown, Buckalew, Calvin, Carey, Church, Cochran, Collins, Dodd, Ewing, Fulton, Funck, Hall, Hay, Hazzard, Hemphill, Howard, Kaine, Landis, MacVeagh, M'Culloch, Mann, Mantor, Minor, Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Smith, Henry W., Stewart, Struthers, Turrell, Wetherill,

Jno. Price, White, David N., White, Harry, White, J. W. F., Woodward and Walker, *President*—43.

So the amendment was agreed to.

ABSENT. — Messrs. Andrews, Armstrong, Baker, Bannan, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Cassidy, Clark, Corson, Craig, Cronmiller, Davis, Elliott, Ellis, Fell, Finney, Gilpin, Green, Hanna, Harvey, Heverin, Lear, Littleton, Long, McCamant, M'Murray, Metzger, Mitchell, Palmer, H. W., Parsons, Porter, Pughe, Purman, Read, John R., and Wherry—38.

Mr. STRUTHERS. I move to insert in the first line, after the word "shall," the words "consist of one hundred and fifty members," so as to read:

"The members of the House of Representatives shall consist of one hundred and fifty members and be apportioned among the several counties according to population," &c.

SEVERAL DELEGATES. We have just voted that down.

Mr. STRUTHERS. Mr. President: It will be observed that the report of the committee does not fix the number at all; it leaves it altogether loose. They simply provided in the report that for the purpose of ascertaining a ratio, the population should be divided by one hundred and fifty. They do not say that the number of Representatives shall be one hundred and fifty, but that a ratio shall be ascertained in that way; and in carrying it out, as I have ascertained from gentlemen who have run it through, they get a number beyond one hundred and fifty in pursuance of this, and I think it is understood generally by those who have had it in hand that it is a sliding scale by which they can go up from time to time in the number of representatives.

Now, sir, the vote just taken establishes the fact that a ratio is to be obtained by dividing the population of the State by two hundred. My proposition is to fix the number of representatives at one hundred and fifty. I would like to have a distinct vote upon that, because I think we have declared by a large and decided vote quite a number of times that that shall be the limit. That is the object of the proposition which I make.

Mr. CURTIN. Is the amendment in order after the vote just taken?

The PRESIDENT. It is in order, although apparently in conflict with the vote already taken. Two hundred, how-

ever, was not inserted as the number of members of the House, but as the divisor to get the ratio.

Mr. CURTIN. I know nothing about parliamentary rules or the effect of my amendment, but I understood it to fix the number of members of the lower House of the Legislature at two hundred. I thought that was what I offered.

The PRESIDENT. That was not what was offered, as the Chair understood it.

Mr. CURTIN. I know nothing about any parliamentary law that would change the effect of my motion. That was my plain proposition.

The PRESIDENT. The Chair will direct the reading of the section.

Mr. CURTIN. If some of the gentlemen who understand parliamentary law will correct the proposition I shall be much obliged to them. I know nothing about it. I get the same confusion which seems to prevail in other gentlemen when I apply the little arithmetic I know to my politics. I wanted a square vote as to two hundred members of the lower House of the Legislature, and I thought we had it.

Mr. BAER. The arithmetic of the delegate from Centre is correct, and it is useless to undertake to mystify it with a view of getting that voted out which has just been voted in. It is a principle in law that that is certain which may be reduced to certainty. Now, by dividing the population by two hundred, you do fix the number of representatives, and what more is wanted by this Convention? The effort is to undo what we have just done; and I appeal to members now who voted in favor of this increase to two hundred to stand by their votes and vote down the proposition to make the number one hundred and fifty.

Mr. HAY. It seems to me the question can very easily be raised by an amendment to the amendment. Let some gentlemen who is in favor of fixing the number of the House of Representatives at two hundred move to amend the amendment by striking out one hundred and fifty and inserting two hundred.

The PRESIDENT. There is an amendment to the amendment pending.

Mr. HAY. I thought it was a single amendment.

The PRESIDENT. The question is on the amendment of the delegate from Warren (Mr. Struthers.)

The amendment was rejected.

Mr. NILES. I move now to insert the words "two hundred."

SEVERAL DELEGATES. No, no; they are in.

Mr. NILES. I withdraw the motion.

The PRESIDENT. As the Chair understands the proposition, by dividing the population of the State by two hundred, it works out the ratio for a representative, and it makes the House consist of two hundred members.

Mr. BUCKALEW. The question is now, I understand, upon the report of the committee, amended by inserting two hundred as the divisor for obtaining the representative ratio.

The PRESIDENT. Yes, sir.

Mr. BUCKALEW. Now, Mr. President, the two main objections made to the report of the select committee are these: First, that counties below a representative ratio are each allowed one representative; and, second, that a fraction of one-half or over in counties with less than five ratios are also counted each for one representative. These are the two principal objections made to the report of the committee; and I propose to speak to them.

First, as to the representation of the small counties, the committee was virtually instructed by a vote which had been taken in convention upon that subject. The question was debated and decided by this body. The committee conformed their report to that decision as they understood it, and if blame is to rest anywhere for this part of the report, it rests not upon the committee, but upon the Convention itself. I resisted that decision. To the best of my ability, and pertinaciously, I resisted this representation of small counties and urged upon the Convention every legitimate consideration which told against it; yet it was decided, and I for one, now nearly the end of the month of September, am for standing by decisions once made. We have not six or nine months ahead of us to debate over and over again the same questions, heap up words without end in these volumes of Debates, and change and rechange our minds with every passing breeze or with every new speech or argument that is addressed to us. The committee, therefore, were justified in reporting back to the Convention its own proposition, and those of us who were originally opposed to it and were over-ruled in our opinion by the judgment of the Convention, did right in acquiescing in what had been determined.

Mr. LILLY. I should like to ask the gentleman from Columbia if he does not remember my asking the Chair whether this committee went out with instructions or without instructions, and I was told that they were uninstructed and could do just as they pleased.

Mr. BUCKALEW. As a legal question of parliamentary law the gentleman from Carbon is correct. What I said was that the committee was *virtually*—not in legal form, but virtually instructed by the decision already made by the Convention.

We were right in making this report for another reason, and that is, the insignificance of the question in its effect upon the constitution of the Legislature, the representation of these very small counties in the report as distinguished from the plan which the Committee on Suffrage had upon this subject which refused them representation. The difference is just four representatives; so that this whole question of the representation of small counties amounts to four representatives in one hundred and fifty-six; that is the whole of it; and because, therefore, in result it is not a question of the first magnitude, those of us who upon principle were opposed to this arrangement could very well acquiesce in it. If it were larger in its effect we might be justified in a more pertinacious and continued opposition. Certainly this arrangement will gratify some localities in our State, and it seems to be a favorite theory with even a majority of this Convention, though against my own view. Upon both grounds, then, that I have mentioned, I think it will be proper that the Convention shall sustain the report which we have made as to this subject.

But it is further complained that fractions in counties with less representative ratios than five are to be represented, and that representation is not given for fractions exceeding one half in counties containing five or more ratios. Sir, if there is any one thing perfectly plain it is the sheer justice, I had almost said the necessity, if you are to have a fair arrangement of allowing the representation of fractions in small counties and not regarding it in the large ones. Why, sir, suppose that no fractional representation is allowed and you go by ratios; in the case of a county with one representative, a fraction of forty-nine per cent. of the inhabitants may be unrepresented in the House. Suppose a county has but one ratio and ninety-nine hundredths of a

second ratio; if you do not allow her representation for her fraction she loses representation to an extent of forty-nine per cent. of her whole population.

In the case of a county with two representatives, the loss of representation on the disallowance of fractions will be, perhaps one-half that amount, and in a decreasing degree the same is true of the county with three or four ratios. But now take the case of Philadelphia, with twenty-eight representatives, and suppose she should have at this moment, though she has not a fraction of ninety-nine hundredths for a twenty-ninth member, and you do not give it to her; what is the utmost possible loss on the population of the city? Three and a-half per cent. It is impossible that she can lose a larger representation of her population; whereas, a county with one member might lose forty-nine per cent. and counties with two, three or four members from ten to thirty per cent. each. Therefore it is just; it is right; it is reasonable to allow fractionable representation for small counties and to allow representation by ratios for the large ones. That is what the committee have done by their arrangement.

Why, sir, in the proposition sent to us with reference to fractional representation, there was a representation of counties with one ratio and three-fifths of a ratio. If you allow it in a county with one representative, why should you not extend it to a county entitled to two? If you want to prevent forty-nine per cent. from being disfranchised, why should you not prevent twenty-five per cent. from being disfranchised? It may be reasonable to go down as low as twelve or fifteen per cent. although at the same time you do not represent three and a half per cent. in Philadelphia.

Let me state another thing in this connection. Dividing the population of the State by one hundred and fifty, and allowing the representation of majority fractions, and as the committee report, you will always get a total number not differing more than one or two from one hundred and fifty. Ordinarily, it will be just one hundred and fifty or one hundred and fifty-one, and this shows that in the aggregate result the plan which the committee have reported of fractional representation works fairly. To be sure, you cannot get absolute exactness. I myself might have preferred a scale of fractions: one representative for a certain fraction

over one ratio, one for a larger fraction over two ratios, and so on.

But it is much simpler to say that a majority fraction shall have a representative in these small counties, and then in the outcome you get your House made up of a proper number. Now, sir, the number one hundred and fifty-six is produced in the result upon the committee's report, because you give separate representation to all the small counties, which makes a difference of four or five.

Mr. President, I have spoken to the two main objections to this report: but there is another consideration with me in supporting what has been done by the committee. It is perfectly evident to me that no considerable number of members in this Convention are perfectly agreed upon all the points involved in this section. Views are discordant, and the only possible way of getting to a result, and getting done with our work, is that each of us shall give up some points to which he is devoted, and accept the opinions of his colleagues. We have already adopted one amendment increasing the number to two hundred. I do not know whether other amendments are to be adopted by the Convention or not. If a disposition to do that prevails, I suppose we shall have as many propositions as there are active members on this floor, and we shall get away entirely from our moorings. I do not know yet what sort of a result we shall get from this divisor of two hundred; nobody can know until he sits down and calculates it.

Mr. D. W. PATTERSON. It makes the ratio twenty thousand.

Mr. NILES. No; seventeen thousand five hundred.

Mr. BUCKALEW. However, that is aside for the present. I entreat gentlemen of the Convention, who are satisfied that this report of the committee is, upon the whole, about as good as can be arrived at, to vote down all further amendments, and stand by the report of the committee, and enable us to conclude this question to-day.

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

Mr. STRUTHERS. I now offer the following amendment as a substitute for the report:

"The House of Representatives shall consist of two hundred members. Each county shall be a representative district. An apportionment of members based on the last preceding United States census

shall be made every ten years, the first to be made the first year after the adoption of this Constitution. A general ratio shall be ascertained by dividing the whole population of the State by two hundred. Each county having not more than this ratio shall have one member. The population of the remaining counties shall be divided by the remaining number of members, and one member given to each ratio thus obtained. If this does not reach the full number of two hundred the deficiency shall be made up from the largest fractions of ratios."

Mr. President, I prepared this amendment whilst awaiting the report of the committee. Looking the subject over carefully I had prepared such an amendment as it appeared to me would meet the views of the members more generally than anything that has been proposed heretofore. In working it out I found it reduced the unrepresented fractions very much below what any other proposition had done. The Convention has just voted, however, that the whole number shall be two hundred—

Mr. HARRY WHITE. Allow me to interrupt my friend from Warren, and in interrupting him I desire to correct a misapprehension which exists in the minds of the delegates of the Convention. The Convention will understand—

The PRESIDENT. Does the delegate from Warren permit himself to be interrupted?

Mr. STRUTHERS. Yes, sir.

Mr. HARRY WHITE. Delegates should understand that the report of the committee merely designated the number one hundred and fifty as the divisor of the entire population from which to ascertain the ratio for representation. The delegate from Centre (Mr. Curtin) moved to amend by striking out "one hundred and fifty" and inserting "two hundred." His motive, doubtless, was to limit the number of the House of Representatives. In fact, however, it does not do so; it merely increases the divisor from one hundred and fifty to two hundred, thus lessening the ratio and increasing the number of members of the House of Representatives *ad infinitum*.

Mr. STRUTHERS. If I understand the construction given, and it has been so treated by the gentleman from Columbia, (Mr. Buckalew) in speaking on the subject and by other gentlemen here, the fixing of the ratios fixes also the number of representatives. I accordingly substi-

tute two hundred for one hundred and fifty, more explicitly and expressly to denote what the number shall be. Now, I am decidedly of opinion that one hundred and fifty are as many as the desires of the people of the Commonwealth ask us for, but the Convention seems to have decided, and I think they voted generally for the two hundred upon the assumption and belief that that amendment fixed the number of representatives. I think it does not; but upon that there is a difference, and hence it was that I proposed in this amendment to fix the number at two hundred, rendering that certain which is left uncertain by the report.

Now, sir, as I remarked before, under the proposition limiting the number of members to one hundred and fifty, and making the number of members the ratio, my proposition will reduce the fractions that remain unrepresented below any proposition that has been made before, which I have seen. Making two hundred the number, and adopting two hundred as the ratio, it will reduce those fractions still more, so that you have hardly a fraction left at all. It will bring the fractions down to almost nothing.

I wish to have this proposition considered fairly by the Convention. It seems to me that it is far better than the proposition made by the committee; it does not present a mere sliding scale. As the report of the committee reads now, I think that the Supreme Court, when it comes to construe it, will say that all you have fixed is the ratio, and not the number of representatives. I think it better to have the number of representatives definitely fixed by the language of the article itself.

Mr. J. PRICE WETHERILL. Mr. President: I desire to make a single remark. After having gone over the matter not quite as carefully, probably, as I should, I find that the report as amended will make the House consist of two hundred and three members; and furthermore that in order to secure that very desirable result of giving Centre county two members instead of one, it gives Philadelphia about ten additional members.

The PRESIDENT. The question is on the amendment of the delegate from Warren (Mr. Struthers.)

The amendment was rejected.

The PRESIDENT. The question recurs on the section reported by the committee, as amended.

Mr. JOSEPH BAILY. Now, let us have a fair and square vote on the report.

Mr. HARRY WHITE. Mr. President: I hear delegates say, "let us have a vote on the report." I call attention of the delegates to the fact that the proposition now to be voted upon is not the report of the committee at all. It is as different from it almost as day from night, so far as the number of members is concerned; and I call upon the Chair now to state what the proper construction is of the effect of the amendment offered by the delegate from Centre, which has been adopted.

The PRESIDENT. All I said was that dividing by one hundred and fifty gave the ratio, and that number has been altered from one hundred and fifty to two hundred. All I know is that "two hundred" has been inserted in place of "one hundred and fifty." The question is on the section as amended.

Mr. AINER. I should like to have the last clause beginning "any county, including Philadelphia," &c., voted on separately.

The PRESIDENT. The first division then ends with the first paragraph, at the word "ratio."

Mr. LILLY. I ask for a further division, to end with the close of the fourth line, ending with the words "full ratio."

The PRESIDENT. The section will be so divided. The first division will be read.

The CLERK read as follows:

"The members of the House of Representatives shall be apportioned among the several counties according to population on a ratio to be obtained by dividing the whole population of the State as ascertained by the most recent United States census by two hundred; any county, including the city of Philadelphia, having more than one ratio shall be entitled to a member for each full ratio."

Mr. BUCKALEW. There ought to be a clerical correction there, striking out the words, "the city of," so as to read, "any county, including Philadelphia;" and the same correction should be made in the eighth line. Philadelphia is a county as well as a city.

Mr. HARRY WHITE. I hope that will not be done for the reason that according to my understanding of the consolidation act of 1854 Philadelphia is known as the city of Philadelphia.

Mr. SIMPSON. I call the gentleman's attention to the consolidation act, which provides that it shall still be one of the counties of the Commonwealth.

Mr. DALLAS. It is both a city and a county.

The PRESIDENT. What is the amendment of the delegate from Columbia?

Mr. BUCKALEW. To omit the words "the city of" because some gentlemen in the State think that Philadelphia is not a county. I propose to say, "every county, including Philadelphia," so that there may be no mistake.

The PRESIDENT. The question is on the amendment of the delegate from Columbia.

The amendment was agreed to.

The PRESIDENT. The question recurs on the first division of the section as amended.

Mr. BUCKALEW. I ask for the yeas and nays on the division.

Mr. KAINE and others seconded the call.

The yeas and nays were taken with following result:

YEAS.

Messrs. Addicks, Ainey, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bardsley, Bartholomew, Beebe, Biddle, Bowman, Brodhead, Buckalew, Campbell, Carter, Corbett, Curry, Curtin, Dallas, Darlington, De France, Dunning, Gibson, Guthrie, Hall, Hay, Hazzard, Heverin, Horton, Hunsicker, Knight, Lamberton, Landis, Lilly, MacConnell, McClean, McCulloch, M'Michael, Mann, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Read, John R., Reynolds, Ross, Runk, Russell, Sharpe, Smith, H. G. Stanton, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, Woodward and Wright—61.

NAYS.

Messrs. Achenbach, Alricks, Barclay, Black, Charles A., Brown, Calvin, Church, Cochran, Collins, Cuyler, Edwards, Ewing, Fulton, Funck, Hemphill, Kaine, Lawrence, Mantor, Minor, Patterson, D. W., Purviance, Samuel A., Reed, Andrew, Rooke, Simpson, Smith, Henry W., Stewart, Struthers, White, David, N. White, Harry, White, J. W. F. and Walker, President—31.

So the first division was agreed to.

ABSENT. — Messrs. Andrews, Armstrong, Bannan, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Carey, Cassidy, Clark, Corson, Craig, Cronmiller, Davis, Dodd, Elliott, Ellis, Fell, Finney, Gil-

pin, Green, Hanna, Harvey, Howard, Lear, Littleton, Long, MacVeagh, M'Casant, M'Murray, Metzger, Mitchell Parsons, Porter, Pughe, Purman, Smith, Wm. H., Temple, Wherry and Worrell—41.

The PRESIDENT. The second division will be read.

The CLERK read as follows:

"But each county shall be given at least one member, and counties shall not be joined to form a district. Any county having less than five ratios shall have an additional member for a surplus exceeding one-half a ratio over one or more full ratios."

Mr. CAMPBELL. I call for another division, to consist of the words, "but each county shall be given at least one member," for the purpose of getting a square vote on that proposition.

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

Mr. BEEBE. I second the call.

Mr. BOWMAN. I have taken no part in the discussion of this question this morning. I have left that to other gentlemen of the committee who have, in my judgment, fully vindicated the report. It is now proposed by the gentleman from Carbon (Mr. Lilly) in calling for a division of this question to strike out if possible a provision providing for single county representation. The gentleman from Philadelphia moves to further divide so that we shall be enabled to get a square vote upon that proposition.

This morning the gentleman from Centre (Mr. Curtin) made a proposition which seems to have carried in this Convention, that the ratio be ascertained by dividing the population by two hundred instead of by one hundred and fifty, as contained in the report. Now, sir, is it possible that the gentleman from Carbon has no magnanimity about him whatever? The city of Philadelphia is to be increased in representation ten members and have thirty-eight according to the amendment of the gentleman from Centre. The county of Allegheny is to have sixteen representatives instead of eleven, and other large counties in the State are to be proportionately increased, yet to-day the gentleman from Carbon would come forward and say by offering his proposition that the several counties in the Commonwealth not containing a population equal to the ratio, which is seventeen thousand and a little over, should not have a separate representation in a body of men com-

posed of two hundred and three members. That is the straightforward proposition now presented to the judgment of this Convention and that, too, coming from the gentleman from Carbon. I doubt very much whether there is any other gentleman on this floor or one who will ever see this building who would bring forward such a proposition as that. Why is it that the gentleman so persistently in season and out of season—

Mr. LILLY. I would like to ask what proposition I have brought forward. I have only asked for a division at one point. I have made no proposition.

Mr. BOWMAN. Why, the gentleman's position is as apparent as anything can be, but if he desires to back out of it now, I am willing to let him depart in peace. [Laughter.]

Mr. LILLY. If the gentleman from Erie will allow me to explain my position, I can do so in a few moments.

Mr. BOWMAN. I shall be glad to hear the gentleman's explanation of his position, and I will do it sometime next week, but not now. I know that gentlemen present are impatient to get a vote on this question. Let us dispose of it as soon as we can. I am not here for the purpose of undoing what has been done this morning, though, in my judgment, a House composed of two hundred and three members will be found to be infinitely too large. Let us look at it. We have a body on this floor composed of one hundred and thirty-three members, and we are quarreling over this question for the last two months before the adjournment; from the time we met on the sixteenth day of the present month this question, and this question alone, has monopolized the attention of the gentlemen here, and if one hundred, or less than one hundred men, cannot dispose of a question of this character without occupying so much time as has been consumed by us upon this matter, what do you suppose can be done in a body composed of two hundred and three?

I am in favor of the report of this committee. I think that upon calm reflection gentlemen will ascertain, and that pretty soon, that we have made a mistake here this morning. But no matter about that. The balance of the report is before the Convention and it is the question for consideration now. As was said the other day, this is a matter upon which we must make concessions; we must all yield something; and while I was in favor of

districting the State throughout and dividing every county, if you please, that might be entitled to two or more members, I had to yield, and I did so as gracefully as possible. It must be remembered that no one man's proposition upon this floor can ever be carried. Such a thing cannot be done. We must all yield something. As was so forcibly illustrated this morning by the chairman of the committee, we must for the time being put ourselves in the position of jurors. Take the jury-box for a moment. A jury is sworn to render a verdict according to the law and the evidence, and then their conclusion must be the verdict of twelve men, not an individual verdict of each man composing that jury. If we here undertake to have every man's proposition carried out, if we undertake to say that this man's proposition is better than the others, without making any concessions upon the part of each individual member, we shall never dispose of this question; we shall vote upon this subject for the next six weeks without ever reaching any conclusion upon it. For one, I am getting heartily sick and tired of the whole subject. I believe this report is as fair a one as could be made, and knowing the House of Representatives is to be increased so that it will consist of two hundred and three members, I ask, is there a gentleman upon this floor who would lay down such a monstrous proposition as that each separate county, being a municipal organization as it is in the Commonwealth, independent as it has been and as it is forever to be from every other county in the State, ought not to have a representative upon the floor of the House of Representatives?

Mr. LILLY. One word, only. The gentleman has misrepresented me entirely. I do not know what he wants to get at by scolding the whole Convention.

Mr. BOWMAN. One word, if the gentleman will allow me to explain. I am not to blame for not understanding the gentleman, and he is not to blame for not understanding me. I did not furnish him with his brains. [Laughter.]

Mr. LILLY. I am very thankful the gentleman did not. [Laughter.] I do not desire, at this time, to occupy the attention of the Convention; but as I have been, in this summary manner, brought into this debate, perhaps it may be well for me to explain the position which I occupy in reference to this question. I will, therefore, tell the gentleman from Erie

that I think he will not only find myself, but very many others on this floor, who are in favor of districting the State according to population only. I think that in that position I stand upon the plane of justice. I ask nothing more than justice. I intend to vote for nothing but what I believe to be just and proper. I believe that the population of the State should be divided by the number of representatives, in order to get the ratio, and then represent equally the people all over the State. That is my position, and that is all that there is about it, and I do not intend to vote for anything else if I can help it.

The PRESIDENT. The question is on the second division, upon which the yeas and nays have been ordered.

The yeas and nays being taken resulted as follows:

Y E A S .

Messrs. Achenbach, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Beebe, Bowman, Brodhead, Brown, Buckalew, Calvin, Curry, Curtin, Darlington, De France, Dunning, Ewing, Fulton, Funck, Guthrie, Hall, Hay, Hazard, Heverin, Horton, Hunsicker, Kalne, Knight, Lamberton, Landis, MacConnell, MacVeagh, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Ross, Runk, Russell, Sharpe, Simpson, Stanton, Stewart, Struthers, Turrell, Van Reed, White, David N., White, Harry, Woodward, Worrell, Wright and Walker, *President*—62.

N A Y S .

Messrs. Addicks, Ainey, Barclay, Bardsley, Bartholomew, Biddle, Black, Charles A., Campbell, Carter, Church, Cochran, Collins, Corbett, Cuyler, Dallas, Edwards, Gibson, Hanna, Hemphill, Howard, Lawrence, Lear, Lilly, M'Clean, M'Culloch, M'Michael, Newlin, Patterson, D. W., Read, John R., Reynolds, Smith, Henry W., Wetherill, J. M., Wetherill, John Price and White, J. W. F.—34.

So the second division was agreed to.

ABSENT.—Messrs. Andrews, Armstrong, Bannan, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Carey, Cassidy, Clark, Corson, Craig, Cronmiller, Davis, Dodd, Elliott, Ellis, Fell, Finney, Gilpin, Green, Harvey, Littleton, Long, M'Cam-

ant, M'Murray, Metzger, Mitchell, Parsons, Porter, Pughe, Furman, Smith, H. G., Smith, Wm. H., Temple and Wherry—37.

Mr. BARTHOLOMEW. I desire to amend the third division by striking out "two" in the first line and inserting "one."

The PRESIDING OFFICER (Mr. Lilly in the chair.) That is not in order. The yeas and nays having been ordered on the whole section, an amendment to the text is not in order.

Mr. BARTHOLOMEW. It is a separate division and comes up now, and is certainly open to amendment.

The PRESIDING OFFICER. The yeas and nays were ordered on the whole section. Then a division of the section was called for; and the yeas and nays must be called on each division.

Mr. BARTHOLOMEW. Are the yeas and nays to be taken on this third division without a special call for them?

The PRESIDING OFFICER. The yeas and nays have been ordered on the division and it is not amendable.

Mr. BARTHOLOMEW. Can the yeas and nays be taken, without a special call, on this third division?

The PRESIDING OFFICER. Yes, sir. The question is now upon the third division. The Clerk will read the division.

The CLERK read as follows:

"And counties shall not be joined to form a district. Any county having less than five ratios shall have an additional member for a surplus exceeding one-half a ratio over one or more full ratios."

Mr. MACVEAGH. I submit there is a division ending with the word "district."

The PRESIDING OFFICER. That division has not been asked for.

Mr. MACVEAGH. I ask for that division.

The PRESIDENT *pro tem*. The question then is on the third division in these words:

"And counties shall not be joined to form a district."

On this division the Clerk will call the names of delegates.

SEVERAL DELEGATES. Do not call the roll. It is not necessary.

The PRESIDENT *pro tem*. Unless it is demanded, the question will not be taken by yeas and nays.

The question being put it was declared doubtful, and a division was called for.

Mr. JOSEPH BAILY. I call for the yeas and nays. Let us settle this question.

Mr. WORRELL. I second the call.

The PRESIDENT *pro tem.* The yeas and nays are called for, and the Clerk will call the names of delegates.

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

YEAS.

Messrs. Achenbach, Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Beebe, Bowman, Brodhead, Brown, Buckalew, Calvin, Collins, Corbett, Curry, Curtin, Darlington, De France, Duanning, Ewing, Fulton, Funck, Gibson, Guthrie, Hall, Hay, Hazard, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Knight, Lamberton, Landis, Lawrence, MacConnell, MacVeagh, M'Clean, M'Michael, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Rooke, Ross, Runk, Russell, Sharpe, Smith, H. G., Stewart, Struthers, Turrell, Van Reed, White, David N., White, Harry, Woodward, Worrell, Wright and Walker, *President*—71.

NAYS.

Messrs. Addicks, Ainey, Baker, Bidle, Black, Charles A., Carter, Church, Cochran, Cuyler, Dallas, Edwards, Hanna, Lilly, M'Culloch, Patterson, D. W., Reynolds, Simpson, Smith, Henry W., Wetherill, J. M. and White, J. W. F.—20.

So the division was agreed to.

ABSENT.—Messrs. Andrews, Armstrong, Baer, Bannan, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Campbell, Carey, Cassidy, Clark, Corson, Craig, Cronmiller, Davis, Dodd, Elliott, Ellis, Fell, Finney, Gilpin, Green, Harvey, Lear, Littleton, Long, M'Camant, M'Murray, Metzger, Mitchell, Newlin, Parsons, Porter, Pughe, Purman, Smith, Wm. H., St nton, Temple, Wetherill, Jno. Price, and Wherry—42.

The CLERK read the next division, as follows:

"Any county having less than five ratios shall have an additional member for a surplus exceeding one-half a ratio over one or more full ratios."

Mr. MACVEAGH. Is an amendment now in order?

The PRESIDENT. The division can be amended.

Mr. LILLY. Is it in order to amend the text of that division at this time?

The PRESIDENT. We have been pursuing that course all through.

Mr. MACVEAGH. I move to strike out "five" and insert "two."

Mr. KAINÉ. I submit that that is not in order. When we have begun to vote on the section and a division has been called for, and the yeas and nays ordered, no amendment can be made.

Mr. BARTHOLOMEW. Allow me to give the gentleman from Fayette some information. General Lilly, when in the chair, during the absence of the President, ruled that it was not in order. I went to the Clerk's desk to see whether the record showed that the yeas and nays had been called on the whole amendment, and the record does not show any such thing; the yeas and nays have been called on each separate division. Therefore the amendment is in order, there being no call for the yeas and nays on the division.

The PRESIDENT. The Chair decides that it is order to move an amendment.

Mr. MACVEAGH. Then I move to strike out "five" and insert the word "two" before "ratios."

Mr. BEEBE. Will the delegate give his reason?

Mr. MACVEAGH. I did give it.

Mr. J. N. PURVIANCE. I move further to amend, by striking out "one-half" and inserting "three-fifths."

The PRESIDENT. There is an amendment now pending.

Mr. J. N. PURVIANCE. This is a further amendment.

Mr. MACVEAGH. Gentlemen suggest to me to change my amendment from "two" to "three." I, personally, have no objection to that change if the Convention desire it. The gentleman from Allegheny (Mr. MacConnell) seems to be desirous that a vote should be taken on that change from "five" to "three." I so modify my amendment.

The PRESIDENT. That amendment is before the Convention.

Mr. KAINÉ. I am opposed to any further amendment of this report of the committee. The Convention has stricken out "one hundred and fifty" and inserted "two hundred." I voted against that proposition, but a majority of the Convention having adopted it, I submit. Now, if you commence striking out and altering these ratios and fractions as they have been put in by the committee, we shall be led into unutterable confusion. I trust that the Convention, to avoid that,

will stand by the rest of the report of the committee and adopt it.

The PRESIDENT. The question is on the proposed amendment of the delegate from Dauphin (Mr. MacVeagh.)

The amendment was rejected.

Mr. MACVEAGH. Now I move to insert "two" instead of "five," so that it will read: "Any county having less than two ratios shall have an additional member," &c.

The amendment was rejected.

Mr. J. N. PURVANCE. Now I move to amend the division in the last line by striking out "one-half" and inserting "three-fifths of," so that it will read: "Any county having less than five ratios shall have an additional member for a surplus exceeding three-fifths of a ratio over one or more full ratios."

The amendment was rejected.

The PRESIDENT. The question now is on the division.

Mr. HOWARD. I am opposed to this latter division. The smaller counties of the Commonwealth have already, by the decision of the Convention, received one member. There seems to be an understanding among some members that the larger counties are to be struck at in a different direction. By the last clause of this proposition, Allegheny and Philadelphia are to be districted in a manner entirely different from the rest of the State. By the clause now under consideration any county having less than five ratios, that is to say, if it has got four, if it has got three, if it has got two, if it has got one, is to get an additional member for half a ratio. Why is it that the large counties are to be struck at in this way, that their fractions are to be all thrown away, and that no counties can have the benefit of fractions but the smaller counties of the Commonwealth? Do you call this fair? Sir, it is not fair.

I understand that by this plan a certain number of counties will be benefited. I know that the class of counties that run from thirty-five thousand to thirty-six thousand population will get twelve members on these half ratios. Is that a representation according to population, according to taxables, or even according to counties? By propositions already adopted, every county, no matter what her population may be, gets a member. Then we go on to say that if a county is entitled to one member and a half of another, she shall have two members; if she is entitled to two members and a half, she shall have

three; if she is entitled to three and a half, she shall have four; if she is entitled to four and a half, she shall have five, and there you stop; the other counties of the State are not permitted to come in to this sort of dinner. It is not fair to turn out eight counties of the Commonwealth and say they shall not be invited to the same table. I am opposed to it, and I hope it will be voted down. Enough has been done for the smaller counties, and this proposition should be rejected.

Mr. DARLINGTON. Although this proposition would benefit my county as well as a great many others, it has always seemed to me to be unjust and unfair. I would not give a representative to anything less than a ratio under any circumstances. Let us have no fractions here. Fix the ratio. If the counties come up to it, give them members in proportion to it, any excess to go unrepresented until they come up to it in point of population. I think we had better strike out the last two lines.

Mr. BUCKALEW. Mr. President: This division of the section is an absolute necessity now, or some one of a similar character. Without this you are not going to have anywhere in the neighborhood of two hundred representatives, because the fractions in the counties of one, two, three and four members are necessary to make up the complement of two hundred members, or about it. There are to be two hundred and three, and the three members beyond the two hundred will about represent the small counties that are below half the ratio. The allowance of these fractions will be necessary to get the result out. The point is this: Without this division the large districts will have full representation; they will lose nothing, as I explained before—the very largest in Philadelphia cannot lose over three and a half per cent.—whereas the smaller ones lose from ten to fifty per cent. I shall not go over what I stated before. I merely rose to suggest that it is necessary to have some provision in regard to fractions, and this is the one upon which the committee settled.

Mr. HARRY WHITE. Mr. President: I hope this division will prevail, if there is any possible prospect of this section becoming a part of the Constitution, which, I trust in the Almighty, will never be. But the policy of this division of the proposition is to equalize, as far as possible, the legislative power of the Commonwealth. The only remedy, the only hope

that some of the rural districts, a large class of them, such as Bedford, Cambria, Indiana, Huntingdon, Butler and Beaver counties, with a population such as they have, to preserve any fair equality with the very small counties of the Commonwealth, and with the more populous counties of the Commonwealth, is upon a principle of this kind. Now, delegates will understand that this limits the representation of fractions to those counties which have less than five ratios. Observe this only cuts out Philadelphia, Allegheny, Luzerne and Lancaster. These are the most populous counties of the Commonwealth, and every one of them has exceeding five ratios. It may possibly, under the change from one hundred and fifty to two hundred, affect some other counties of the Commonwealth, because the ratio has been decreased, and, consequently, the number of ratios to be given to the several counties is multiplied; but this illustrates it. Now, the city of Philadelphia has, under the provision making the divisor two hundred, thirty-eight representatives; the county of Allegheny has fourteen representatives; and I call your attention to the fact that I have gone through the figures, while we were taking the votes here, to see what the aggregate number of representatives would be, and I discovered that the aggregate number of representatives will be about two hundred and thirteen; and of them the city of Philadelphia has thirty-eight, the county of Allegheny has fourteen. It is only a question of arithmetic. The delegates will understand in a moment that this gives those two counties a larger proportion of power in the legislative body of the Commonwealth than they ought to have, but if it is the sense of the Convention to pass this proposition, I submit that you should pass it with the clause that we are now about to vote upon, because this is the only way by which the medium counties of the Commonwealth can preserve a fair share of equality. I am, therefore, in favor of this division as long as this section is in this shape before the Convention.

Mr. BUCKALEW. I ask for the yeas and nays.

Mr. HOWARD. Before the question is put, I desire to amend. I move to strike out "five" and insert "three."

The PRESIDENT. That has been voted down. The yeas and nays are called for by the delegate from Columbia.

Mr. KANE. I second the call.

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The PRESIDENT. The Clerk will call the names of delegates on this division of the section.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bardsley, Bartholomew, Beebe, Black, Charles A., Bowman, Brown, Buckalew, Calvin, Church, Corbett, Curry, De France, Dunning, Fulton, Funck, Guthrie, Hall, Hay, Hazzard, Heverin, Horton, Hunsicker, Kaine, Lawrence, Lilly, MacConnell, M'Clean, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson T. H. B., Patton, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Rooke, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Struthers, Turrell, Van Reed, White, David N., White, Harry, Woodward, Worrell and Walker, *President*—62.

NAYS.

Messrs. Addicks, Ainey, Barclay, Bidle, Brodhead, Cochran, Collins, Curtin, Cuyler, Darlington, Edwards, Ewing, Gibson, Hanna, Hemphill, Howard, Knight, MacVeagh, M'Culloch, M'Michael, Patterson, D. W., Read, John R., Reynolds, Smith, Henry W., Wetherill, J. M., and White, J. W. F.—26.

So the division was agreed to.

ABSENT—Messrs. Andrews, Armstrong, Bannan, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Campbell, Carey, Carter, Cassidy, Clark, Corson, Craig, Cronmiller, Dallas, Davis, Dodd, Elliott, Ellis, Fell, Finney, Gilpin, Green, Harvey, Lambertson, Landis, Lear, Littleton, Long, M'Camant, M'Murray, Metzger, Mitchell, Newlin, Parsons, Porter, Pughe, Purman, Stanton, Temple, Wetherill, John Price, Wherry and Wright—45.

The PRESIDENT. The last division will be read.

The CLERK read as follows:

"Any county, including Philadelphia, having over two hundred thousand inhabitants shall be divided into districts; but no district shall elect more than four members."

Mr. AINEY. I move to amend the first line of the division, by striking out all after the word "having," and inserting "more than two ratios." The latter part I move to amend, by striking out all

after the word "district," in the second line, so as to read :

"Any county, including Philadelphia, having more than two ratios shall be divided into districts."

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

Mr. AINEY. At the request of several members around me, I will modify it so far as it affects the second line of the division, and leave the latter part of the line to remain, only striking out "four" and inserting "two," so as to read, "but no district shall elect more than two members."

The PRESIDENT. The amendment is so modified.

Mr. AINEY. Mr. President: I regard this latter division as little else than objectionable special legislation. I can find no justification for it in any reason that I am able to conceive. It provides that no district shall elect more than four members in the city of Philadelphia and in the county of Allegheny; and yet, if this section should become a part of the Constitution, the county of Luzerne will be a separate district, and elect nine members on one ticket and as one district, while in the city of Philadelphia and in the county of Allegheny there is to be no district which shall elect more than four members. Why shall this distinction be made? The counties of Allegheny and Luzerne are not materially different. Why, then, this special provision? The committee have given no sufficient reason, certainly, why it should be inserted in our Constitution.

The county of Schuylkill, under this section, will be entitled to six members, and they also will be elected as a whole. This provision says that county shall not be divided. It says those six districts shall remain as a whole. The county of Lancaster, too, will be entitled to seven, and that cannot be divided if this provision stands.

Now, sir, the reason, I apprehend, why this Convention has, up to this time, failed to agree upon measures calculated to reform the present unjust mode of representation, or upon any system of apportioning the State, is because too many members, when any proposition is presented, first examine to see how it is going to affect their own locality. Principle seems entirely disregarded. Instead of an earnest endeavor to get at something which shall put in the Constitution a

remedy for the evils of which the people have justly complained in the past, they seem only intent in getting the largest slice possible. If members will, in endeavoring to get at some provision which shall meet the evil, look at principle more, and how it will affect their immediate locality less, I think this matter may be disposed of in a very short time.

Now, I am in favor of single districts everywhere. If right in Allegheny and Philadelphia it is equally right in other counties. I am also in favor of allowing the great and growing city of the northern part of this State—Scranton—a representative in the Legislature. Why shall the small county of Elk or Forest have a representative in that body simply as a community when you deny it to as important an organized community as the city of Scranton, or the city of Williamsport, or the city of Reading, or the city of Lancaster? Why shall not these important communities be heard as well as the small counties in other parts of the State? And I must not forget to mention my own city—Allentown. Clustered around that city are interests of vast importance to this State. In the Valley of the Lehigh, and in close proximity to Allentown, are great iron works, where is manufactured one-seventh of all the pig iron made in the United States, and yet I may say that great interest has never had a representative in the Halls of our State Legislature. We have never had a representative there to speak in behalf of this great interest; on the contrary, representatives heretofore elected from that section have usually been against this interest. Now, if we are to have any equality in the Halls of legislation, if we are to have a true representative body let us have better local representation. If communities are entitled to representation as such, let us give localities a representation also, and especially let every important city that has a population large enough to be a district be represented separately. In any event do not put it out of the power of whoever shall be vested with the important duty of apportioning the State to give our important cities a representation.

Now, sir, my amendment is intended to accomplish that object. I do not care about the latter part of it; I would prefer to have the last part of the second line struck out. I see no particular object in it, no reason why we should limit the number of representatives in districts to

two. I do not see that it has any importance, but at the instance of a number of members here, I have modified my amendment accordingly. But I do entreat members of the Convention to pause before they strike down the right of localities to representation. We have been sent here to reform the present unjust and unequal mode of representation. I earnestly hope we shall not forget, in this scramble for self, one of the most important objects for which we are here assembled.

Mr. DARLINGTON. Mr. President: I am in favor of the principle suggested by the gentleman from Lehigh, but he does not go quite far enough to suit either him or me. I think that this Convention have so far clearly indicated a disposition to elect a large portion of the members of the Legislature by single districts, by giving to each county a member, and wherever a county is entitled to no more than one, it must necessarily be a single district. They have gone further in that direction by providing that there shall be a division of certain counties.

Now, what I want to accomplish—and I hope the Convention will see the thing in the same light that I do—is to adopt a rule which shall be uniform throughout the State. If it is right to divide any county, it is right to divide all counties that send more than one member; and I propose, if the amendment of the gentleman from Lehigh is not adopted, to move as an amendment to the last two lines of this division:

“Representatives shall be chosen by single districts composed of contiguous and, as nearly as practicable, compact territory of equal population.”

If the gentleman from Lehigh will accept that as a modification of his proposition, I will go with him heart and hand.

Mr. AINEY. I withdraw my amendment to allow that to come in.

Mr. DARLINGTON. Then I move to strike out this division and insert in lieu of it:

“Representatives shall be chosen by single districts composed of contiguous and, as nearly as practicable, compact territory of equal population.”

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

Mr. WOODWARD. I wish to say, in answer to the gentleman from Lehigh and the gentleman from Chester, that that amendment, if adopted, will kill this in-

strument. The people of Pennsylvania will reject your Constitution with disdain if you require them in all the counties of the interior to abandon their life-long habit of forming their county ticket for the Legislature as they form it for other officers, and electing them by the county as a district. In Philadelphia, in Pittsburg, in overgrown communities it is absolutely necessary to divide them into districts. It is a necessity growing out of the size and population of these cities; but in doing that it is thought better to limit the districts to four members each, and it was applied to those two large cities in the two ends of the State only because of the necessity.

Now, the proposition to district the whole State, I say, is sure to kill the Constitution, and it ought to kill it. Does the gentleman from Lehigh pretend that a portion of the people of Lehigh county, in one corner of the county, ever formed a legislative district to elect a legislative ticket, or the people of Chester county? They never did. When they hold a county convention, the whole county is represented; the ticket is formed, the ticket is elected, and that is what the people in the interior throughout the State are accustomed to.

Now, in breaking rudely into this popular habit, which has grown with our growth, and strengthened with our strength, as the gentleman from Chester proposes, you destroy the last chance which your Constitution has to be adopted by the people. As to the people of Lehigh and Chester counties ever agreeing to form legislative tickets out of small districts, to which they have never been accustomed, and which they would not understand the working of, they are not going to do any such thing; and if their representatives on this floor are absurd enough to propose it, the people at home are wise enough to reject what they propose.

I hope this amendment will be voted down.

Mr. NILES. Mr. President: I am one of the very few delegates on this floor who would have adopted the article on the Legislature as reported originally. I would have hedged about the legislative power as stringently as possible. The article reported by the Committee on Legislation met my entire approval, and when adopted I undertake to say that the power of the Legislature for evil is destroyed. Then I would have left the original number, thirty-three Senators and one hun-

dred members, and left the apportionment of the State as heretofore.

We have spent during the past sessions of this Convention six weeks in trying to do what the Legislature does—district the State; and we have fallen into all manner of difficulties in doing that. As was well said by the delegate from Lehigh, (Mr. Ainey,) every member here is protecting, or trying to protect, his own immediate interests or those of his own immediate locality. Sir, to-day we have adopted here, by a vote of this Convention, a proposition to put the number at two hundred, and why so? For the purpose of bringing back the power to the immediate localities.

Now, I undertake to say—and I am sorry to differ with the distinguished delegate from Philadelphia, (Mr. Woodward,) that if there is any reason in the wide world why we should increase the number one hundred per cent., from one hundred to two hundred, it is for the purpose of bringing the legislative representation to the door of every voter in the Commonwealth. Why, sir, I ask you, if you increase the number from one hundred to two hundred is it not for the purpose of giving every locality in the broad Commonwealth a part in the legislative power of the government. And I ask you, Mr. President, and I ask the opponents of the amendment, why Philadelphia and Allegheny should be put into separate representative districts when Lancaster and Berks and Schuylkill and Luzerne are not? Why should Philadelphia be broken up into legislative districts electing not exceeding four members each, when the entire county of Luzerne, entitled to nine members, elects them as a whole? Why should Wilkesbarre overwhelm Scranton? Why should not each one of these distinct municipalities, having an entire ratio, be entitled to be heard upon the legislative floor of the Commonwealth? Sir, I undertake to say that in my opinion if there is any reason in the wide world why this increase of numbers from one hundred to two hundred should be made, it is for the express purpose of preventing one portion of the large counties swallowing up the others. There is no reason, I undertake to say again, in conclusion, why we should increase the number except for the very purpose shadowed forth by the amendment of the delegate from Lehigh. I hope it may prevail.

The PRESIDENT. The question is on the amendment of the delegate from Chester (Mr. Darlington.)

Mr. ADDICKS and Mr. DARLINGTON called for the yeas and nays, and the call was seconded by ten members.

Mr. BUCKALEW. I ask that the amendment be read, so that we may understand it.

The PRESIDENT. The amendment will be read.

The CLERK read as follows:

“Representatives shall be chosen by single districts composed of contiguous and, as nearly as practicable, compact territory of equal population.”

Mr. BUCKALEW. Mr. President: One of the great reasons for county representation was to prevent the gerrymandering of counties for the House of Representatives, and yet the gentleman proposes to throw away the whole useful result in that direction which we have attained by our previous vote.

Another gentleman asks what reason there is for separating Philadelphia and Allegheny from the other counties of the State. Why, sir, we find them now separated in the Constitution, and for reasons which were good in 1857 and remain good in 1873; because they are utterly unlike any of the other counties of the State. From sheer necessity we separate them. The gentleman from Chester proposes a form of minority representation for the House. He wants to divide up each county for the purpose of allowing various interests within each to obtain a voice in the Legislature of the State. That is proposed; that is intended. So far as that object is concerned, I am not opposed to it; but in this particular case there are overwhelming reasons against it, into the discussion of which I shall not now enter because time will not permit; but one thing I have to say, and that is this: So long as these apportionments are to be made by the Legislature in the accustomed and usual manner, I cannot honestly vote to permit the division of all the counties of the State, for it will increase the evil of gerrymandering in this Commonwealth, as I said on a former occasion, beyond any example which we have in any one of the States of our American Union. Even in the State of New York, where they adopted a system of single districts, never for one moment did they entertain the idea of having those districts made by the majority in the Legislature of the State.

They confided the division of counties to the supervisors' board of each county and to the local legislature in the city of New York, so that there is no precedent in this country, so far as I remember, for what is here proposed.

Now, sir, for one, as to my own county, (and I think other gentlemen may say the same thing as to their counties in the interior,) I say "Hands off from my county by this alien, this sinister power which has heretofore abused the authority with which it was vested"—the Legislature of the State. Bad enough work has been done by permitting counties to be united, as in the last appointment, by allowing Dauphin to swallow up Perry, joining Washington and Beaver and Butler into a representative district, and cutting off one of the representatives of Luzerne to which she was entitled by her population, to place it elsewhere; and yet the Legislature was then hedged about with constitutional restrictions, was forbidden by the amendments of 1857 to divide counties at all, was embarrassed by fixed county lines, in its work. Now throw open a whole map of the State, so that a caucus or a committee, or a combination of political leaders, may write down upon it any divisions they please, from one end of the State to the other, for members of the House as well as for members of the Senate, under the eighteenth section, and I venture to say that our State will have, by all odds, the worst one of all the American Constitutions on the subject of the constitution of its Legislature.

One of the great inducements to me for supporting county representation and for conceding the representation of even the smallest counties, was that the right of the people of the State to be represented in the lower House would not be subject longer to the manipulation of the majority of the two Houses at Harrisburg. And, sir, when you send forth this Constitution with county representation in it, written upon it as one of its leading features, it will be one of the strongest arguments to the people in favor of its adoption, that gerrymandering, if not prevented, will at least be checked by the lips of this Convention; that as to three-fourths of the Commonwealth or a larger proportion in fact of the Commonwealth, in its representation in the House, you have extinguished this evil forever.

Mr. MACVEAGH. Mr. President: It is undoubted that the increase of the number of members does put a different phase

upon this question of single districts and may well induce gentlemen to vote for single districts who did not expect originally to do so. It is very easy to declaim about the evils of one side of the picture, but you must look upon both sides of the shield and see the story written upon the other. There are great dangers from gerrymandering the State by a joint committee of the two Houses of the Legislature even when you have improved your Legislature by all the methods of improvement which have been suggested here; but there are also great perils to the State in allowing a little knot of political leaders at the county town to nominate a large ticket to represent a whole population. The question is, whether the evils under which this State would suffer would be greater by allowing the Legislature to divide counties into single districts, or by allowing small knots of small politicians at county towns to elect large numbers of representatives of their own will. A few gentlemen in the city of Wilkesbarre under this will select nine members, for I believe that is the number to which Luzerne will be entitled, and three or four gentlemen in Pottsville are to select seven members of your Legislature, and three or four gentlemen in Lancaster are to select six or perhaps seven members, for it comes very near the fraction entitling it to seven; and so all over the State.

A DELEGATE. They choose under the Crawford county system.

Mr. MACVEAGH. The Crawford county system! Anybody who thinks that is a method of reform in these days, can go on his way rejoicing; I shall not awaken him from his sweet dream of simplicity! If there is any engine of fraud in politics, I think that is it.

There are dangers on both sides. I have been averse to cutting up these counties into single legislative districts. I have thought it was better to run the risk of a reasonable number being confided to the manipulations and the trading of every county convention, than to divide the counties into single districts, and bring the choice of the legislator home to the door of the elector. But when you put such a great power as is now contemplated in the hands of a very few men, when you subject the choice to the tradings and bargains and corruptions—if not pecuniary, than the corruptions of bargaining that attend almost every county convention in this State, with very rare exceptions—you incur a great peril in that

direction; and it is worth serious consideration which of the two evils is the greater.

As to the danger which my friend from Philadelphia (Mr. Woodward) apprehends, I do not share it. There will be many things in this Constitution which will not meet my approval; but nevertheless I earnestly hope that it will be so acceptable to the vast majority of the people that it will be taken by them as an improvement on anything which now exists. I labor here to perfect your Constitution, because I believe the people desire to accept it unless some great blot or some great blunder shall be written across it to deface it. I think if you make single districts they will accept it. If you leave these large counties to the manipulations of county politicians at the county seat, they will still accept it. If you refer this entire matter to your reformed and improved Legislature, they will still accept it; for I hope they will still be able to find here and there, scattered all over it, honest efforts to improve the character of your representative bodies and to lessen the dangers of corruption under which public life in America has so long and so grievously suffered.

Mr. HARRY WHITE. Mr. President: I utter but familiar words, when I say that this is a vital question. There may be differences of opinion here upon the question of a supplemental oath, or as to the propriety of clothing the Supreme Court or any of its judges with some power of revising the acts of the Legislature. Subsequent reflection, when the moment of excitement has passed, may satisfy us to accept the result. But if a mistake is made on a question of apportionment, the formation of districts to represent the people by those who have a voice in making our laws, that mistake is vital, and will go home to every fireside, and will be felt at home when the people are inspecting our work.

I consider this Convention, with all deference to the majority, if there is a majority in favor of the proposition lying on the Clerk's desk, (I mean the proposition fixing the number of members,) have made a vital and fatal mistake, a mistake which will never be ratified and confirmed by the people.

But, sir, I utter heartily amen to the amendment offered by the delegate from Chester. I shall support it with all the power I possess here and elsewhere, for I believe it to be the only remedy which I

to be found against the iniquities in representation of which some people complain.

Why, Mr. President, this is the only system of minority representation which is sound or orthodox. You talk of electing upon the principle of minority vote in the community, persons representing different political interests, under what is known as the limited plan, and you fail to do that which is acceptable to the people or philosophical in principle. But when you subdivide the large and populous regions of the Commonwealth so that the people in the different subdivisions can be heard through their representatives, you secure the minority of the different localities a fair voice. It is defensible in principle. The only argument made against it is that it will be fruitful in gerrymandering the State; that it will open temptations to a corrupt Legislature or other tribunal for the purpose of gerrymandering the State, and thus defeating the will of the majority of the people.

Such danger is less to be apprehended in the formation of single districts than in the formation of large and populous districts.

Why, sir, the delegate from Columbia has risen in his place here and appealed to a proper prejudice in using the word "gerrymandering," and referring to recent apportionments by the Legislature. Why, Mr. President, in what respect have the most flagrant instances of gerrymandering occurred? In the formation of single districts? No, sir, you have a provision in your Constitution that more than three counties shall not be joined in the formation of a district; and this made it impossible for the Legislature to associate more than three counties in the formation of senatorial districts. There is no other limit whatever upon the power of the Legislature. Cast your eye over the results of the present apportionment, cast your eye over former apportionments, and you discover that where the greatest latitude was given to the apportioning power to travel into territory to suit their selfish interests, they did so. The city of Philadelphia and the middle district, known as the Juniata double district, formed by the apportionment of 1864, were glaring evidences of that fact. The point I make is this, that greater opportunities and larger latitude are given to gerrymander the State in the formation of large districts than in the formation of smaller districts.

Take the city of Philadelphia. Gentlemen familiar with its politics know that the Democratic portion of the population lies in one section of the city, and the Republican portion all around the city of Philadelphia. In the Second, Third, Fourth, Fifth, Sixth, Eleventh, Twelfth and Seventeenth wards is to be found the bulk of the Democratic vote in the city of Philadelphia. Let the Republican party be in power and apportion the city, which is entitled to five Congressmen, into congressional districts, and it can give the entire five to the Republican party. Why? Because the districts' are so long that it allows the Legislature to travel through the different wards and the different election precincts and make up, districts where the majority vote can be distributed so as to secure all the districts. But if you confine the Legislature or any other power in making this apportionment to small divisions, it is impossible then to travel into a region of different politics to overwhelm a vote of opposite politics. Hence I say that a panacea is to be found in a single district system against gerrymandering, whilst the formation of large districts is a temptation to indulge in it.

Much has also been said about the injustice of subdividing the rural districts. I, if I had it in my power, would not consent as a separate proposition to the subdivision of the counties of the rural districts. There is no clamor for it; there is no special occasion for it; but for the purpose of giving single districts in the populous communities, in the city of Philadelphia, in the county of Allegheny, in the counties of Schuylkill and Luzerne, I, for one, am willing if this proposition obtain to go before my constituency and be responsible to them for voting for a subdivision in these special districts. Whilst in many of the counties of the Commonwealth subdivision into separate districts is rarely required for the necessities of the people, it is sometimes needed. For instance, in the county of Cambria, next to me, there is the thriving town of Johnstown. The rest of the county is agricultural, and there has been for years a continual strife between the two sections in order to secure a representative in the Legislature to represent their individual interests, to advocate the removal of the county seat or the formation of a new county. The practical result of such an amendment as this will be that in the northern part of this county, where the

people are homogeneous and have a similarity of interest, they would be entitled to a representative and the other manufacturing community would have its representative and each have on the floor of the Legislature some member to advocate its peculiar views. Considerations like this have forced me to the conclusion to support the proposition offered by the gentleman from Chester, and I hope it will prevail.

The PRESIDING OFFICER. [Mr. Turrell in the chair.] The question is on the amendment offered by the gentleman from Chester.

Mr. MANN. I desire to offer a substitute for this proposition.

The PRESIDING OFFICER. A substitute is not now in order. There is already a substitute for the division pending.

Mr. MANN. I did not understand that it was an amendment to the original report.

The PRESIDING OFFICER. The whole section is an amendment.

Mr. MANN. Will the Chair please explain how that is?

The PRESIDING OFFICER. The original question before the Convention was the nineteenth section of the article on the Legislature. It and amendments to it were referred to a special committee, and the special committee have reported the section which is now under consideration. The section is in the nature of an amendment itself, and to this division of the section the gentleman from Chester has offered a substitute. If the substitute be adopted it will then admit of no amendment except by way of addition. The question is upon the substitute of the delegate from Chester.

Mr. BARTHOLOMEW. On that I call for the yeas and nays,

Mr. HOWARD. I second the call.

Mr. BUCKALEW. I rise to make an inquiry. Do I understand the Chair to decide that if this amendment be adopted, it cannot afterward be amended? My impression is that the question will be on the division as amended, and that nothing will be in order but an addition to it.

The PRESIDING OFFICER. That is what the Chair decided. If this amendment be adopted the question will then be on the division as amended, not on the section as amended.

Mr. BAER. I call for the reading of the substitute for information.

The CLERK read as follows:

"Representatives shall be chosen by single districts composed of contiguous and, as nearly as practicable, compact territory of equal population."

The yeas and nays which had been required by Mr. Bartholomew and Mr. Howard, were taken, and were as follow, viz:

YEAS.

Messrs. Addicks, Ainey, Andrews, Barker, Bardsley, Bartholomew, Biddle, Cochran, Corbett, Cuyler, Darlington, Edwards, Ewing, Fulton, Funck, Hanna, Knight, Lawrence, MacConnell, M'Culloch, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Reynolds, Runk, Simpson, Stanton, Struthers, Turrell Wetherill, J. M., White, David N., White, Harry and White, J. W. F.—35.

NAYS.

Messrs. Achenbach, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Beebe, Black, Charles A., Brodhead, Brown, Buckalew, Calvin, Campbell, Church, Dodd, Gibson, Guthrie, Hall, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Kaine, Landis, Lilly, M'Cleane, M'Michael, Mann, Mantor, Minor, Mott, Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Ross, Russell, Sharpe, Smith, H. G., Smith, Henry W., Smith, William H., Wetherill, John Price, Woodward, Worrell and Walker, *President*—48.

So the amendment was rejected.

ABSENT.—Messrs. Alricks, Armstrong, Bannan, Bigler, Black, J. S., Bowman, Boyd, Broomall, Bullitt, Carey, Carter, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curry, Curtin, Dallas, Davis, De France, Dunning, Elliott, Ellis, Fell, Finney, Gilpin, Green, Harvey, Heverin, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, M'Murray, Metzger, Mitchell, Parsons, Porter, Pughe, Purman, Simpson, Stewart, Temple, Van Reed, Wherry and Wright—50.

Mr. BARTHOLOMEW. I now move to amend the division by striking out the word "two," in the first line, and inserting the word "one," so that the division will read:

"Any county, including Philadelphia, having over one hundred thousand inhabitants shall be divided into districts,"

that I call for the yeas and nays.

Mr. W. H. SMITH. I second the call.

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

YEAS.

Messrs. Baily, (Perry,) Bardsley, Bartholomew, Beebe, Biddle, Calvin, Cochran, Cuyler, De France, Dodd, Edwards, Ewing, Fulton, Funck, Guthrie, Hanna, Hay, Hazzard, Howard, Landis, Lawrence, Lilly, MacConnell, M'Culloch, M'Michael, Mann, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Runk, Russell, Sharpe, Smith, Wm. H., Stanton, Struthers, Turrell, Wetherill, J. M., Wetherill, J. Price, White, David N., White, Harry, White, J. W. F. and Walker, *President*—51.

NAYS.

Messrs. Achenbach, Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Barclay, Black, Charles A., Bowman, Brodhead, Brown, Buckalew, Campbell, Church, Corbett, Darlington, Gibson, Hall, Hemphill, Horton, Hunsicker, Kaine, Lamberton, M'Cleane, Paterson, D. W., Patton, Read, John R., Reed, Andrew, Ross, Smith, H. G., Smith, Henry W., Woodward and Worrell—34.

So the amendment was agreed to.

ABSENT.—Messrs. Armstrong, Baker, Bannan, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Carey, Carter, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curry, Curtin, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Finney, Gilpin, Green, Harvey, Heverin, Knight, Lear, Littleton, Long, MacVeagh, M'Camant, M'Murray, Metzger, Mitchell, Parsons, Porter, Pughe, Purman, Simpson, Stewart, Temple, Van Reed, Wherry and Wright—48.

The PRESIDING OFFICER. [Mr. Turrell in the chair.] The question now is on the division as amended.

Mr. S. A. PURVIANCE. I move to strike out in the last line the first word, "shall," and insert the word "may," so as to read, "may be divided into districts."

The amendment was rejected, the ayes being twenty-two—not a majority of a quorum.

Mr. AINEY. I move as a further amendment to this division, in the second line, to insert after the word "districts," these words:

"And every city shall be entitled to separate representation when its population equals the ratio."

The PRESIDING OFFICER. The question is on the amendment of the delegate from Lehigh.

Mr. AINEY. On that I ask for the yeas and nays.

Mr. H. G. SMITH. Mr. President: I hope this amendment of the gentleman from Lehigh will be adopted. If there be reason why the smallest and most sparsely settled counties of this Commonwealth should be entitled to separate representation, there is more reason why the growing cities of this Commonwealth should be equally entitled to separate representation. If there be reason for the vote which this Convention has just given to divide counties which contain a population of one hundred thousand, I cannot see any argument which will lead gentlemen in this Convention to vote against a proposition so fair and so reasonable as the one now presented. In all that relates to the growth of this Commonwealth, in all that relates to its best interests, the many cities now springing into importance and rapidly assuming place and power in the State are entitled to a vote and voice in the popular branch of the Legislature. If the counties of this Commonwealth that reach one hundred thousand population be divided, let some definite limit be set to this division.

Now, sir, in the county of Lancaster, the population of the city of Lancaster under the proposition adopted this morning would entitle it to a representative; but a gerrymander by the Legislature might attach a single township and debar the political majority in that city from representation in the Legislature. The same thing might be done with Reading; the same thing might be done with the city of Scranton by attaching some division of the county of Luzerne to it. If then, sir, we wish to provide in this matter against the admitted evils of gerrymandering, let us go as far as reason and good judgment dictate. Let us say that cities, which as much as counties are subdivisions of the Commonwealth, shall be fairly represented in the popular branch of the Legislature. To such representation they are shown to be entitled by all arguments made in favor of the separate representation of counties. Let us provide that when the growing cities of this Commonwealth are entitled to representation by their numbers, they shall not be deprived of it by gerrymandering. Let us do what is just, equitable and clearly right in this matter. I do earnestly urge members to

stand by the amendment proposed by the gentleman from Lehigh.

The PRESIDING OFFICER. The question is on the amendment offered by the delegate from Lehigh, (Mr. Ainey,) on which he called for the yeas and nays. Is the call seconded?

The call was seconded by ten delegates.

Mr. BUCKALEW. I should like to ask a question of the gentleman moving this amendment, whether his intention is that the city of Pittsburg shall elect all its members on one ticket? I think that would be the effect of his amendment the way he has it worded.

Mr. AINEY. As I understand it, it would not have that effect. The division reads that "no district shall elect more than four members;" and that clause is left in.

Mr. D. N. WHITE. I should like to hear the amendment read before the vote is taken.

The PRESIDING OFFICER. The amendment will be read.

The CLERK. The amendment is to insert, after the word "districts," the words: "And every city shall be entitled to separate representation when its population equals the ratio."

So as to make the division read:

"Any county, including Philadelphia, having over one hundred thousand inhabitants, shall be divided into districts; and every city shall be entitled to separate representation when its population equals the ratio; but no district shall elect more than four members."

The PRESIDING OFFICER. The yeas and nays have been ordered on the amendment, and the Clerk will call the roll.

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

YEAS.

Messrs. Addicks, Ainey, Bailly, (Perry,) Bailey, (Huntingdon,) Bartholomew, Biddle, Bowman, Brodhead, Buckalew, Campbell, Church, Corbett, Edwards, Ewing, Guthrie, Hall, Hanna, Hay, Horton, Howard, Kaine, Lamberton, Landis, Lilly, M'Culloch, M'Michael, Mann, Mott, Palmer, H. W., Patton, Purviance, Sam'l A., Reynolds, Rooke, Runk, Russell, Sharpe, Smith, H. G., Smith, Wm. H., Stanton, Wetherill, J. M., Wetherill, John Price, White, David N. and White, J. W. F.—43.

N A Y S.

Messrs. Alricks, Andrews, Baer, Beebe, Black, Charles A., Brown, Calvin, Cochran, Darlington, De France, Dodd, Fulton, Funck, Hazzard, Hemphill, Hunsicker, Lawrence, MacConnell, McClean, Mantor, Minor, Niles, Patterson, D. W., Patterson, T. H. B., Purviance, John N., Smith, Henry W., Struthers, Turrell, White, Harry, Woodward, Worrell and Walker, *President*—32.

So the amendment was agreed to.

ABSENT. — Messrs. Achenbach, Armstrong, Baker, Bannan, Barclay, Bardsley, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Carey, Carter, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Finney, Gibson, Gilpin, Green, Harvey, Heverin, Knight, Lear, Littleton, Long, MacVeagh, McCamant, McMurray, Metzger, Mitchell, Newlin, Palmer, G. W., Parsons, Porter, Pughe, Purman, Read, John R., Reed, Andrew, Ross, Simpson, Stewart, Temple, Van Reed, Wherry and Wright—58.

The PRESIDING OFFICER. The question recurs on the division as amended.

Mr. HUNSICKER. I desire to ask, first, a parliamentary question: whether the whole section will come up for ratification after this division is acted upon, or whether it will then be considered as adopted as a whole?

The PRESIDING OFFICER. The division as amended comes up first.

Mr. HUNSICKER. But I desire to know whether, if the division as amended is carried, the whole section is then carried. Some members say yes, and some say no, and I should like to have a decision of the Chair.

The PRESIDING OFFICER. After we vote on every division, we gain nothing additional by taking a vote on the whole.

Mr. HUNSICKER. I desire to ask the Chair this parliamentary question: If this last clause is either adopted or defeated, will there still be a vote taken on the section, the whole proposition as amended?

The PRESIDING OFFICER. All that precedes this, the Chair will rule for the present, has been adopted, and that result will not be changed by the vote upon this division.

Mr. HUNSICKER. Then I desire to make a few remarks in explanation of the vote I intend to cast.

Mr. LAWRENCE. Did I understand the Chair to say that no vote had been taken on the division as amended?

The PRESIDING OFFICER. The amendment was adopted.

Mr. LAWRENCE. But does not that amend the whole section? The section has been amended in two particulars, and of course the question will be on the section as amended after we are through with this division.

Mr. HUNSICKER. If that is to be the ruling of the Chair—

The PRESIDING OFFICER. Let the question be taken on the pending division.

Mr. HUNSICKER. I desire the ruling of the Chair on that question, because that will determine my vote. I want to know if I shall have an opportunity afterwards of casting my vote against the section?

Mr. WORRELL. Is that a proper question in this stage of the procedure?

Mr. MACVEAGH. I raise the point of order that no vote was taken upon any division as amended after the amendment was voted in. The Clerk can decide that question.

Mr. BARTHOLOMEW. The question was taken on each division by yeas and nays.

Mr. MACVEAGH. Then if it was, after the amendment goes in of course it will come up again.

The PRESIDING OFFICER. I will state in answer to the gentleman from Dauphin that I was not in the chair when the vote was taken, but my understanding was that a vote was taken on each division as amended, and by yeas and nays. If I am wrong, I shall be happy to be corrected.

Mr. MACVEAGH. I appeal to the record.

Mr. J. M. BAILEY. I think I can relieve the gentleman from Dauphin. This is the first division that has been amended.

Mr. MACVEAGH. Not at all. The first division was amended.

Mr. J. M. BAILEY. Yes, I was mistaken; "one hundred and fifty" was changed to "two hundred."

Mr. MACVEAGH. And on that division as amended I heard no vote taken.

Mr. KAINE. Yes, there was.

Mr. MACVEAGH. I may be mistaken as a matter of fact.

Mr. KAINE. The section was first amended by inserting "two hundred" in place of "one hundred and fifty." Then a division was called for, and that first di-

vision was carried by a vote of sixty-two to thirty-one.

The PRESIDING OFFICER. The Clerk will state how the question stands.

The CLERK. The section has not been amended in any particular since the amendment offered by Mr. Curtin, to strike out one hundred and fifty and insert two hundred, which was before the division was called for, until the present division was reached. The amendments offered by Mr. Buckalew were merely amendments of phraseology, on which I suppose it was not necessary to have any vote. This division has been amended, and the question is on the division as amended. A vote on the section as amended, on motion of Mr. Curtin, has never been taken, according to my record.

Mr. MACVEAGH. That is what I said.

Mr. HUNSICKER. I objected several days ago to this parliamentary strategy of cutting a section into pieces and taking a vote by divisions, because it always leads to confusion and is always a trap to catch the unwary, and I confess I myself have fallen into this trap this morning and been caught. I never would have voted for this proposition if I had known that eventually it would have allowed the gerrymandering of six counties of this State in the very worst kind of way. The counties of Allegheny and Philadelphia, being large cities, it is perfectly proper that they should be cut up into districts; but if you divide the counties of Berks, Luzerne and Schuylkill, which have no large cities or no cities with a population such as that of Philadelphia or Pittsburg, it will enable the friends of single districts to accomplish the very thing that they could not accomplish by a direct vote, because that system was voted down by a vote of seventy-seven to some thirty. I only make this statement because I now intend to vote against the whole section.

The PRESIDING OFFICER. The question is on the last division as amended.

Mr. DE FRANCE. Let it be read.

The CLERK read as follows:

"Any county, including Philadelphia, having over one hundred thousand inhabitants, shall be divided into districts, and every city shall be entitled to separate representation when its population equals the ratio; but no district shall elect more than four members."

The division was agreed to.

Mr. MACVEAGH. Now let us have a vote on the section.

Mr. BARTHOLOMEW. I claim that that is out of order.

Mr. WOODWARD. I rise to make an inquiry. I suppose the vote will now recur on the section, or the report, as amended. Am I right about that?

The PRESIDENT. The Chair is compelled to rule that as he understands it, there is no vote now to be taken on the section, for if he were to rule the contrary any gentleman might ask for a division, and then we should have to go right over what we have already done.

Mr. WOODWARD. Then my question is this: Would it be in order for me to move to strike out two hundred as the divisor and re-insert one hundred and fifty?

The PRESIDENT. That you cannot do.

Mr. WOODWARD. The section has been amended since that was agreed to. I wish to raise that question again, if possible.

The PRESIDENT. A reconsideration of that vote can be moved, and it can be reached in that way.

Mr. MACVEAGH. Let us understand precisely the position of the question. There was an amendment voted in the report on the motion of the delegate from Centre (Mr. Curtin.) There was another amendment voted in on the motion of the delegate from Philadelphia (Mr. J. Price Wetherill.)

Mr. LILLY. Mr. President: I inquire is there any question before the House?

Mr. MACVEAGH. Yes, sir; there is a question of order.

Mr. LILLY. I think that question has been decided.

Mr. MACVEAGH. No, sir.

The PRESIDENT. The gentleman from Dauphin has the floor.

Mr. MACVEAGH. Those two amendments have been made to the report. It was the impression that when the amendment of Governor Curtin was adopted, there had been a vote on that division as amended; but in point of fact there never was. The Clerk reports that there never was any vote on the first division as thus amended. There was a vote upon putting in the amendment, but there never was any vote upon the section or even upon the division as amended.

Mr. D. W. PATTERSON. On the first division there was.

Mr. MACVEAGH. No, sir; I appeal to the Clerk. The Chair will see that this

question is important as preserving the rights of members.

Mr. BARTHOLOMEW. There was a vote taken on the first division.

The PRESIDENT. The Clerk will read what occurred, from the Journal. It is the impression of the Chair, that there was a vote on the first division as amended.

The CLERK. The minutes show that Mr. Woodward moved to proceed to the consideration of the article. Mr. Curtin moved to strike out "one hundred and fifty" and insert "two hundred," upon which the yeas and nays were called, and resulted, yeas fifty-two, nays forty-three. Mr. Struthers moved to amend by inserting after the word "shall," his amendment, in the first line, which was not agreed to. On the adoption of the section, Mr. Ainey called for a division, the first division to end with the first paragraph. Mr. Lilly called for a further division, to end with the word "ratio," at the end of the fourth line, upon which the yeas and nays were called, and resulted, yeas sixty-two, nays thirty-one.

Mr. BARTHOLOMEW. That was the first division.

The CLERK. Mr. Campbell called for a further division, to end with the word "member," in the fifth line, upon which the yeas and nays were called, and resulted, yeas sixty-two, nays thirty-four.

The PRESIDENT. It is the distinct recollection of the Chair that there was a vote by yeas and nays on the first division as amended, and that is confirmed by the report of the official stenographer, which he has submitted to the Chair.

Mr. MACVEAGH. The Clerk reported the other way a short time ago.

Mr. WORRELL. I move to refer the article to the Committee an Revision and Adjustment.

Mr. HARRY WHITE. Before the vote is taken on that, I desire to offer an amendment.

Mr. HUNSICKER. I move to reconsider the vote by which this section was adopted. I voted in the affirmative.

The PRESIDENT. It is moved to reconsider the vote on the adoption on the first division.

Mr. HUNSICKER. The first four divisions.

The PRESIDENT. You can move to reconsider but one at a time. Is the motion seconded?

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

The PRESIDENT. It is moved to reconsider the vote upon the first division of the section.

The yeas and nays were required by Mr. MacVeagh and Mr. J. Price Wetherill, and were as follow; viz :

Y E A S .

Messrs. Ainey, Alricks, Black, Charles A., Brown, Calvin, Church, Cochran, Corbett, Dartington, Dodd, Edwards, Fulton, Hay, Hazzard, Hemphill, Hunsicker, Landis, MacVeagh, McCulloch, Minor, Patterson, D. W., Purviance, John N., Purviance, Samuel A., Reynolds, Smith, Henry W., Stewart, Struthers, Wetherill, Jno. Price, White, David N., Woodward, Wright and Walker, *President*—32.

N A Y S .

Messrs. Achenbach, Addicks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Bartholomew, Beebe, Bidle, Bowman, Brodhead, Buckalew, Campbell, Carter, Curtin, De France, Dunning, Ewing, Funck, Gibson, Guthrie, Hall, Hanna, Horton, Howard, Kaine, Lambertson, Lawrence, Lilly, MacConnell, McClean, M'Michael, Mann, Mantor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Rooke, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stinton, Turrell, Van Reed, Wetherill, J. M. White, Harry, White, J. W. F., and Worrell—54.

So the motion to reconsider was rejected.

ABSENT.—Messrs. Armstrong, Bannan, Barclay, Bardsley, Bigler, Black, J. S., Boyd, Broomall, Bullitt, Carey, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curry, Cuyler, Dallas, Davis, Elliott, Ellis, Fell, Finney, Gilpin, Green, Harvey, Heverin, Knight, Lear, Littleton, Long, McCamant, M'Murray, Metzger, Mitchell, Newlin, Parsons, Porter, Pughe, Purman, Read, John R., Reed, Andrew, Ross, Temple, and Wherry—47.

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

Mr. HARRY WHITE. I offered an amendment a moment ago which lies on the Clerk's desk.

The PRESIDENT. The amendment will be read.

The CLERK. The amendment is to insert as a new section the following:

SECTION 20. The Legislature at its first session after the adoption of this Con-

stitution, and at its first session after each United States decennial census thereafter, shall apportion the State into senatorial and representative districts agreeably to the provisions of the foregoing section.

Mr. BUCKALEW. I move to amend by substituting what I send to the Chair.

The CLERK read as follows:

"At the session of the General Assembly next after the adoption of this Constitution, commissioners of apportionment shall be chosen, whose duty it shall be to divide the State into senatorial districts, and counties containing over 100,000 into representative districts, in conformity with the provisions of the two next preceding sections. The Senate shall choose four and the House of Representatives eight of said commissioners, each Senator and each Representative voting for one-half the number to be chosen by his House.

"The said commissioners shall severally possess all the qualifications required of members of the State Senate; shall be sworn or affirmed to support and obey this Constitution and to perform their duties with fidelity, and shall be ineligible to an election to either House under the apportionment made by them, for a period of five years. The assent of nine of their number shall be necessary to an apportionment, which, when made, shall be certified by them to the Secretary of the Commonwealth, to be published under his direction with the general laws of the State.

"And commissioners of apportionment shall, in like manner, be chosen and appointed by the two Houses to make apportionments based upon each future decennial census of the United States, whose qualifications, duties and powers shall be the same as those of the commissioners above mentioned, who shall take and subscribe a like oath or affirmation, and be subject to like ineligibility for legislative service, and who shall form such apportionments as shall be authorized by the Constitution by a like vote and assent of three-fourths of their number."

Mr. BUCKALEW. The amendment requires a slight modification on account of an amendment made by the Convention in regard to the representation of cities. I rise to suggest that the amendment of the gentlemen from Indiana and this amendment presented by me shall be printed, and that the Convention shall proceed to act upon the subject in the

morning. I do not care to address the Convention at this hour.

SEVERAL DELEGATES. Go on.

Mr. LILLY. I do not think the amendment can need modification because it says that the apportionment shall be according to the two foregoing sections; so that that covers it.

Mr. BUCKALEW. If members of the Convention desire me to go on now, I will proceed with my remarks on this subject. ["No." "No."]

Mr. CORBETT. [At two o'clock and forty minutes P. M.] I move that we adjourn.

The PRESIDENT. The question is on the motion to adjourn.

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

Mr. T. H. B. PATTERSON. I second the call.

The yeas and nays being taken with the following result:

Y E A S .

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bartholomew, Black, Charles A., Bowman, Brown, Buckalew, Calvin, Church, Cochran, Corbett, Curtin, De France, Hall, Hanna, Hemphill, Kaine, Knight, Lamberton, M'Clean, Niles, Patton, Reed, Andrew, Rooke, Runk, Sharpe, Simpson, Smith, H. G., Stanton, Stewart, Wetherill, J. M., Wetherill, John Price, White, Harry, Woodward and Worrell—37.

N A Y S .

Messrs. Achenbach, Addicks, Andrews, Baer, Beebe, Biddle, Campbell, Carter, Cuyler, Darlington, Dodd, Edwards, Ewing, Fulton, Funck, Gibson, Guthrie, Hay, Hazzard, Horton, Howard, Hunsicker, Landis, Lawrence, Lilly, MacConnell, MacVeagh, M'Culloch, M'Michael, Mann, Mantor, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Reynolds, Russell, Smith, Henry W., Struthers, Turrell, Van Reed, White, David N., White, J. W. F., Wright and Walker, *President*—47.

So the Convention refused to adjourn.

ABSENT. — Messrs. Ainey, Armstrong, Bannan, Barclay, Bardsley, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Bullitt, Carey, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curry, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Finney, Gilpin, Green, Harvey, Heverin, Lear, Littleton, Long, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Newlin,

Parsons, Porter, Pughe, Purman, Read, John R., Ross, Smith, Wm. H., Temple and Wherry—49.

Mr. BUCKALEW. Mr. President: I conform myself to the pleasure of the Convention, and I will state, as well as I can, within the limited time which the rules allow, the reasons by which this amendment proposed by me can be supported. It is a proposition that hereafter apportionments shall not be made by the Legislature itself, but that they shall be made by commissioners selected by the Senate and House respectively, of which the Senate shall select one-third, and the House two-thirds, and it makes careful provision as to the qualifications of the commissioners selected, and as to the manner and conditions upon which they shall perform their work.

This is a question of the first magnitude in our representative system, and although it is precipitated upon us when we are somewhat fatigued and near the end of our session, it still deserves respectful and earnest attention from every member of this body.

The existing evil no man doubts, no man denies. The fact that our present plan for framing apportionments works badly is known not only to us but to all our fellow-citizens in every part of the Commonwealth, and sir, the only question for the Convention to consider is whether it be possible for us to provide a remedy for this admitted evil or not. If the plan proposed by way of amendment shall itself be found open to strong and just objection, if upon comparing it with the present plan it is found to be no better, upon the whole, ground will be laid for its rejection. But if it can be shown by fair argument that this plan, originating with the Committee on Suffrage, Election and Representation, is a material improvement upon the present plan and that it gives to the people security for justice and fairness in the future, then I take it that the members of this Convention, as honorable and patriotic men, will give to it their voices and their votes.

In the first place, (and to commence with the least material point of the argument,) this plan will save to the Commonwealth a very large amount of expense. The last apportionment of this State for Senators and Representatives cost the people \$75,000 at least in the protraction of the session for the period of about one month and a half. An apportionment made by commissioners would

be inexpensive. It will be made by but twelve persons instead of one hundred and thirty-three, and there will be no corps of attendant officers, such as the two Houses have, to be paid during a protracted session while the question of apportioning the State undergoes consideration. You can apportion the State for the next century for the amount which the apportionment of 1871 cost the people of this State.

Well, sir, along with this is the attendant advantage, the abbreviation of legislative sessions and the prevention every ten years of a special session to be called by the Governor for the express purpose of making an apportionment of the State; for at the session of 1880 this question cannot be reached, and the apportionment should be made in the spring of 1881, under the census of the previous year, to enable the people to elect their Senators and Representatives in the fall following. Otherwise the careful revision which would be due to the people every tenth year will be deferred in its application for the whole representative term and for the term of one-half the members of the Senate. The Governor will therefore be obliged, when the proper time arrives, to call a special session, the expense of which will be borne by the people.

Again—I proceed now to the second point—next winter you will have an unreformed Legislature, one not chosen under your amendments, one in which the Senate will not consist of fifty and the House of two hundred members. You will have the old and unreformed Legislature to make the apportionment which will continue until 1881, a period of seven years. This plan which is proposed, sanctioned by the Committee on Suffrage, Election and Representation, is that the two Houses of the Legislature, instead of performing this duty themselves, shall select a tribunal or board and depute to it this power. It is not a measure of offence to the Legislature or to the principle of representative government. Why, the Legislature itself acts upon this very subject by committees, and every contested apportionment is finally arranged by a committee of conference appointed between the two Houses, and members are often obliged to accept bills from such committees which they do not approve. In the case of a contested election of a member, instead of deciding the contest themselves, they must appoint a committee, which is put under oath to try the

case and render a decision. The Legislature will still perform this duty if this proposition be adopted. They will perform it through agents appointed by themselves and put under such guarantees as will secure better results to the people than they could by attempting to perform this work themselves.

The objection to apportionments by the members of the Senate and House of Representatives, an objection which is fundamental and invincible, is this, that they are made, so to speak, judges in their own cause. The members of the Senate and of the House are personally interested in making districts in which they can be re-elected to their respective Houses. It is not so much the pressure of political considerations upon them that decides their action as the seductive, silent, efficient action of self-interest. They ought not then to make an apportionment which may affect the question of their own re-election by the people. The power should be lodged elsewhere.

What is this tribunal? There are to be six members from each of the two political organizations which we may suppose will continue to exist. These members are selected, four by the Senate and eight by the House of Representatives, to perform this duty, and when the board or commission meets it will be constituted precisely as the Legislature is often constituted when one branch has a political majority of one complexion and the other has a political majority of another complexion. This does not prevent action, because no apportionment bill ever failed to pass in the history of the Commonwealth. If the first failed a second was introduced and carried.

There never was a failure, although each House had a complete veto on the other, and when the Legislature is constituted in that manner, one party holding control of one House and the other party of the other House, then it is that you get a fair bill; and you never can get a fair bill politically under other circumstances. To be sure, even then, private interests come in and determine somewhat the result; but, by this board of commissioners, you have that check by one party upon the other in the making of apportionments, and you have these commissioners

severed from all personal interest in the work which they are to perform. The amendment renders them ineligible to the Senate or House for a period of five years under any apportionment which they may make. That will extend beyond the period of four years of a senatorial term, and will exclude considerations of self-interest from them, and as each party in the commission will have power to protect itself the result will be inevitably *mutual concessions and the attainment of justice*.

The amendment provides that nine of the twelve commissioners shall unite in making the apportionment; so that no interest represented in that board can have its own way. It will be, as such a proceeding ought always to be, a question of mutual and fair consultation. It will be fair because every man in the board will know at the beginning that neither party can have its own way, if it asks what is unjust. Well, what will be done? These commissioners will take up the census returns, they will take a map of the State, such as we have here upon our desks, and they will take up the most recent election returns, and make these districts, in Philadelphia and Allegheny and other large counties, for which we have made provision, according to those statistics, and deal fair justice to all concerned.

As to the Senate, (for this applies to the Senate also,) there will be fifty senatorial districts formed in the same way, in a due and proper manner.

The PRESIDENT. The gentleman's time has expired.

Mr. BUCKALEW. I have nearly finished.

Mr. ALRICKS. I move that the delegate's time be extended.

Mr. BUCKALEW. No, I will not trespass. I have stated the main points of the argument.

Mr. KAINE. I move that the two propositions be printed so as to be laid on the delegates' desks in the morning.

The PRESIDENT. That will be done, of course.

Mr. CUYLER. I move that we adjourn.

The motion was agreed to, and (at two o'clock and fifty-seven minutes P. M.) the Convention adjourned until half-past nine o'clock to-morrow morning.

ONE HUNDRED AND FORTY-NINTH DAY.

WEDNESDAY, *September 24, 1873.*

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. HAY asked and obtained leave of absence for Mr. J. R. Read for to-day and to-morrow.

Mr. REYNOLDS asked and obtained leave of absence for Mr. Biddle for to-day and to-morrow.

Mr. BAER asked and obtained leave of absence for himself for a few days from to-morrow.

Mr. ALRICKS asked and obtained leave of absence for himself for a few days from Saturday next.

CONSTRUCTION OF WILLS.

Mr. ALRICKS submitted the following resolution, which was read :

Resolved, That the Committee on the Judiciary inquire into the expediency of reporting a section to the purport that in the construction of wills where the ancestor takes a preceding freehold estate the remainder may be devised to the heirs or issue as purchasers, if such is the clear intention of the testator.

The PRESIDENT. The question is on ordering the resolution to a second reading.

Mr. MANN. I submit that it is to be referred, under the rule, without further action.

Mr. KAINE. I hope not. I hope the resolution will go to second reading, and then let us hear from the gentleman who offers it.

Mr. ALRICKS. I desire to have it referred.

The resolution was read the second time and referred to the Committee on the Judiciary.

THE LEGISLATURE.

Mr. D. N. WHITE. I move that the Convention resume the consideration on

second reading of the article on the Legislature.

The motion was agreed to.

The PRESIDENT. When the Convention adjourned, the amendment of the delegate from Columbia (Mr. Buckalew) to the amendment of the delegate from Indiana (Mr. Harry White) was pending. That amendment will be read.

The CLERK read the amendment to the amendment as follows :

"At the session of the General Assembly next after the adoption of this Constitution, commissioners of apportionment shall be chosen, whose duty it shall be to divide the State into senatorial districts, and counties containing over one hundred thousand into representative districts in conformity with the provisions of the two next preceding sections. The Senate shall choose four and the House of Representatives eight of said commissioners; each Senator and each Representative voting for one-half of the number to be chosen by his House. The said commissioners shall severally possess all the qualifications required of members of the State Senate; shall be sworn or affirmed to support and obey this Constitution, and to perform their duties with fidelity, and shall be ineligible to an election to either House under an apportionment made by them for a period of five years. The assent of nine of their number shall be necessary to an apportionment, which, when made, shall be certified by them to the Secretary of the Commonwealth, to be published, under his direction, with the general laws of the State.

"Commissioners of apportionment shall in like manner be chosen and appointed by the two Houses to make apportionments based upon each future decennial census of the United States, whose qualifications, duties and powers shall be the same as those of the commissioners above mentioned, who shall take and subscribe a like oath or affirmation, and be subject to like ineligibility for legislative service, and who shall form such apportionments as shall be authorized by the Constitution

by a like vote and assent of three-fourths of their number.

MR. DARLINGTON. It cannot be supposed that the Convention is prepared to vote upon a question of this magnitude without further consideration at any rate. There are many objections on my mind to the scheme of the gentleman from Columbia. In the first place, I think it may safely be said that it is untried, that it is an experiment, and has never yet been tested, so far as my knowledge extends, in any State. In the next place, it is objectionable on the ground of its impracticability of operation. It proposes that twelve commissioners of apportionment shall be selected by the Legislature, each member of the Legislature voting for six. At least, that is the substance of the proposition, although some of the commissioners are to be selected by the Senate and some by the House. Still the mode of selection is the same, each member of the Senate voting for two only of the four to be elected; and in the House each member is to vote for only one-half of those who are to be chosen by that body. By this means you secure, it is true, twelve commissioners of apportionment, as they are called, equally divided in politics. It is, however, practicable for such a body to make an apportionment? We know very well in the experience we have heretofore had on this subject, that whenever the two Houses of Legislature have been nearly equally divided, an apportionment becomes difficult, and in some cases it has even been necessary to allow the apportionment to go over to another session, and then the apportionment already existing continued until a new one should be effected.

Now, imagine twelve gentlemen equally divided in politics to come together for the purpose of apportioning the State, and imagine (what is not extravagant but which may be expected often to occur) the apportionment already existing is, in the change of parties, largely in favor of one political party, the Democrats or the Republicans, as the case may be. In the present apportionment of the Legislature the Republicans have largely the advantage. You bring together your six men on one side and six on the other, and of course those representing the party in the majority will adhere to the apportionment already made unless they can get one as favorable for their side. What follows? Stubbornness, firmness on each side and a total inability to agree.

You might as well raise the wind in any other quarter as to attempt to get three men on the one side to go over to the other and thus effect an apportionment under this scheme. It is a very beautiful thing in theory that they will come together determined to agree; but it must be remembered that these twelve men are not like a jury selected for the trial of a civil or criminal issue under the control of a court, where their duty is to agree, and where, if they do not agree, they may be discharged and the case submitted to another jury; but they are twelve independent gentlemen, if you please, of the best character in the State, six holding firmly to their opinions and believing in the success of their party and that the good of the Commonwealth is bound up with the success of their party; and the other six equally firm, equally intelligent, and honestly believing in the necessity of the success of their party and its measures. They are at a dead lock. What hope can you have that even a commission of the best men will ever under such circumstances agree?

Now, I am putting this case on the supposition that the Legislature will be purified and that we shall have a better class of men in it than we ever had before; that the best men in the Commonwealth will be selected and will hold this office at Harrisburg. You will find that it is impossible for that class of men to carry out this measure. Now suppose, on the other hand, that your Legislature should be as corrupt as gentlemen here have denounced them as having been heretofore, what class of men will they be likely to select for commissioners of apportionment? Precisely the men of their own kidney, men like themselves, corrupt men who can be purchased, men who will be in favor with these corrupt men, and who, of all others, will be the ones to be selected.

Then with corrupt men in your body of twelve, what has a designing and wealthy man to do but to buy up one, two or three or half a dozen of them? He could do that much more easily than he could purchase the Legislature, because they are smaller in number. I submit that it is most dangerous to put this power into the hands of any set of men you can possibly secure, supposing them to be corrupt, because it requires but little money to purchase enough to accomplish the object designing men.

So, whether you look at this question in the light of honesty and fairness, or in the light of corruption with the worst characters in it occupying the office, in either event it would be far less desirable and far more dangerous than to rest the power where it now is. If, on the other hand, you suppose that the members of the Legislature will be pure men, why can you not trust them to make the apportionment? We have prescribed the manner in which it shall be done. We have said already that every county entitled to a single representative shall have it; we have said that no counties shall be divided except when they arrive at a certain number of population; we have said that no two counties shall be joined in forming a district; and thus this apportionment is practically reduced by the provisions we have adopted to the division of counties containing over one hundred thousand inhabitants. The duty of apportionment will be confined to Philadelphia, Allegheny, Luzerne, Berks and Schuylkill, and that is the end of it. All others are settled by us. The Legislature cannot move out of the track we have laid down for them, either now or at any future time; and when we thus reduce their power to the apportionment of these few counties, and when we make it impossible in the apportionment of those counties to affect the general result throughout the State, as I submit to be the case, where is the danger in leaving that power precisely where it has always been—in the hands of the representatives of the people?

All the other States of the Union have so left it, and find no inconvenience from it. I am aware that in the State of New York, where they have required that members of the Legislature shall be elected by single districts, they have left the division of counties entitled to more than one member to their boards of county supervisors; but still the Legislature have never denied themselves the power and have never supposed they were incapable of the power of apportioning the Senate, and they have always done so in New York as well as elsewhere; and they have apportioned the House too, with that single exception of dividing counties in making single districts. That is a power which this Convention has not seen fit to confer even upon the Legislature, nor can it be exercised by them or by any other body.

Then we are asked to adopt an untried scheme. It proceeds upon the theory that a corrupt Legislature will dishonestly apportion the State. If we can trust the Legislature to select honest men, cannot we trust them to make an honest apportionment? Upon what principle is it that we suppose more fidelity to exist in the hearts and minds of those who are appointed by the Legislature than in those who appointed them? We have not been willing in the organization of the judicial department to permit anybody but ourselves to select our judges. Why? Because we are capable of selecting them as we are capable of selecting those to whom we would entrust the power. Therefore, the people, the fountain of all power, have chosen to keep in their own hands the selection of the judiciary, and not trust it to the Legislature or to the Governor, or to anybody else.

I say that, inasmuch as the people are the fountain of all power and are themselves honest, they are to be assumed, under the safeguards which through us they have placed in the Constitution upon their representatives, to be able to choose honest and faithful men to do not only all the apportionment that is to be done, but a much more important duty, to enact the laws which are to govern us all. If they are honest enough to make the laws that are to govern us, which define crimes and prescribe punishments, to decide all questions of magnitude between man and man, are they not honest enough to do that other thing which become necessary in the administration of the law, the apportionment of the members of the Senate and House of Representatives.

MR. KAINE. MR. President: I do not understand the gentleman from Chester upon this question. He seems to desire to do that which is right—at least he so says; and therefore upon this subject I think he is not informed. If he is sincere, he certainly knows nothing of the manner in which this State has been districted for Senators and members of the House of Representatives, and members of Congress, for the last ten or fifteen years. The matter now proposed to be remedied by the amendment of the gentleman from Columbia is one of the troubles that have been prevailing in the Legislature of this Commonwealth, and against which the people of the State desire some remedy.

Why, sir, I hold in my hand a map of the congressional districts of the State,

made at the last session of the Legislature; and certainly a greater outrage upon the rights of portions of the people of this Commonwealth never was perpetrated by a legislative body. I should say that it would require a person running for Congress as a candidate to be perfectly posted in the minute geography of the State to know the various counties or parts thereof in his district. Here is a district composed first of the counties of Huntingdon, Fulton and Franklin, commencing nearly in the centre of the State, Huntingdon county adjoining Centre, and running south to include the counties of Fulton and Franklin, and then running north to include the counties of Perry, Juniata and Snyder. It commences here, [pointing to a map,] runs south, then turns around and runs up to a point where the district is almost cut off, and then it diverges into a kind of snake and runs up north, beyond the centre of the State.

Then, again, we have in one district the county of Montgomery and part of the county of Bucks. I believe it is the first time in the history of Pennsylvania, since the act of Congress providing that members from the different States should be elected in single and separate districts, that a county in Pennsylvania has been divided. I never heard of a county being divided to make a congressional district, in this State or in any other in the Union.

Mr. J. W. F. WHITE. Allow me to suggest to the gentleman that Allegheny county was divided by the previous apportionment.

Mr. KAINE. Allegheny county was too large for one member, and therefore, of necessity, had to be divided; but here Bucks county is divided and part of it put with Montgomery and a part with Lehigh and Northampton, for partisan purposes entirely, as I am informed.

Again, we have a district composed of Elk, Clearfield, Centre, Clinton, Lycoming, Union and Mifflin, commencing away nearly on the northern line of the State and running far south of the centre. So I might go over the entire map. There are some districts made compact enough; but there is not a district in the State which has not been made for partisan purposes. I do not care in whose favor they have been made; I do not care whether they have been made to accommodate a Democrat in the Senate or a Republican of the Senate or a Democrat of

the House or a Republican of the House who expected to go to Congress. I at one time had some experience in the Legislature of this State upon that very subject, when I know that districts were made by the party then dominant in both branches of the Legislature to suit particular members, and I have no doubt these districts have been made in the same way. I have no doubt they have been made to accommodate certain members of the House and Senate who were Democrats and perhaps certain members of the two Houses who were Republicans. It is evils like this that I desire to avoid. Let the districting of the State be made fair and honest, and let it be made by a tribunal that will not be induced to make districts to suit their own convenience or that of their friends.

So in regard to the districting of the State for members of the House of Representatives and senators. At the last apportionment of the State three counties in my section of the State were placed together to form a representative district. The counties of Washington, Beaver and Butler were put together, certainly for no honest purpose. Washington itself should have been entitled to two members, Beaver to one, and Butler to another; yet they are put together and elect four members.

We have, it is true, prevented anything of that kind hereafter by the section we have already adopted providing that no counties shall be joined together for the purpose of forming a representative district. And wherefore the necessity of doing that? It was just for the very reason that that thing had been done before. That was done for the very purpose of preventing the Legislature from doing that thing again. Then why not go to the very utmost limit and provide by a separate and distinct tribunal for a fair and honest apportionment of the State, as is provided for in this amendment of the gentleman from Columbia? Take it out of the hands of the Legislature. Why, sir, under the Constitution that was in force in Maryland until the last ten or fifteen years the senators of that State were elected by electors. The people elected electors who met and elected the senators of the State. So here let this Convention establish a tribunal, a body to be selected by the Legislature, who shall divide the State into congressional, senatorial and representative districts.

Mr. HARRY WHITE. I crave a few moments attention of the Convention. I would hesitate to do it, if I had not had the honor of offering the original proposition to which the delegate from Columbia offered the amendment which is now the immediate matter under consideration. I will not attempt to reply to what I might characterize, with all respect to the delegate from Fayette, as his diluted remarks upon the subject. I cannot, for the life of me, see how it is pertinent to enlarge upon the subject of a congressional apportionment when we are considering this elementary principle itself. I sympathize, however, somewhat with the delegate from Fayette in his strictures upon congressional apportionments, but I will remind the honorable delegate that in the passage of the last congressional apportionment the honorable Senator who so well represents the district in which the delegate resides gave that bill his most earnest and hearty support. If I had not heard the words of denunciation fall from the lips of the honorable delegate this morning I would have supposed, inasmuch as his representative in the Senate of the State supported this measure, it met with his own hearty approbation.

Enough of this. The importance of this matter of creating a tribunal to make an apportionment cannot be overstated. It is a principle which is in no way incident to the apportionment or to the rules which we have provided for it.

Now, to be practical, the Convention has two propositions before it. The one which I had the honor of offering is to be found in this brief language:

The Legislature at its first session after the adoption of this Constitution, and thereafter at its first session after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the foregoing sections.

This is familiar to the people of the Commonwealth, recognizes the ordinary tribunal constitutionally selected for the enactment of those laws which regulate the most delicate relations of society. As against this proposition, the delegate from Columbia has suggested a method which I hold in my hand. I will not delay the Convention by reading it. It practically proposes to select twelve delegates, four of whom are to be elected by the Senate, each senator voting for two, the four highest to be elected; and eight of whom are to be elected in the lower

House, each representative voting for four, and the eight highest to be elected. These twelve, thus selected, will apportion the State. They will, of course, be equally divided politically. It is familiar utterance that all innovation is not reform. How true it is of this novel proposition. Novel, indeed—not new to this Convention, for it has been here before—but novel to the State. This Convention has hitherto voted down a similar proposition. It is a twin sister to many propositions, hitherto made by the delegate from Columbia to secure what he plausibly calls minority representation. I have no unnatural prejudice against the minority representation principle so much cherished by the honorable delegate from Columbia. I respect, indeed, his adroit and persistent effort to inject upon every occasion this minority representation principle into every department of the government. Careful reflection and close scrutiny of it in all its details has convinced me that it is an unsafe principle to apply to our representative system. I know it to be obnoxious to the people of this Commonwealth. I know it to be odious to the people who live in the section of the Commonwealth which I more immediately represent. I am satisfied that instead of it having the virtue to correct the evils which the gentleman from Columbia has so earnestly denounced in characterizing gerrymandering apportionments, it will multiply them in the future if this proposition is incorporated into our Constitution.

What is the fundamental idea of this scheme? The fundamental principle is that the Legislature, the immediate representatives of the people, are not to be trusted with the exercise of this delicate function, but a tribunal springing from this corrupt, this unregenerate, this unappointed Legislature itself is to be organized for the same purpose. It is a familiar principle in legal parlance, *facti per alium, facit per se*. The honorable delegate uttered with great unction here the fact that the first Legislature which would make an apportionment would be an unreformed Legislature. Aye, that is true. I am one of those, however, who do not think that this new Constitution we are now considering and which we hope to see adopted, will be a panacea for all evils. I cannot hope that it will regenerate and correct the frailties of mankind. I believe that hereafter the same character of men over the State will go to the

Legislature as those who are now there. but the fallacy of this argument consists in the fact that while the gentleman from Columbia would not trust the Legislature itself to perform this function, he makes it plausible by declaring in his provision that the persons who are to be elected by the Legislature to compose this board of commissioners are to be themselves ineligible as members of the Legislature under any appointment which they may create for a period of ten years. Never was there a more dangerous dogma than that which seek to repose power where no responsibility is attached.

Why, sir, look abroad in society to day! It is one of the vices of the age that crimes are of frequent occurrence and committed by those who are apparently far removed above the ordinary ambitions of our political communities. There are those high in the church of the Meek and Lowly who listen from time to time to the whisperings of the frailties of men and fall by the way-side and tarry there in popular contempt. But a few days ago we observed those who occupied the highest and most prominent positions in the financial world topple from their high estate after trifling with popular confidence, and in their fall take scores with them. Very lately, indeed, the country has seen men occupying high political position far removed from immediate responsibility to a constituency, outrage public morals and bring scandal upon the nation.

No, sir! The safest repository of political power is with the public men, the public characters, who are closest to the people and immediately responsible to them. Who does the honorable delegate hope will compose this board? I cast my eyes around me and I look upon the men of this Convention who give to this body its respectability. I see the honorable delegate from Philadelphia, the delegate at large (Mr. Woodward,) who once occupied the highest judicial function in this State. I see the very honorable delegate who occupies the presidential chair of this body. I see one of the honorable delegates from the county of Allegheny, (Mr. S. A. Purviance,) who occupied a high position in this Commonwealth. I see the most venerable member of this body, a gentleman who has the respect of all of us. These men are respectable, not one of whom, however, would be thought of to compose this board to apportion the State into legislative districts.

On the contrary, Mr. President, the man who would be selected for this purpose would be the pensioners upon political power, would be some individual who was waiting for the crumbs that fell from the table of patronage, some man who desired to be collector in some revenue district, some high post-office expectant, some man who wished to cast his fortunes with the coming man for United States Senator, so that, as a member of this board, he could set up the State in the interest of his favorite candidate, and thus secure his election, probably, in the year of grace, 1875.

The PRESIDENT. The delegate's time has expired.

Mr. NILES. Mr. President: I desire to say but one word. I have listened during the entire session of this Convention to the words of wisdom that have usually fallen from the lips of my friend who sits by me, (Mr. Kaine,) and I have entirely agreed with him when he has said we ought not to desert the old Constitution for the sake of change; that unless some good reason was given for a departure from the old time-honored customs of our fathers we ought not so to depart.

Now, I desire for just one moment to call the attention of this Convention to the naked proposition that is submitted to us by the delegate from Columbia. We have heard here from time to time denunciations against the Legislature; that they are not a body that ought to be entrusted with the great duty that has hitherto devolved upon them. But what is the panacea of the evil that is proposed to us here to-day? In leaving the old time-honored customs what does the delegate from Columbia give us? Does he take the power from the Legislature when he says to us by this proposition that the Legislature shall not apportion and I do not know what the congressional apportionment of the past few years has to do with this question. Nothing; but the proposition that we to-day are considering here does not propose to take from the Legislature this power. We leave it substantially where it is to-day. We say that instead of two hundred members of the Legislature and fifty Senators making the apportionment of the State as heretofore they shall elect twelve of their own number. Now, I should like to have the delegate from Columbia or the delegate from Fayette tell me wherein twelve men selected by this, as you say, irresponsible power will be any better men than

the whole body themselves. I ask the delegate from Fayette if there is anything in this proposition that prevents the Legislature from electing twelve men of their own number to make the apportionment of the State for the next ten years.

You say that you will not trust two hundred members and fifty senators to make an apportionment, and yet you say here is the panacea for the evils we have had inflicted upon us, if evils they are, that these men may elect twelve men from their own body, no better than themselves, who shall for ten years, in the hard lines of the Constitution, put an apportionment bill upon us that cannot be changed. Is that an improvement? I submit are twelve of these two hundred and fifty men any more responsible, any more virtuous than the whole two hundred and fifty would be in the aggregate?

MR. KAINE. Will the gentleman allow an interruption?

MR. NILES. Certainly.

MR. KAINE. We have already, I would say for the information of the gentleman from Tioga, a provision in the Constitution that will prevent the Legislature from electing any one of their own number a member of this commission.

MR. NILES. It is not in this proposition.

MR. KAINE. It is elsewhere, and therefore it cannot be done.

MR. NILES. I have not seen it. It is not in this proposition, to say the least of it.

MR. KAINE. We adopted a provision this week that no person shall hold two offices.

MR. NILES. If that is true let them take any twelve other men.

Now, Mr. President, I submit another thing that is not fair. As suggested by my friend on the right, (Mr. Hazzard,) that although no person as provided in a previous article, shall keep two offices of trust or profit, there is nothing in this that makes the commissioner an officer. There is no salary affixed, there is no profit.

But I submit there is another unfair thing in this. They say that two hundred members and fifty senators might be bought. There has been everything said in this Convention from the beginning of our session down to the present time against irresponsible commissions, men who are responsible to no constituency, against commissions that have been created for Philadelphia, the great city,

and yet here is a proposition to put into the hands of an irresponsible commission, responsible to nobody, the whole political destiny of this State for ten years.

To whom is this commission responsible? Sir, I undertake to say if there was ever an office created that would tempt human nature it is this very office, and here are ten men of no constituency or no responsibility behind or before them, that is to district for ten years the entire State into political communities.

And yet there is another thing that is unfair. The Democratic party may have an honest majority of fifty thousand; the Republican party may have an honest majority of fifty thousand; and yet that is entirely ignored in this thing; and there is no use of mincing the matter, an honest majority should be respected, and I have heretofore heard nothing that has been urged in favor of minority representation where the majority, an honest majority, should be entirely ignored. But yet by this proposition either of the great political parties of this country might have an honest majority of fifty thousand or one hundred thousand and they would be entirely ignored. One party with half the number of the other would have the same voice in districting the State and districting it in their interest, the same as the party that had one hundred thousand majority. I say that that is unfair; it is an unfair proposition, and for one I will not give my vote in favor of it.

MR. J. W. F. WHITE. Mr. President: I would not perhaps say anything on this question, but it is one of those questions that interest directly only a portion of the State, and Allegheny county is one of the portions of the State affected by this proposition.

Under the section adopted yesterday there are but six counties in the State where there will be any districting. Philadelphia, Luzerne, Schuylkill, Berks, Lancaster and Allegheny. Under the section we adopted yesterday all the other counties of the State are entitled to county representation, and only these six counties would have to be districted at present under the present census.

MR. BUCKALEW. The proposition includes the Senate.

MR. J. W. F. WHITE. I was speaking more particularly in reference to the constitution of the House of Representatives.

The object of the section as explained yesterday, was to prevent any gerrymandering of the State; and I have always

understood that the great objection to these apportionments has been the union of counties and the division of counties, but more especially the joining of counties. The delegate from Fayette (Mr. Kaine) refers to the last congressional apportionment as a very unjust one, and also refers to the last apportionment for the House because of the union of several counties forming one district and electing several members. No such apportionment could take place under the section adopted yesterday. We have prohibited the joining of counties, and, therefore, that which has been the great source of gerrymandering heretofore has been removed.

Now, in reference to Allegheny county and Philadelphia, and I ask the gentleman from Philadelphia to look at this question, there are twelve men to be elected by the Legislature to district Allegheny and Philadelphia. You may not have one representative in those twelve, and in all probability you would not have. We are to put the districting of our localities in the hands of twelve men, and probably not one of those twelve will be directly or indirectly interested in the mode of districting our localities. We lose our voice there except so far as our members may vote in the Legislature for the election of these twelve.

Now, look at their mode of election. The Senate is to elect four and the House to elect eight, each member voting simply for one-half the number. If the political parties are equally divided, the Senate having twenty-five of each party and the House one hundred of each party, one-half the number of each party can elect one-half of the entire number of twelve. Supposing, therefore, that the two Houses were equally divided between the two great political parties, thirteen in the Senate and fifty-one in the House can elect one-half of the twelve. But suppose they were not equal; suppose the number in the Senate of one party was twenty and of the other thirty, and in the House eighty and one hundred and twenty on the basis of two hundred in the House; then ten men in the Senate and forty men in the House could elect one-half of the twelve.

In reference to apportioning the House on the present census—and according to our action yesterday there would be only seventy-nine members in the House from all these six counties, including Philadelphia, and one hundred and twenty-two

members in the House would have no direct interest in the apportionment for the House—why should we place the apportionment for the House in the hands of men who have no direct interest in it, or permit them to control it? But when you extend it to the Senate I think it is far more objectionable than if applied merely to the House. I shall refer to that in a moment.

One argument that we have heard here from the beginning of this Convention is that we must increase the numbers of the House in order to secure wisdom, honesty and purity there. That has been the great argument for increasing the number from one hundred to two hundred. In addition to that, we have incorporated a number of provisions in our Constitution taking away the powers of the members of the Houses, restricting and limiting them. The great object was to secure good men and prevent corruption in the House. This proposition ignores all the arguments that have been heretofore used on that subject. We have got a House of two hundred and a Senate of fifty, and yet we cannot trust them to do what they have always done in this State, and what they do, I believe, in every State of the Union. We must create a new tribunal of twelve men; as a delegate to my right says, an irresponsible tribunal.

Mr. President, if we cannot trust the two hundred and fifty men in the Legislature to district the State, can we trust them to elect twelve men to do it? Will there be more wisdom and virtue and purity in the twelve men they elect than in the whole body of two hundred and fifty men? In addition to that, no apportionment can have any validity until passed by the two branches of the Legislature separately, and by a majority, under the article we have already adopted, of the members of both Houses—over one hundred in the House and over twenty-five in the Senate—and until it has received the approval of the Governor. Shall we say that with all the guards and protections we have thrown around the passage of laws and the final approval of the Governor, we have not a safer tribunal to make the apportionment of the State than simply twelve men elected by those Houses on this plan?

Why, sir, look at it. Any apportionment that may be passed by the Legislature must be printed and pass both of those Houses and receive the signature of the Governor; but here we have twelve

men who may sit in secret, nobody knowing what they do or the motives that influence them, and their apportionment is final and conclusive; there is no appeal from it, no remedy whatever, no matter how bad or ridiculous it may be, for ten years. They do not report it to the Legislature to be approved by them, nor is the Governor or any other power to sanction or approve it; but these twelve men who hold a secret conclave may apportion the State as they please, and they hand it over to the Secretary of the State, and there it is rivited upon the State for ten years beyond any redemption.

Why, Mr. President, if there be corruption in the Legislature, if poor human nature be so corrupt and so untrustworthy as this proposition implies, I should like to know of any measure more open to corruption than this very one. It supposes that each party, if there are two political parties, and it is based on that idea, shall have six men on this board, nine of them to agree. All that is required is the purchase of three men from one of the parties in order to secure the nine; and does not every man know that it is easier to buy those three men than it is to buy a large portion of the Legislature? Then it is provided that these men are not to be eligible for election to the Legislature for five years. Even that provision, to my mind, is objectionable. They are debarred from office, and if they are corrupt men they will make a good thing out of it when they have the means of doing it, and there is no great political party in the State now, nor will there be in all probability at any time in the future, that could not raise \$100,000, if necessary, to secure the apportionment of the State for the next ten years. All they have to do is to secure three men out of twelve, to make such an apportionment. Of course this goes on the supposition that they are men who can be bought. Well, if the Legislature cannot be trusted because they are corrupt, will they not elect that kind of men on this commission?

THE PRESIDENT. The delegate's time has expired.

MR. WOODWARD. The rascalities of legislative apportionment are admitted; but when a gentleman of large experience in public affairs, who has thought as deeply on these subjects as perhaps any of us, brings forward a measure calculated to remedy those abuses, it is met by protracted arguments by gentlemen who, while they do not expressly vindicate

these rascalities or make themselves in any wise responsible for them, do argue that the plan proposed will be no better than the existing plan. In other words, we have theory set off against fact. The fact is that an abuse does exist on this subject. The proposition to remedy it and amend it is met by theory. The twelve men selected as a commission will be divided equally in politics, will be stubborn men, and will never come to an agreement, says the gentleman from Chester; some of them will be bought, says the gentleman from Allegheny; and therefore this plan will not work. All this may be true; these gentlemen may be prophets, though I have never understood that either of them was a prophet or the son of a prophet. I do not know where they got the gift of prescience; but it is possible they may be correct. Still, there is no mistake about the facts; and the theories of these gentlemen may be incorrect.

I do not believe much that I have heard here this morning in the way of theory. For instance, I do not believe what the gentleman from Tioga and the gentleman from Indiana so emphatically said, that this apportioning of the representatives is a legislative duty. I deny that. I say that the legislative faculty is confined to the making of laws, and that the districting of the State is not, strictly speaking, in the nature of a legislative duty at all. And, sir, in the origin of this representation of the people nobody conceived such an idea. In 1265 (49th Henry III) the great principle of representation of the people was carried out by the King's writ issued to all the sheriffs of the kingdom, directing them to return two knights for each county and two burgesses for each borough or city. It was an executive duty in its origin. It was an exercise of the sovereign power, and the Legislature have no power except that which is delegated to them in the Constitution. All through the early English history of representation representatives were elected in pursuance of the King's writ as the supreme power in the State.

In our own State, under our Constitution of 1776, the council of censors, I believe, fixed this matter; the Legislature had nothing to do with it. The gentlemen are mistaken in saying that this was an ancient legislative custom. I agree that we may devolve it on the Legislature, because we represent the sovereignty of the Commonwealth; but it is part of the

sovereignty that resides in the people, and while they may devolve it upon the Legislature they may entrust it to a commission of twelve men, or they may do what I think would be still better, take it into their own hands and elect commissioners to district the State. That would be a direct exercise of sovereignty, and I hold that this is a part of the sovereign power.

When gentlemen talk as if we are taking away from the Legislature a legitimate power, my answer is that it does not belong to the Legislature at all; we do not take from them anything that belongs to them; it belongs to the people, and the people, represented by us here in this Constitutional Convention, may dispose of the power just as we please without offending against any usage or any tradition, or any history that belongs to us or to any other constitutional government. The State of New York has done what we propose to do.

Then will this commission agree? The gentleman from Chester argues that they will not. Why, Mr. President, juries composed of twelve men have no trouble in agreeing about questions just as difficult as the question which is to be submitted to this jury. But they will be bought, says the gentleman from Allegheny. How does he know that they will be bought? Who will buy them? Who will have such an interest in the apportionment of the representatives for ten years in Pennsylvania as to pay \$100,000 to this commission to effect a certain result? I think the gentleman will not find anybody disposed to put up so much money, especially in these times, when everybody wants all the money he has and is anxious to get more.

But here comes the great argument, that the Legislature will not elect twelve men to do this duty any better than they do it themselves. I do not agree to that. The difficulty with the apportionments by the Legislature is that when they come to make them, party spirit and personal interest, as the gentleman from Columbia demonstrated yesterday, enter so directly into the question that the enormous frauds, and disgraceful results which we all deplore are the immediate consequences. It is always done by a committee of the two houses at last—a committee of conference, not composed of twelve men, but representing the two houses; and yet it is iniquitously done.

Now, sir, if in the beginning of a session, before this subject has presented itself to the minds of the Legislature at all, before their party and personal zeal and passion have been aroused by conflict, they are called upon to select twelve of the best men in the Commonwealth to do this duty, I submit that they will be much more likely to select good men away from the irritating subject itself than they will be to make a proper apportionment when that subject is presented in the ordinary course. It does not follow that a Legislature that would not make an honest apportionment would not appoint twelve honest men to make it; still less does it follow that twelve honest men selected by the Legislature and set apart for this purpose, with the public responsibility upon them, would not perform the duty conscientiously. They are disqualified themselves from holding office for five years by this amendment, and they will therefore have no personal interest in the question. They are selected for the performance of a great public duty and trust in the face of the public, and are presumably the best men whom the Legislature could select.

Now, for gentlemen to argue that these men will combine with each other, that they will divide, be stubborn and not agree, that they will sell out for \$100,000, or any other sum of money, I think is to do great injustice to our fellow-citizens; great injustice to these men. There is nothing in our experience of public men that justifies that line of argument; but at any rate, I assert that it is a mere theory, it is mere theorizing upon the future. Let us try this experiment. What we have to-day is bad enough. Let us try this experiment, and if it works as bad as gentlemen theorize, then we will reform it. But that it is a fair show for an improvement upon our present practice, no man in his senses I think can deny.

I have said that this was a case in which I think—though I may have on that subject an opinion not shared by anybody else—the proper power to select this jury is the people themselves. I would have them elected not by the Legislature, but by the people.

THE PRESIDENT. The gentleman's time has expired.

MR. NILES. Let it be extended.

MR. WOODWARD. No, sir, I do not want it.

MR. MANN. Mr. President: The proposition now pending is based upon an

entire misapprehension of the evil to be remedied, as I understand it. What is the evil complained of? This debate has extended, as did many others, into a consideration of the improper influences affecting the Legislature. Gentlemen talk as if there was something of this kind existing. If they will stop and think a moment, they will see the injustice of such a supposition. As far as my knowledge of history goes, the last apportionment bill, apportioning the State into districts for the selection of members, was as honestly passed as any article has been passed in this Constitutional Convention. The Legislature may have been mistaken, and very likely it was, but will any gentleman rise in his place here and say that this Convention has made no mistakes, and if no one can say that, then I submit that there ought to be a little more charity exercised toward the representatives of the people of this Commonwealth.

I undertake to say that the entire evil growing out of the apportionment of the State was political influence, and that the people of the State were responsible for it, and not their agents in the Legislature. During the session of the Legislature that had before it the last apportionment bill, the entire political press of Pennsylvania, without exception, insisted that its representatives should adhere to a certain line of policy. They were constrained and compelled to do so, and what was that policy? One side insisted that the party holding twenty-five thousand majority in Pennsylvania should have a majority in the Legislature. The other resisted. That is all. There was no consideration of money or any other influence except this in that action of the General Assembly. It was only a question of how to apportion the State so as to give a majority in the Legislature to that party in the State polling a majority of twenty-five thousand; that when this State is carried by twenty-five thousand majority for any party, then the party polling such majority shall have an apportionment that will give it a majority in the Legislature. That was all, and it took five months and a half to settle that question.

What was the entire contest? The question in the Legislature was whether that majority in the House of Representatives, to be awarded to the party polling a popular majority of twenty-five thousand, should be four or six. That was the only question at issue, from the be-

ginning to the end of that prolonged contest, and I assert that, in their deliberations and conclusions upon the subject, the members of the Legislature acted as conscientiously as any six men in this body have acted to-day, every man of them. It is the boast of the suspicious men of the Legislature that, though they may sell themselves on corporation votes, they never make sale of a political vote. There is and there has been no such thing. You cannot find a man who has sold out his party in the Legislature. You may talk about it, but when the talk comes down to facts, there is nothing on which to base the charge. And there has never been any allegation, so far as this apportionment was concerned, that anything of the kind occurred. The contest was simply whether twenty-five thousand majority in Pennsylvania entitled a party to four or six majority in the lower House. That was the entire contest. There was no dispute as to the Senate from beginning to end, and when it was settled that a majority of twenty-five thousand in the State entitled the party polling it to six majority in the Legislature, the apportionment bill was decided in six hours, and there was no disagreement as to details, except in one particular, which was of no particular consequences as to the result. And, sir, I defy any six men of this body to sit down and apportion the State more equitably than this last much abused and much condemned apportionment bill. It is easy to find fault. It is a very different thing to apportion Pennsylvania so as to do justice to all the counties, so as to do no injustice to the majority in the State. In that apportionment bill, injustice was done to particular counties, I admit. That was inseparable from the fact that it is impossible to apportion Pennsylvania so as to do justice to the entire majority and not do injustice to some particular county. You cannot do it; and there is as much complaint this morning, that the section adopted yesterday by the committee does injustice to counties, as there ever was with regard to that apportionment bill. It grows out of the difficulties of the case.

Now, my point is that the proposition of the gentleman from Columbia does nothing to remedy this evil. He provides, in his proposition, that the minority, though it be of one hundred thousand, shall have equal power with the majority. To that proposition I will never assent.

I was brought up in the old Jeffersonian idea, that the majority in a republic has a right to rule. This proposition says that they shall not rule, but that the minority shall have equal power with the majority. The whole difficulty with regard to the apportionment of the State comes from the desire of each party to secure power and party advantages. Party influence will be just as strong and just as powerful to influence the men whom the Legislature may elect, as it will be to influence the Legislature itself.

Why, you could not find a party man in all Pennsylvania during that contest that did not take sides with his party on that question, and insist that at all hazards the questions at issue should be decided according to party acquirements.

The PRESIDENT. The gentleman's time has expired.

Mr. KAINE. I wish to ask the gentleman a question before he sits down.

Mr. MANN. My time has expired.

Mr. DE FRANCE. Mr. President: I do not know that this proposition of the gentleman from Columbia is the very best for apportioning the State, but I have a great notion to vote for it. The gentleman from Potter (Mr. Mann) seems to think that the State was a few years ago fairly apportioned according to the party majority by the Legislature. I did not know that the Constitution provided that the State should be apportioned according to party majorities. I never had such an idea. I thought it was to be apportioned according to taxables. That was my idea of it and has always been my idea.

What troubles me most of all is the idea of this last apportionment being so fair! By it, Beaver, Butler and Lawrence, with ninety-nine thousand people, get four representatives; and Montgomery, with eighty-one thousand gets two. If ninety-nine thousand are entitled to four, eighty-one thousand are to two! That is the way the thing was proportioned by the Legislature of 1871. Mercer county has fifty thousand inhabitants; it gets one. If fifty thousand give one, one hundred thousand gives four by legislative figures! That is the way they apportion it! Mercer county gets one representative in the Legislature with fifty thousand people; and Warren county with twenty-three thousand people, gets one representative. That is all fair by legislative figures! Lawrence county with twenty-seven thousand people gets one representative, and has six thousand taxables. Mercer county with

thirteen thousand taxables nearly, and fifty thousand inhabitants, gets one! That is fair! A person ought to vote for the Legislature apportioning the State when they do these things so fair. Venango county has ten thousand taxables and over, nearly eleven thousand, and over forty-seven thousand, nearly forty-eight thousand people. It gets a representative; and Greene county, with twenty-five thousand people, gets a representative.

I got skunked, to use a slang term, at this examination. It is the most infamous, outrageous apportionment that ever was made since God made the world. There could not be a meaner apportionment than it, in my judgment. I do not care what the gentleman from Potter says about the justice of the last apportionment. It is said that figures do not lie. Well, legislative figures do lie, if this is a fair specimen of their figures.

Here Dauphin and Perry get three members with twenty-one thousand taxables, and Montgomery with twenty-one thousand taxables gets two. That is all fair, is it not? Did you ever see such an apportionment in creation, or ever hear of it, Mr. President? It is all the way through about the same thing. Twenty-five thousand people get a representative and sixty thousand people get a representative. I do not think it belongs to party. I do not believe this apportionment belongs to party, although the gentleman from Potter seems to indicate and think that it does; but it surely cannot, and there is no respectable man of sense that understands multiplication and division that would make such a division uninfluenced by selfishness. I do not care how strong in party he is.

Mr. NILES. Will the gentleman allow me—

Mr. HARRY WHITE. Let me interrupt my friend, not to discuss the question but merely to carry out his idea. Let me remind him that that apportionment was made with the Senate one way and the House the other.

Mr. NILES. That is what I intended to call attention to.

Mr. DE FRANCE. I am not responsible for its being that way. I suppose it would be much worse if that was not the case; but it is very bad the way it is, and I am disposed to vote for something else, I care not what it is. I do not think that when things have come to their worst, they can

possibly be made any worse by changing them.

Mr. NILES. Mr. President:—

The PRESIDENT. The delegate has spoken.

Mr. NILES. I only desire to explain that the apportionment bill which has been the subject of so much invective here to-day, was passed in 1871, when the Senate was presided over by William A. Wallace, whose partisan feelings I suppose no man ever questioned, and the other House was the other way.

Mr. DE FRANCE. That makes it so much the worse; that is another reason why the Legislature should have nothing to do with apportionment.

Mr. HARRY WHITE. And I would remind the delegate, that our friend from Columbia voted for this apportionment.

Mr. DE FRANCE. That may be true, but he is trying to remedy the evil, and my friend from Indiana is not.

Mr. STRUTHERS. Mr. President: I am opposed to this proposition, as I am to all propositions which strike at elementary principles of our democratic system of government, as well as for other reasons so well urged by the gentleman from Chester, and others. I have heretofore given my views briefly on this scheme of limited voting. They have not seemed worthy of much consideration by the Convention, I know. And were it not for the deep conviction on my own mind of the evil and pernicious consequences to follow from the adoption of the principle, I would not trouble the Convention with a word on the subject now. But as it is, I must beg indulgence whilst I again in a brief way, express some of my reasons for opposing its introduction into our work for any purpose or in any form. When we come to third reading of the articles in which it has been introduced, I hope we may be able to eliminate it from all of them, so that when our work is submitted for the action of the people it will not bear to them the evidence that this Convention have even entertained a proposition so much at variance with recognized sound principle and usage.

If the declaration in the Bill of Rights, that elections shall be free and equal, is of any value; if the democratic principle that majorities shall rule has not become an effete solecism; if the teachings and practices of our fathers who established and handed down this government to us from generation to generation, through a

century of time, are worthy of a place in our memories, how can we strike at the root of all by this extraordinary innovation? It may, if introduced, prove the entering wedge to the overthrow of our system. It proposes the abandonment of the principle that the people are the rightful sovereign, and properly wield the power of elections—the right to select and elect their servants and representatives. It expressly, in certain cases, where two or more are to be elected at one time, to allow the people to vote for a portion of them, they may vote for half or two-thirds of them, but the other half they dare not vote for on pain of violation of the Constitution and election laws. The other half or third are to be brought forward in some undefined manner and *declared elected*, notwithstanding the people were not permitted any say in regard to them. Yet these latter are commissioned and clothed with equal power over the rights and interests of *all* the people as the others. The person who gets into place by any means, as upon the bench, or on the floor of legislation, is presumed to be the peer of his fellows. The persons elected may differ in opinion on questions arising before them. The one not elected then becomes the arbiter, and the interests of the people involved are determined by the one not elected by them. In general he would consider it his vocation as a minority partisan to foment discord and bring about such a condition.

Sir, the great danger from the first has been that the Convention would attempt too much in the way of innovation. There are a few points in which revision and amendment are desired by the people. They desire some proper restraints on the Legislature in regard to special legislation, which has been carried to an alarming extent in the building up of monopolies and extending unequal privileges to classes and individuals. They desire general laws, which will operate equally and uniformly all over the State, and the advantages of which will be open alike to the rich and the poor—the many of small means and the few of larger means. They desire such legislation as will secure honesty in the administration of public affairs and the purity of elections. Some amendments in these and a few other particulars the people undoubtedly desire. But the introduction of new elementary principles they have not and do not desire, and will be very sure to reject.

CONSTITUTIONAL CONVENTION.

At the formation of the national government men of the most eminent talents and staunchest patriotism differed in opinion on essential points of organization, distribution of powers of government, &c., and on these grave questions the people took sides with Washington, Hamilton and Adams as leaders of one party, and with Jefferson, Madison, Monroe and others, as the leaders of another party—the former known as the Federal and the latter as the Democratic party. These were great national parties. And as the national government sprang from a Union of the States by the people of the States, the same parties developed their power in State organizations and characterized partisan contests within the States for many years. It is known to the country and is a matter of history how the Federal party lost ground almost from the beginning, and was finally absorbed in the Jackson party of 1828, from which date the people of the country have been a unit on elementary questions of government—save the pampered aristocracy of the South, who grew fat and proud on the labor of the slave, and who would fain sunder the cords of Union and establish a government based upon the principle that the successful few have the right to govern, yea to *own* the less fortunate many. The lessons taught them by the Republican armies in the battles of the rebellion cured them of that delusion, and they have returned for protection to the old fold and renewed their allegiance to the Constitution and laws of the Union. There exists, therefore, at the present time no differences of opinion amongst the people of the country respecting the principles, organization or mode of administration of the government. This is proven by the close conformity of the Constitutions of all the States to that of the United States and to one another. No people on the face of the earth are so thoroughly united in heart and sentiment in respect to the principles of freedom, justice and equality at the base of their governments, both State and National, as are the people of the United States. Let this fact go forth to the world as true history, and let no political aspirant or place-seeker in our Constitutional Convention or elsewhere be allowed with impunity to proclaim that there “always has been and always will be two great political parties in this country.” Nothing can be further from true, in the true sense of that term.

The contests for office which are carried on so actively and earnestly at our annual elections are not based upon differences of opinion, on elementary political questions, but on the fitness of men who are placed before the people as candidates, or on some question of financial policy or supposed shortcoming of an opposing candidate, and afford no evidence of difference in political creed. Names are not things.

And here I would ask, why is the Convention, or some of its members, so anxiously striving to fix upon the State the duty and ungrateful burthen of hunting up or *founding* a minority political party and nurturing it upon a third or half of the officers of the State? Whilst it has been enacting so many wise sections to secure equal rights to the people and purify elections, does it find it necessary to accompany them by a sweetener to induce the corruptionists to swallow their work? Whether so intended or not it will, if inserted, be hailed by that class as letting them down easy, if not bettering their fortunes. It will submit to them the filling of all places which the people (by the people we mean popular majorities) are not permitted to elect. They will have their man or men on the supreme bench and all the inferior courts, in the Legislature, (except from single districts,) in the offices of county commissioner, county auditor, school board, and all corporation and other offices where more than one constitute the board. Saying nothing of the derogation from the right of the people to choose all their representatives, officers and agents, we cannot conceive how a more annoying, demoralizing and mischievous arrangement could be made.

In Europe political parties exist as a natural consequence of the state of society. An irrepressible conflict between tyranny and oppression on the one hand, and the spirit of freedom and equality on the other, will ever exist there until the enfranchisement of the masses of the people shall place all on a level. And until then, two great parties will necessarily be ranged in the field of habitual conflict—either peacefully or beligerently. Witness the struggle at the present time between the Monarchists and the Republicans of Spain and France. The parties in the former, even now, are measuring strength on the field of blood, whilst the latter, after a short respite, is

in danger of being involved again in the same way. In England the Tories have learned to appreciate and fear the growing power of the Liberals, and find it safer to deal with them in a more diplomatic manner. To the demands of the people for an extension of the suffrage and more general enfranchisement and representation the parliament have thought it wise to make moderate concessions from time to time to appease them. But practically their concessions have proven illusory and unsatisfactory.

One of the last schemes of these wily statesmen is the proffering of what they term *minority representation*. This they deem safe, because without extending the right to the people to vote or choose by election one of their own class to represent them, they hope to satisfy them by allowing one from the minority of the already favored few to come in. It is of course a deception and intended as such. Yet to this we find our constitutional reformers refer as precedent and authority in favor of the anti-American proposal of minority representation. It is the wrong place to go to for republican lessons or democratic advice.

Why, sir, Chambers' Encyclopædia, pages 194-5, Edinburgh work, after asserting that "all speculative politicians repudiate the idea of an inborn right in *all citizens* to participate, and still more, to participate *equally*, in the rights of choosing the governing body," says that "several intelligent political writers, while advocating a wildly extended suffrage, have proposed a *graduation* of that suffrage, by giving to each individual a number of votes, corresponding as far as practicable to his *intelligence, property* or social position." This, he adds, is "the perfect ideal of representative government, and that the chief question is, by what test can the best test of social value be arrived at? Two different schemes for this purpose have been proposed by Mr. J. S. Mill and Professor Lorimer, the former founded mainly on *intelligence*, and the latter on *wealth and social position*." He then speaks approvingly of the scheme for *minority representation* recently gotten up; commends that gotten up by Mr. Hare and approved by Mr. Mill. Thinks this system would "bring into Parliament numerous men of able and independent thought, who, under the present system, refrain from offering themselves as having *no chance* of being chosen by the majority of any existing constituency."

Refers to J. S. Mill's *Considerations on Representative Government*, (London, 1861;) Prof. Lorimer's *Political Progress not necessarily DEMOCRATIC*, (1857,) and Hare's *Treatise on Election of Representatives*, (1860.) In Vol. I, page 647, of same work, the author says: "In the United States it seems to be the general opinion that the system (voting by ballot) has proved inefficacious," and that "in the State of New York, wherein the ballot was adopted a few years ago, there is a *popular demand* now for open voting," as a cure for the evils introduced by the secret system;" a piece of news to New Yorkers not promulgated at home.

Such are the authors of the philosophical scheme of minority representation. Away with their aristocratic theories and false history! Let us stand on the present Constitution rather than introduce such an innovation into the new.

MR. HANNA. Mr. President: The amendment offered by the gentleman from Columbia seems to me a very simple proposition. When we scan it closely we find that it refers only to senatorial districts and representative districts in those counties exceeding one hundred thousand in population.

In the first place, I propose to consider the utility of the proposed commission. We have been laboring for days to provide a remedy to cure the evils complained of in regard to the apportionment of the State by the Legislature. The two preceding sections of this article have been adopted by this Convention as the great cure-all for those evils. We have provided by those sections that the State shall be divided into convenient districts, that every county shall have its representative, and that no county shall be joined to another in the formation of districts. Those provisions have been adopted with an eye single to the removal of the cause of complaint which has been made of the action of the Legislature in this regard.

In view of what has been done by the Convention I ask, in the first place, what is the use of adopting this proposition? What can we gain by it? We have already adopted every safeguard imaginable after days of thought and labor that it was deemed proper and necessary to provide against the evil of gerrymandering. Having tied the hands of the Legislature in that way, why can we not leave it to the Legislature merely to district the State in regard to senatorial representation and representative districts in the

large counties? With great respect to my friend from Columbia, I differ with him, and I think after we have done what we have, we can safely leave this subject to the Legislature.

As regards the necessity for it, I claim that the members of the Senate and the House are better qualified to apportion the State for senatorial districts and representative districts of the larger counties and cities than anybody else. I would ask this plain, practical proposition, what do we understand by apportionment? It is nothing but devising and submitting a plan whereby the people can be represented. Now, who are best able to prepare that plan? Of course the people themselves. As they cannot do it directly, the next best persons to do this work are their agents and representatives, namely the members of the Legislature. If the people are the best judges and more familiar with this subject than anybody else, why cannot their representatives, directly chosen by them and from them, best determine the plan of representation?

As has been remarked by the gentleman from Allegheny this morning, upon this board of twelve commissioners not one of the large cities or counties may have a single representative. Now, sir, can a board of twelve gentlemen, strangers to this locality, strangers to Allegheny, strangers to Luzerne and Berks and Schuylkill, determine what the people of those counties want better than their representatives? I submit not; and that is one great reason why the plan of apportionment has always been adopted by the Legislature, that they being the best judges and best informed of the wants of the people are the proper persons to form a basis of apportionment.

Again, I should like to ask the gentleman from Columbia how he proposes to carry out the second clause of his proposition? That refers to congressional apportionments.

Mr. BUCKALEW. No; it has nothing to do with them.

Mr. HANNA. The second proposition reads in this way:

"Commissioners of apportionment shall in like manner be chosen and appointed by the two Houses to make apportionments based upon each future decennial census of the United States, whose qualifications, duties and powers shall be the same as those of the commissioners above mentioned, who shall take and subscribe

a like oath or affirmation, and be subject to like ineligibility for legislative service, and who shall form such apportionments as shall be authorized by the Constitution by a like vote and assent of three-fourths of their number."

Does not that refer to the question of congressional apportionment?

Mr. BUCKALEW. No, sir.

Mr. HANNA. Then I misunderstand the proposition. I thought on reading it that it referred to a congressional apportionment. However, as it refers only to the apportionment for the State Senate and representatives for the larger counties, I shall confine my argument to that.

I do not know that I can say anything more on that subject than I have already said which applies to the practical view that should be taken of this section. I listened with great pleasure to the remarks of the distinguished gentleman from Philadelphia (Judge Woodward.) I agree with much that he has said. He argued that we had a perfect right to form such an apportionment. I grant that; but at the same time we are told that while many things are lawful, yet they are not always expedient; and while I agree that we have the right to adopt this system, yet I insist that it is not expedient for us to do it. I therefore hope that the proposition will not be agreed to.

Mr. HOWARD. I confess, Mr. President, that I can see no necessity for a proposition like this. If we cannot trust the representatives of the people to make the apportionment, I hardly think we can trust them to elect these commissioners to make the apportionment second-hand. I am opposed to all sorts of political doctors whose plans oppose the fundamental principle of a republican government, namely, that the majority for the time being shall have the control of the government. I believe it is the business of the minority, if they want to control the government, to keep at work until they set themselves right with the people and manage to build themselves up into a majority. I do not know any way by which a minority can be got into actual participation in the government without destroying the fundamental principle of republican government.

Sir, what is this plan? In the first place, we have provided for the districting of the entire Commonwealth, with the exception of five counties and one city. All the balance are fixed in the Constitution. The people are to choose

the Legislature. Then the Legislature, by this plan, once in ten years are to choose twelve commissioners to attend to these five counties and one city of the Commonwealth, and these commissioners are to make the apportionment; and to whom are they accountable? I believe in responsibility, and I would not give a fig for anything that they call statesmanship, or anything that looks like government, unless you show me some place where the officers are to be accountable. Now, by the plan of the delegate from Columbia, to whom are these commissioners to be accountable? Once in ten years they are to be chosen by the Legislature. They perform their duties privately or publicly, secretly if they choose, and they do not report to the same authority that created them. They are not accountable to the people nor to the Legislature. When they are once appointed, the Legislature are done with them forever. They simply file their report with the Secretary of the Commonwealth, and I suppose the Secretary of the Commonwealth makes proclamation, and the apportionment is made.

I think I understand the object of it. The idea is to give a minority in the Commonwealth the same power as the majority. Is that in accordance with any idea of republican government? Limiting the vote so that a member shall not vote for any more than six of these commissioners, if there was an overwhelming majority in the Legislature, representing a proper public sentiment of an overwhelming majority of the people of the Commonwealth, a contemptible minority would have the same authority in this apportionment as that great and dominant majority. Who is responsible? If a bad apportionment is made, and a representative goes home to the people and they say to him, "You have elected a body of men who have made a bad apportionment," he replies: "I am not responsible, because my hands were tied; I could only vote for six." The majority of the Legislature are not responsible. They cannot be held responsible for what it was impossible for them to do. You destroy all responsibility of government by this plan. These commissioners are accountable to nobody. It is nothing but a plan to give four men the same power that eight ought to have. It is a sort of political arithmetic invented to make one man count as much as a dozen, and you call that statesmanship!

I do not believe in any of this political quackery. I believe in the good old-fashioned doctrine of responsibility to the people, and that the majority for the time being shall have control of the government and be responsible to the people. I repeat again, under this plan there is no responsibility at all to anybody. This board can do just exactly as they please, and are accountable to no man and to no power under heaven; and even the representative, if called to account for voting for the commission, can say, "My hands were tied; I am not responsible; my vote was limited; I could not vote for them all, nor even for the majority of them." That is the plan by which we are to surrender for all time to come the districting of the large counties and this great city of Philadelphia.

Why, sir, the principle in republican government is accountability and responsibility of the delegate to the people when the people delegate authority. I repeat here, if there were no other vice about this plan, it is vicious, totally so, because there is no responsibility whatever and no accountability to any one. I hope sincerely that it will be rejected by this Convention and by a majority so decisive that it will not be heard of again upon this floor. I do not understand the pertinacity with which the idea is pushed upon us, that the minority are to have equal power with the majority or that the minority have any right for the time being to participate in the government at all. I say they have no such right. We make constitutions to protect the minority. We tie the hands of the majority. We say to that majority, "When you obtain the government you must administer it according to the Constitution, but you have the responsibility upon you." Constitutions, in the main, are made to protect minorities against the oppression of majorities, but when a great majority of the people have decided that certain principles and measures are right and elect their representatives to carry out those measures and principles, they ought to control the government from top to bottom; they should be responsible; and if they are derelict in their duty, let the minority, for the time being, standing out in the cold, watch and wait until they can get a majority of the people upon their side of the question, and then let them come in and take possession of the government and be responsible for it.

That is republicanism; that is government under our system; but this plan of thrusting the minority into power is a political quackery that I hope never will be accepted by the people of Pennsylvania.

Mr. HALL. Mr. President: It is doubtless true, as claimed by the gentleman from Potter, (Mr. Mann,) that much of the inequality that has existed in apportionments heretofore made in the Legislature was owing to circumstances over which the Legislature had no control and for which they were not responsible. If any man will sit down with the map of Pennsylvania before him and undertake with the most honest purpose to make an apportionment that shall do equal and exact justice to all parties and all localities, he will find how utterly impossible such an effort is of success. But there are two causes which have always existed, now exist, and will exist as long as the Legislature makes these apportionments, which tend to influence the Legislature to do wrong and injustice where wrong and injustice are otherwise unnecessary. The first of these is the desire of the political majority of the Legislature to so make the apportionment as to give their party an undue majority in both branches of the Legislature. That is done by so distributing the majorities of the dominant party in districts as to spread over the largest number of districts, and so massing the majorities of the minority party as to waste them in as few districts as possible, so that the people are not fairly represented. That desire to so make the apportionment is carried out by a very simple method. The apportionments in the Legislature are made by committees, and those committees are constituted by the presiding officers of the two Houses, so that in fact the whole machinery by which the apportionment is brought about is in the hands of the two presiding officers appointed by the dominant party in each House.

Mr. HARRY WHITE. Will the delegate allow me to interrupt him to ask whether the report of the conference committee is not submitted to the two Houses for their adoption or rejection?

Mr. HALL. Certainly. If the reports of the original committees are not in harmony, or if the two Houses disagree, a conference committee is appointed, and the members of the conference committee are appointed by the speakers of the two Houses, and the gentleman from Indiana

knows as well and perhaps better than any other gentleman in this body, from his long experience, that those reports are always adopted by the two Houses; for the two Houses, wearied out by long strife and discussion over these matters, are compelled to accept the report of the conference committee or have no apportionment at all.

That is one of the evils which we ought to remedy. Everybody feels that much of the gerrymandering which has prevailed is due to the influence of party passion and party desires. If the Legislature had succeeded in the past in simply representing the people in proportion as they differed on party questions, there would be no objection, on that score at least, to the Legislature making the apportionment; but there is the objection which I have stated that has existed and always will exist to any apportionment made by any legislative body.

Then there is one other objection to the Legislature making the apportionment, which I know the gentleman from Indiana will appreciate, and that is the desire of certain influential individuals in the Senate and in the House to so apportion the State as to suit themselves and their own localities. They are generally individuals sufficiently influential to get themselves placed on the committees that make the apportionment, and on the committees that give it final form in conference, and there in order to serve themselves, and their particular friends, or their localities, they are apt to sacrifice the general good.

Here are two objections which have existed in the past and here are two evils which the proposition of the gentleman from Columbia proposes to remedy. How does it do it? In the first place, it neutralizes the political influence to which I have referred. How? By having a commission appointed composed of equal numbers of each political party. It does not give power to the minority because, however much the minority might desire it, they cannot in their condition so district the State as to give an undue advantage to the minority. All that would be effected by that would be to enable the minority members to say to their associates. "Here, gentlemen, we must have a fair apportionment or none." It is not legislation; it is simply a means of dividing districts so that the minority may be fairly represented as well as the majority.

Mr. MACVEAGH. The gentleman will allow me to ask him whether it would not be in the power of the minority to prevent the State being apportioned at all.

Mr. HALL. And if they did prevent districting the State, the old districts would remain and the majority would not suffer. That very thing has happened in the Legislature already. We have had one apportionment bill vetoed by the Governor of one political party and the old apportionment remained. These are possibilities which may exist under any mode which the Convention may adopt. The two Houses may differ in political sentiment, or the two Houses may be united in political sentiment, and yet their work may be vetoed by the Governor. No mode of apportionment which you may adopt will be entirely free from objection on account of some possible contingency of that kind.

Then the other evil to which I have adverted, the undue influence of influential members of the Senate and House, is done away with by this proposition because this commission cannot be chosen from the body of the Senate and House, as was supposed by the gentleman from Tioga. The answer of the gentleman from Fayette was complete on that point, that this Constitution which we are to send to the people and which we hope will be adopted provides that a member of the Legislature can hold no other office, and I am sure that the gentleman from Tioga will not contend that one of these commissioners does not hold an office and an office of trust.

Again, it is also provided in this proposed amendment of the gentleman from Columbia, that the gentlemen who make this apportionment shall be ineligible to hold a seat in either House for five years after the apportionment is made, so that they can have no personal interest, no personal ambition, in arranging the matter. But we are told that some of these men may be corrupt, that it will be easy to buy two or three of these men, and thereby secure an apportionment in a particular interest. It is true that is a possibility; but if you leave it to the Legislature, there is not even the necessity of buying anybody; the dominant party can succeed in securing a partisan apportionment without buying a single one. Even in that view there is the addition of another safeguard.

There is only one point on which I hesitate to give my assent to this proposition;

and that is that the commission is to be appointed by the Legislature. If I had my way, I would remove the whole thing from the Legislature. While I agree to have these commissioners, I would have them elected by the people at once, and not subject to any influence from those men in the Senate and House who are seeking re-election. Otherwise, I am heartily in accord with this proposition.

Mr. CUYLER. Mr. President: I do not rise to discuss this proposition. I have been silent during all the debate that has taken place upon these sections, silent, not because I had any sympathy with the section which has been adopted; but silent because, having had the opportunity of being heard before upon these questions, I had found how useless it was to appeal to the House in the hope that anything different could result. The whole section I regard as one of signal and gross injustice to the city of Philadelphia. With a fifth of the population of the State, with half its assessed value and paying half the taxation of the Commonwealth, she is reduced in the House and in the Senate to one-sixth of the representation.

Mr. DARLINGTON. Not in the House.

Mr. CUYLER. She is reduced in the House to a sixth of the representation as nearly as it can be calculated, because on a basis of two hundred and three members she has thirty-eight, which approaches very closely to a sixth of the whole number.

Mr. HOWARD. Will the delegate from Philadelphia allow me to ask him a question?

Mr. CUYLER. Yes, sir.

Mr. HOWARD. I have heard the statement several times from delegates from Philadelphia that the people of that city owned one-half of the assessed value of the Commonwealth. I should like to ask the delegate if he does not know the fact that in Philadelphia real estate is assessed at its full value, while in the rest of the Commonwealth it is only assessed at about one-seventh of its value, so that in point of fact there are over \$3,500,000 of property, real estate, in Philadelphia, while in the rest of the State there are about \$500,000,000.

Mr. CUYLER. The gentleman may be correct in his statement! and if so, it only intensifies the proposition, as I understand it. Now, the practical result to the city of Philadelphia is that she is brought down in the Senate and in the House to one-sixth of the representation when she

has one-fifth of the population and rapidly increasing, half the property at least, and pays half the taxes. This has resulted from our adoption of a false system to base our representation upon, because the system of representing counties seems to me to be an unjust and an unfair one and to rest upon no natural reason whatever. But still I am bound to accept this condition of affairs because a majority of the House has thus resolved.

But now there is to be a fresh aggravation. There are but six counties of the Commonwealth interested at all in the question now before the House, and Philadelphia is more largely interested by far than any other. It is now proposed that not only shall she be cut down to less than her fair proportion of representation in the Commonwealth, but also that the apportionment of districts is to be taken absolutely out of her own hands and placed with the Legislature, or with commissioners who are to be chosen by the Legislature; for it may very well occur that of the twelve commissioners who are to be chosen by the Legislature, not one solitary man will come from Philadelphia; and thus it may come to pass that Philadelphia will be districted into her thirty-eight different legislative districts by men who know nothing of her wants or of her interests; by men, no one of whom comes from the body of the county of Philadelphia; by men who can be actuated by no sympathy with the people of Philadelphia, but who look at the whole matter from a standpoint in which the people of Philadelphia may perhaps have no interest whatever.

Sir, I regard this as a fresh injustice. I can see no reason, when six counties of the Commonwealth alone are to be affected by it, that sixty-six counties of the Commonwealth shall determine this question. Therefore, if it were in order—it is not now probably, the pending question being on an amendment to an amendment—but when it comes in order I shall desire to substitute for the proposition now pending something that shall be in substance what I will now read:

“At the session of the General Assembly next after the adoption of this Constitution, the Legislature shall divide the State into senatorial districts. At the general election next succeeding the adoption of this Constitution, the qualified electors of counties in which separate representative districts are authorized shall in every such county elect six com-

missioners for the purpose of establishing such districts in such county; but no elector shall vote for more than three of said commissioners. Apportionments into senatorial and representative districts shall be made in like manner immediately after each decennial census of the United States.”

I think that places the responsibility just where it ought to belong. It places it upon the people who are immediately affected by it, and it leaves with the people who are to be immediately affected the selection of the men who are to perform this duty, instead of depositing it with the Legislature, who may select men from the State at large who have no direct responsibility to the people concerned.

Mr. BUCKALEW. I desire to make a modification of my amendment, in order to have it conform to the action of this House yesterday upon this subject, by inserting in the third line, after the words “one hundred thousand,” the words, “inhabitants and cities entitled to separate representation.”

The House having voted yesterday to give certain cities separate representation, the modification becomes necessary. As originally offered and now modified, I call for the yeas and nays on my amendment.

Mr. SHARPE. I second the call.

The PRESIDENT. Does the gentleman from Columbia ask for unanimous consent to make a modification?

Mr. BUCKALEW. No, sir; I have the right to make a modification.

The PRESIDENT. The Chair is of opinion that the gentleman has no right to modify his amendment unless by unanimous consent, there having been an adjournment since he offered it.

Mr. BUCKALEW. The rule is express that a proposition may be modified at any time before action has been taken upon it by the House.

The PRESIDENT. Will the gentleman point to the rule? The Chair knows of no such rule. It certainly would make the Journal of to-day read differently from the Journal of yesterday.

Mr. MACVEAGH. Certainly the late presiding officer of this body decided—whether correctly or incorrectly—as the presiding officer now decides. Whether it was right or wrong I do not know, but it was certainly so decided by him on several occasions.

The PRESIDENT. It would make the Journal of to-day read differently from that of Tuesday. Does the gentleman from Columbia move an amendment?

Mr. BUCKALEW. I cannot now move the amendment, but it is not material. It is a mere matter of details and can be corrected afterward.

The PRESIDENT. The Chair would allow the modification to be made if he could, but under the rule he cannot. The question is on agreeing to the amendment of the gentleman from Columbia, on which the yeas and nays have been called for.

Mr. REEBE. Let it read.

The CLERK read as follows:

"At the session of the General Assembly next after the adoption of this Constitution, commissioners of apportionment shall be chosen, whose duty it shall be to divide the State into senatorial districts, and counties containing over one hundred thousand into representative districts in conformity with the provisions of the two next preceding sections. The Senate shall choose four and the House of Representatives eight of said commissioners; each senator and each representative voting for one-half of the number to be chosen by his House. The said commissioners shall severally possess all the qualifications required of members of the State Senate; shall be sworn or affirmed to support and obey this Constitution, and to perform their duties with fidelity, and shall be ineligible to an election to either House under an apportionment made by them for a period of five years. The assent of nine of their number shall be necessary to an apportionment, which, when made, shall be certified by them to the Secretary of the Commonwealth, to be published under his direction with the general laws of the State.

"Commissioners of apportionment shall in like manner be chosen and appointed by the two Houses to make apportionments based upon each future decennial census of the United States, whose qualifications, duties and powers shall be the same as those of the commissioners above mentioned, who shall take and subscribe a like oath or affirmation, and be subject to like ineligibility for legislative service, and who shall form such apportionments as shall be authorized by the Constitution by a like vote and assent of three-fourths of their number.

The PRESIDENT. The Clerk will proceed with the roll.

The yeas and nays, which had been required by Mr. Buckalew and Mr. Sharpe, were taken and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Barclay, Black, Charles A., Black, J. S., Brodhead, Brown, Buckalew, Campbell, Carter, Church, Corbett, De France, Dodd, Elliott, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hemphill, Heverin, Kaine, Lamberton, Landis, Lilly, Long, McClean, M'Murray, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patton, Purman, Reed, Andrew, Ross, Sharpe, Smith, H. G., Smith, Wm. H., Van Reed, Woodward, Worrell and Wright—47.

NAYS.

Messrs. Addicks, Ainey, Andrews, Baile, (Perry,) Baker, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Calvin, Carey, Cochran, Collins, Curry, Cuyler, Darlington, Edwards, Ewing, Fulton, Funck, Green, Hanna, Hazzard, Horton Howard, Lawrence, Littleton, MacConnell, MacVeagh, M'Culloch, M'Michael, Mann, Mantor, Minor, Newlin, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Runk, Russell, Smith, Henry W., Stanton, Stewart, Struthers, Turrell, Wetherill, J. M., Wetherill, John Price, White, D. N. White, Harry, White, J. W. F. and Walker, *President*—57.

So the amendment to the amendment was rejected.

ABSENT. — Messrs. Armstrong, Bannan, Bigler, Biddle, Boyd, Bullitt, Cassidy, Clark, Corson, Craig, Cronmiller, Curtin, Dallas, Davis, Dunning, Ellis, Fell, Finney, Hunsicker, Knight, Lear, M'Camant, Metzger, Parsons, Pughe, Read, John R., Simpson, Temple and Wherry—29.

Mr. CUYLER. I now move to amend by substituting as follows:

"At the session of the General Assembly next after the adoption of this Constitution, the Legislature shall divide the State into senatorial districts. At the general election next succeeding the adoption of this Constitution, the qualified electors of counties in which separate representative districts are authorized, shall in every such county elect six commissioners for the purpose of establishing such districts in such county; but no elector shall vote for more than three of

said commissioners. Apportionments into senatorial and representative districts shall be made in like manner immediately after each decennial census of the United States."

Mr. MANN. I desire to ask the gentleman who offered this proposition to make his amendment conform to the section adopted yesterday, with reference to counties of one hundred thousand inhabitants.

Mr. CUYLER. It does do that by saying, "the qualified electors of counties in which separate representative districts are authorized." It covers that fully.

The PRESIDENT. The question is on agreeing to the amendment.

The question was put.

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

Mr. SHARPE. I second the call.

The PRESIDENT. Is the call sustained? More than ten members rose.

The PRESIDENT. The call is sustained and the Clerk will proceed with the call.

Mr. KAINE. I now desire that the amendment shall be read.

The CLERK read the amendment to the amendment.

Mr. KAINE. Mr. President: We have already declared that each county shall be a separate election district.

Mr. HALL. I call for a division of the question, the first division to end after "senatorial districts."

The PRESIDENT. A division is asked by the delegate from Elk, the first division to end with "senatorial districts."

Mr. CUYLER. I beg leave to make answer to an inquiry which has been made of me. Some gentlemen seem to understand that these six commissioners are to do the whole work for all the counties that are affected. Not so. Each county that is affected under this plan will elect six commissioners for that county. Each county would elect its own men, each party voting for three.

The PRESIDENT. The first division will be read.

The CLERK read as follows:

"At the session of the General Assembly next after the adoption of the Constitution, the Legislature shall divide the State into senatorial districts."

Mr. HALL. That is the first division.

The PRESIDENT. The question is on the first division, just read.

Mr. HARRY WHITE. May I ask for the reading of the whole amendment? It is

very well written, but I could not read it distinctly.

Mr. CUYLER. I rise to a point of order. We have taken a *viva voce* vote. After that has been taken and the yeas and nays have been ordered, can the proposition be divided? Is it not too late to divide it after a *viva voce* vote?

The PRESIDENT. The whole paragraph will be read again.

The CLERK read the amendment to the amendment.

The PRESIDENT. The first division is before the Convention.

Mr. COCHRAN. The first division of the question is, I suppose, one which, taken apart and separate from everything else, those who are opposed to the plan suggested would have no objection to. But I see no propriety in voting the first division in when we have the original proposition, which provides for a general apportionment by the Legislature. Those who are in favor of the plan of general apportionment by the Legislature, it seems to me, ought not to embarrass that proposition by voting for this portion of the amendment of the gentleman from Philadelphia. I have no objection to this part of the amendment in itself considered, but taking it in connection, and knowing that there is a previous proposition which covers the whole ground, I shall vote against this division of the amendment.

The PRESIDENT. The yeas and nays are ordered, and the Clerk will call the roll on the first division.

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

Y E A S .

Messrs. Achenbach, Alricks, Baer, Barclay, Beebe, Black, Charles A., Brodhead, Carey, Church, Corbett, Curry, Cuyler, Elliott, Ewing, Gibson, Hanna, Harvey, Hay, Hemphill, Lilly, Long, M'Michael, Mann, Mitchell, Palmer, H. W., Runk, Sharpe, Smith, Wm. H., Van Reed and White, David N.—30.

N A Y S .

Messrs. Addicks, Ainey, Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Bardsley, Bartholomew, Bowman, Broomall, Brown, Buckalew, Calvin, Campbell, Cochran, Collins, Dallas, Darlington, De France, Dodd, Dunning, Edwards, Fulton, Funck, Gilpin, Green, Guthrie, Hall, Hazzard, Horton, Howard, Kaine, Lamberton, Lawrence, Littleton, MacConnell,

MacVeagh, M'CLean, M'Culloch, M'Murray, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Smith, Henry W., Stanton, Stewart, Struthers, Turrell, Wetherill, J. M., Wetherill, Jno. Price, White, Harry, White, J. W. F., Woodward, Worrell, Wright and Walker, *President*—70.

So the first division of the amendment was rejected.

ABSENT.—Messrs. Armstrong, Baker, Bannan, Biddle, Bigler, Black, J. S., Boyd, Bullitt, Carter, Cassidy, Clark, Corson, Craig, Cronmiller, Curtin, Davis, Ellis, Fell, Finney, Heverin, Hunsicker, Knight, Landis, Lear, MCamant, Metzger, Parsons, Pughe, Read, John R., Simpson, Smith, H. G., Temple and Wherry—33.

MR. CUYLER. I ask unanimous consent in the second division, upon which the vote is about to be taken, to substitute "seven" for "six," and "four" for "three," so that there will be seven commissioners to be elected, each voter to vote for four. The object of that is to prevent a dead lock from their standing three to three in regard to the apportionment. I see the force of that difficulty which has been suggested, and ask unanimous consent to make that modification.

THE PRESIDENT. If there be no objection the modification will be made. The question is on the division as modified.

MR. EWING. Is the division open for discussion?

THE PRESIDENT. The second division I suppose will be the entire remainder of the amendment proposed.

The second division will be read.

THE CLERK read as follows: "At the general election next succeeding the adoption of this Constitution the qualified electors of counties in which separate representative districts are authorized, shall in every such county elect seven commissioners for the purpose of establishing such districts in such county; but no elector shall vote for more than four of such commissioners. Apportionment into representative districts shall be made in like manner immediately after each decennial census of the United States."

MR. J. PRICE WETHERILL. Now, Mr. President, I have just a word to say. The design of the amendment on the part of the mover was, as I understand it, to prevent a dead lock. That was very

proper, for the reason that the caucuses of the two parties would control the commissioners, and thereby control the apportionment, and we should have most certainly the two parties in this commission evenly divided, and we never could get a unanimous verdict of the jury, with three on one side, and three on the other, directly antagonistic under a caucus pledge. Therefore, of course, there would be a dead lock.

But I am rather surprised, from the position which I know my colleague holds in this city, that he should deliberately propose to put the apportionment of the city of Philadelphia entirely into the hands of the party to which he is antagonistic. He desires the majority party to vote for four and the minority party to vote for three, and of course the majority party would control, and the majority party would apportion the city of Philadelphia, and the majority party would say exactly how these districts should be formed. I do not think that that would be an improvement upon any plan of apportionment which the Legislature might present.

The whole subject is filled with difficulty, and for these reasons, inasmuch as I do not think any minority would be fully represented in a commission of seven, with four elected surely from the opposite party, it does seem to me that we had better refer this whole matter to the Legislature. Certainly, we still receive just as much at its hands as we would at the hands of a commission as suggested by my colleague from Philadelphia.

MR. EWING. Mr. President: I voted for the first part of this proposition to separate it from the districting of the counties entitled to six representatives, because I would prefer seeing some reasonable, practical method of dividing the large counties by a local authority.

I have two or three objections to the plan that is now before us. In the first place I do not see any great advantage in having commissioners elected on the minority vote plan. If you do so elect them and allow one party to elect four and another three, the majority party will, of course, govern. I would prefer to see some local board constituted of officers that already exist for some other purpose, and I can see no advantage that the plan which the gentleman from Philadelphia now proposes has over one that would give the districting of the counties to the county commissioners. I understand

some gentlemen have a plan of that sort, and I think I shall vote against this present proposition hoping that there will be another amendment offered; and I am ready to vote for any good plan which will give the districting of the large counties to some local authority, either elected by districts in the county, or the county commissioners, or some other officers of the county.

I just wish now to say in regard to the remarks of the gentleman from Philadelphia about the unfairness of the apportionment made yesterday to Philadelphia, that he seems to have "injustice to Philadelphia" on the brain. It is the staple of nearly all his speeches on this subject. He is entirely mistaken in regard to the provision being unjust to Philadelphia. I did not vote for it and was not in favor of it; but it does Philadelphia full justice. Philadelphia by it has thirty-eight out of two hundred or two hundred and one members. I think two hundred will be found to be the precise number that it makes. Now, his mistake is in supposing that Philadelphia has one-fifth of all the population of the State. It has not. It gets thirty-eight members on full ratios and it has only four thousand five hundred left unrepresented, while there are quite a number of small counties that have only one member that lose a great deal more than that. Allegheny loses fifteen thousand six hundred, more than three times as much as Philadelphia does; and yet I think in the apportionment we have made, the large counties have justice done to them. It is the medium-sized counties with one or two members who lose on a large fraction that have a right to complain, but not Philadelphia or the larger counties; they have full justice done them.

The PRESIDENT. The question is on the second division of the amendment to the amendment.

Mr. CUYLER. The yeas and nays were ordered on the whole section in the first instance, as I understand. If that is not so, I call for the yeas and nays now on this division of my amendment.

The yeas and nays were ordered, and being taken resulted as follows:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baer, Bailey, (Huntingdon,) Black, Charles A., Black, J. S., Brodhead, Brown, Buckalew, Campbell, Church, Cuyler, Dallas, De France, Dodd, Dun-

ning, Gibson, Guthrie, Hall, Hay, Hemp-hill, Hunsicker, Kaine, Lamberton, Long, M'Clellan, M'Murray, Mitchell, Mott, Palmer, G. W., Patton, Reed, Andrew, Runk, Sharpe, Smith, Wm. H., Stanton, Wetherill, J. M., Woodward and Wright—40.

NAYS.

Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Calvin, Carey, Cochran, Collins, Corbett, Curry, Darlington, Edwards, Ewing, Fulton, Funk, Gilpin, Green, Hanna, Hazzard, Heverin, Howard, Lawrence, Lilly, Littleton, MacConnell, MacVeagh, M'Culloch, M'Michael, Mann, Mantor, Minor, Newlin, Niles, Patterson, D. W., Patterson T. H. B., Porter, Purviance, John N., Purviance, Sam'l A., Reynolds, Rooke, Ross, Russell, Smith, Henry W., Struthers, Turrell, Van Reed, Wetherill, John Price, White, David N., White, Harry, White, J. W. F., Worrell and Walker, *President*—57.

So the question was determined in the negative.

ABSENT—Messrs. Armstrong, Bannan, Barclay, Biddle, Bigler, Boyd, Bullitt, Carter, Cassidy, Clark, Corson, Craig, Cronmiller, Curtin, Davis, Elliott, Ellis, Fell, Finney, Harvey, Horton, Knight Landis, Lear, M'Camant, Metzger, Palmer, H. W., Parsons, Pughe, Purman, Read, John R., Simpson, Smith, H. G., Stewart, Temple and Wherry—36.

Mr. HALL. I offer the following amendment, to take the place of the proposition of the gentleman from Indiana:

"At the general election next after the adoption of this Constitution, and at each general election in the years next succeeding the taking of a United States decennial census, twelve commissioners of apportionment shall be chosen by the electors of the State, each elector to vote for not more than six of said commissioners. It shall be the duty of the said commissioners to divide the State into senatorial districts, and counties containing over one hundred thousand inhabitants into representative districts in conformity with the provisions of the foregoing section. The said commissioners shall severally possess all the qualifications required of members of the State Senate; shall be sworn or affirmed to support and obey this Constitution, and to perform their duties with fidelity, and shall be ineligible to an election to either House under an apportionment made by

them for a period of five years. The assent of nine of their number shall be necessary to an apportionment, which, when made, shall be certified by them to the Secretary of the Commonwealth, to be published under his direction with the general laws of the State."

Mr. HARRY WHITE. On that I call for the yeas and nays.

Mr. HALL. I wish to explain the nature of the proposition. It differs from that offered by the gentleman from Columbia (Mr. Buckalew) only in this: that the commissioners are to be chosen directly by the people and not by the Legislature. In all other respects it is precisely the proposition of the gentleman from Columbia. I second the call for the yeas and nays.

The yeas and nays were ordered.

Mr. BUCKALEW. This is exactly the amendment which was submitted to the Convention several months ago by the member from Carbon (Mr. Lilly.) I prefer it to the amendment which I submitted last evening, and which has been voted on this morning. I have always preferred this mode of selecting these boards of commissioners; but I offered my amendment in the other form in deference to what I supposed were the views of other gentlemen of the Convention and to avoid all imputation of a desire to insult the Legislature by taking away from them entirely a power which they had been accustomed to exercise, leaving with them the privilege of making apportionments through commissioners selected by themselves. But I think the proposition now offered by the gentleman from Elk is much better, because it will separate this commission entirely from the Legislature, more perfectly than my amendment would have done if it had been adopted.

Mr. President, I am, for one, perfectly willing that a proposition of this kind or some other of the same character shall be submitted, along with our amendments, to a separate vote of the people of the State. If my amendment had been agreed to, I should not have resisted a proposition of that sort. As it is a new mode of making districts in the State, and as there are political interests involved or supposed to be involved in it, I would have been perfectly willing that my amendment, if it had been agreed to, should have been submitted to a separate vote; and so with regard to this amendment, if the Convention shall think proper

to accept it, I, for one, am willing that it shall be submitted, along with our work, to a separate vote of the people of the State.

And by the way, sir, there is no absolute necessity that we should say that the Legislature shall apportion the State. If we say nothing at all on the subject of who shall make the apportionment, the power will reside with the Legislature as a matter of course. The Legislature has conferred upon it all the legislative power of the State, and it is the duty of the two Houses to pass all laws which shall be necessary to execute the several provisions of the Constitution, so that these sections eighteen and nineteen, with regard to the Constitution of the Senate and House, will be executed by the Legislature, at all events, under their general law-making power. It will be their duty to do so. So that, as I said before, there is no necessity for saying that the Legislature shall possess this power of apportioning the State, or of determining how it shall be apportioned. So if we submit this amendment now proposed by the gentleman from Elk to a separate vote by the people, and the amendment shall be rejected, complete power will still reside in the Legislature to make these very apportionments that are in question; so that no embarrassment can result.

I submit then that any members of the Convention who think this is a fair proposition to be passed upon by the people of the State—the question whether the mode of making apportionments shall be changed—will be justified in voting for this amendment which is now submitted by the gentlemen from Elk, and I pledge myself to go with those who may desire a separate vote on this section by the people of the State.

Mr. S. A. PURVIANCE. Inasmuch as this mode of apportionment relates to the county of Allegheny and a few other counties, I desire to interpose my objection to it. In addition to the objection that this board of apportionment are of equal numbers, and therefore probably never would agree, which is a very formidable objection, I ask the gentleman from Elk, how are they to be nominated and presented to the people for their consideration? Why, sir, they are to be nominated by party conventions, and then after that nomination is made the people of the several counties which are proposed to be divided have nothing to say that can affect in any respect the ac-

tion of this board. The board might be selected entirely from the middle or eastern part of the State, and the people of Allegheny county would have nothing to say in reference to the apportionment; and so, as mentioned by the honorable delegate from Philadelphia, (Mr. Cuyler,) the whole board might be selected beyond the limits of Philadelphia, and thus the people of Philadelphia would have no voice whatever in reference to the apportionment of their city. I therefore hope that this amendment may be voted down.

The PRESIDENT. The question is on the amendment of the delegate from Elk, (Mr. Hall,) on which the yeas and nays have been ordered.

Mr. HEMPHILL. I am paired with Mr. Newlin.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Black, Charles A., Black, J. S., Brodhead, Brown, Buckalew, Campbell, Carter, Church, Corbett, Dallas, De France, Dodd, Dunning, Elliott, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hunsicker, Kaine, Lamberton, Lilly, Long, M'Clellan, M'Murray, Mitchell, Mott, Palmer, G. W., Patton, Reed, Andrew, Sharpe, Smith, H. G., Smith, Wm. H., Van Reed, Woodward and Worrell—42.

NAYS.

Messrs. Addicks, Ainey, Andrews, Bailly, (Perry,) Baker, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Calvin, Carey, Cochran, Collins, Curry, Cuyler, Darlington, Edwards, Ewing, Fulton, Funck, Green, Hanna, Hazzard, Horton, Howard, Lawrence, MacConnell, MacVeagh, M'Culloch, M'Michael, Mann, Mantor, Minor, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Sam'l A., Reynolds, Rooke, Runk, Russell, Smith, Henry W., Stanton, Stewart, Struthers, Turrell, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Walker, *President*—53.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Armstrong, Bannan, Barclay, Biddle, Bigler, Boyd, Bullitt, Cassidy, Clark, Corson, Craig, Cronmiller, Curtin, Davis Ellis, Fell, Finney, Hemphill, Heverin, Knight, Landis, Lear, Littleton, M'Camant, Metzger, Newlin, Pal-

mer, H. W., Parsons, Pughe, Purman, Purviance, John N., Read, John R., Ross, Simpson, Temple, Wetherill, John Price, Wherry and Wright—38.

The PRESIDENT. The question recurs on the original amendment of the delegate from Indiana (Mr. Harry White.)

Mr. HARRY WHITE. I wish to change a word in the amendment, by unanimous consent. I propose to transpose the word "thereafter," to come in after the word "and," so as to read, "and thereafter at its first session after each decennial United States census."

The PRESIDENT. Will the Convention give leave to make the modification? The Chair hears no objection, and the amendment will be so modified.

Mr. BRODHEAD. I offer the following as a substitute for the pending proposition.

"The Legislature, at its first session after the adoption of this Constitution, and at its first session after each decennial census thereafter, shall apportion the State into senatorial districts agreeably to the provisions of the foregoing section. The apportionment of representative districts shall be made by a board consisting of the commissioners, sheriffs and judges of the court of common pleas of each city or county."

Mr. CUYLER. I have a solitary objection to the amendment just offered. I am wholly opposed to imposing upon the judges of our courts any such duty. If there be a vice in the system which has heretofore existed, it has been that executive duties were placed upon judges of courts. I hope this Convention will frown down everything of that kind, and for that reason I trust this amendment will not prevail.

Mr. BRODHEAD. The judges will be called upon to act in this matter only once in ten years. If the judges cannot come forward at least once in ten years and act as other citizens and without prejudice and party feeling, I do not think the judgment seat is the proper place for them. I desire to take this power away from the Legislature. In regard to the senatorial districts, we cannot do so according to the provision we have already made; but in the way we have decided to elect representatives, the State can be districted in the mode I propose. Then the matter of districting the counties entitled to large numbers of members will be brought home to the people who are

directly interested the people of each county which is to be districted. The members of the Legislature at Harrisburg know nothing of that county except the members who represent it directly and who have a very small voice in making the apportionment.

Mr. ALRICKS. Mr. President: I hope this amendment and the original proposition to which it is moved, will be voted down, the amendment because it will be conferring on the judges powers which we have already said in another article of the Constitution they shall not exercise, and the original proposition because it is meaningless. I say it is meaningless, with great respect to the gentleman from Indiana. It is a work of supererogation. We are now considering the article upon the Legislature and we are defining the duties that will be devolved on the Legislature. There is, therefore, no necessity for our repeating what is to be done by the Legislature. This is one of their powers. I trust both the amendment and the original proposition will be voted down.

The PRESIDENT. The question is on the amendment of the delegate from Northampton to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT. The question recurs on the amendment of the delegate from Indiana.

Mr. HARRY WHITE. I ask unanimous consent for leave to change another word according to the suggestion of one or two gentlemen. I propose to change the word "foregoing" to "preceding," so as to read: "agreeably to the provisions of the preceding sections."

The PRESIDENT. If there be no objection that modification will be made. The amendment is so modified.

Mr. BUCKALEW. I would suggest another small change to prevent possible embarrassment. Instead of saying that the apportionment shall be made "at the next session after each decennial census," I would say "as soon as may be after each decennial census," so as to avoid any possibility of deferring the apportionment until the next regular session, which might not be held for two years after the census.

Mr. HARRY WHITE. My only fear is that that will leave too much to discretion. I want to have a rule about the construction of which there can be no doubt. I would rather have the expres-

sion "immediately after each decennial census."

Mr. BUCKALEW. Very well.

Mr. HARRY WHITE. I will accept that modification and ask unanimous consent to so modify the amendment.

The PRESIDENT. If there be no objection, that modification will be made. The question is on the amendment as modified.

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

Mr. KAINE. I second the call.

Mr. CUYLER. Let the proposition be read as it now stands amended.

The CLERK read as follows:

"The Legislature at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts, agreeably to the provisions of the preceding sections."

Mr. HEMPHILL. As the yeas and nays are to be taken, I wish to state that on this question I am paired with the gentleman from Philadelphia (Mr. Newlin) who, if present, would vote "yea" while I should vote "nay."

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Calvin, Carey, Cochran, Collins, Curry, Curtin, Darlington, Edwards, Ewing, Fuiton, Funck, Green, Hanna, Hazzard, Horton, Howard, Lawrence, MacConnell, M'Culloch, M'Michael, Mann, Mantor, Minor, Niles, Patterson, D. W., Porter, Purviance, John N., Purviance, Samuel A., Rooke, Runk, Russell, Stanton, Stewart, Struthers, Turrell, Wetherill, John Price, White, David N., White, Harry, White, J. W. F. and Walker, *President*—49.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Bailey, (Huntingdon,) Black, Charles A., Brodhead, Brown, Buckalew, Campbell, Carter, Church, Cuyler, Dallas, De France, Dunning, Elliott, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hunsicker, Kaine, Lamberton, Landis, Lilly, Long, M'CLean, M'Murray, Mitchell, Mott, Palmer, G. W., Patterson, T. H. B., Patton, Reed, Andrew, Ross, Sharpe, Smith, Henry W., Smith, Wm. H.,

Van Reed, Wetherill, J. M., Woodward and Worrell—44.

So the amendment was agreed to.

ABSENT. — Messrs. Armstrong, Baer, Bannan, Barclay, Biddle, Bigler, Black, J. S., Boyd, Bullitt, Cassidy, Clark, Corbett, Corson, Craig, Cronmiller, Davis, Dodd, Ellis, Fell, Finney, Hemphill, Heverin, Knight, Lear, Littleton, MacVeagh, M'Camant, Metzger, Newlin, Palmer, H. W., Parsons, Pughe, Purman, Read, John R., Reynolds, Simpson, Smith, H. G., Temple, Wherry and Wright—40.

Mr. D. N. WHITE. I now move that the article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

PRINTER'S ACCOUNTS.

The PRESIDENT. There is no other business before the Convention that the Chair is informed of. The Committee on Revision has not yet reported.

Mr. ADDICKS. I move that the Convention do now adjourn.

Mr. HARRY WHITE. Oh, no. We can go on with the printing matter.

The motion to adjourn was not agreed to.

Mr. HALL. I move that the Convention proceed to the report of the Committee on Accounts and Expenditures.

The motion was agreed to.

The PRESIDENT. The report of the Committee on Accounts and Expenditures is before the Convention. The accompanying resolution will be read.

The CLERK read the resolution as follows:

Resolved, That there is due to Benjamin Singlerly, Printer for the Convention, in full of all claims to the fifteenth of July, 1873, (exclusive of the items in the above mentioned accounts yet to be fully audited, together amounting to the sum of \$714 50, and also exclusive of the items excepted from the audit of the first account, together amounting to the sum of \$2,060 45,) the sum of \$11,288 35; and that a copy of the above report and of the action of the Convention thereon, be forthwith certified by the Chief Clerk to the Auditor General of the Commonwealth.

Mr. HAY. Mr. President: I did not propose myself to ask for the present consideration of this resolution because of the fact that the Convention yesterday morning directed a memorial which was presented by the State Printer to this body to be printed for the use of the Convention,

and this is not yet printed and before us; but I am entirely satisfied that the Convention should consider it now if the members are so disposed. I will say this, that so far as I know there are no facts stated in the memorial which was presented that are not as fully and as fairly stated in the report of the Committee on Accounts and Expenditures, excepting the one fact which the Printer states in his memorial, that he would lose money by an adherence to the report of the committee. That is the only fact stated in the memorial which is not stated in the report of the Committee on Accounts and Expenditures, and that fact being stated in this manner, I do not know that the Convention is not as fully prepared to consider the whole subject as if they had the Printer's memorial itself before them.

There is one request made in that memorial which I desire now to allude to, which is the request that the Printer should be heard before the Committee on Accounts and Expenditures. That request, however, is like asking for what you have already received, as if it had never been granted. I will state to the Convention now—repeating what I stated yesterday or the day before—that the Committee on Accounts and Expenditures has had before it on repeated and numerous occasions the Printer of the Convention, and has heard most fully and deliberately every statement and every fact and argument that he had to present. Not only that, but he has stated to the committee that he did not desire to be heard any further before them, upon their request to him to appear in person or by legal counsel and make an argument in favor of the legal position he has assumed, so that we can see no necessity for any further hearing before the committee nor any propriety in his request at this time.

I desire also that the Convention should understand that from the time the first account was presented to them, the Committee on Accounts have most thoroughly and, as they think, exhaustively investigated this whole subject, with the utmost desire that the fullest possible justice should be rendered to the Printer of this Convention, as well as that it should be done to the Commonwealth of Pennsylvania, which this committee, on behalf of this Convention, represents in this matter. I hope that the members of this Convention will bear in mind continually in this discussion, if discussion there is to be, that

the Committee on Accounts and Expenditures represented the Convention, and did not represent themselves, and had no particular views to advance or forward by anything that they did or have reported. Their desire was simply to see that the agreement of the Convention, whatever it was, was fully and properly carried out.

In the examination of the Printer's accounts, the Committee on Accounts and Expenditures ascertained that the Printer was charging for some of the main items in his account prices which were larger than those which were prescribed to be paid in the printing acts. The contract of the Printer with the Convention was substantially to do the work of the Convention—all the printing and binding—on the terms of his contract with the State. That was his professed contract with this body. The contract of the Printer with the State was to do all the printing and binding of the Commonwealth for the term of three years, from July, 1871, at the prices mentioned in the printing acts, less a discount of forty-one and one-fourth per cent. The Committee on Accounts and Expenditures have in every case where the printing acts applied allowed these rates and no other, believing that in their settlement they were bound by these prices fixed in the law; that the contract with the Printer of this Convention means that, and nothing else. And certainly it was a notorious fact at the time that this contract was entered into, whilst the present Printer of the Convention had competitors before us for the work of this body, that this Convention was induced to believe that he desired, and was willing and prepared to do the work on the terms of his contract—for the prices mentioned in the schedule of the act of March 27, 1871. That certainly was the understanding of this body when they made the contract; and as your committee thinks, that is the contract.

The Printer, however, when his accounts came to be settled, claimed that he should be paid rates in excess of the rates mentioned in that schedule. He based his claim upon two sections of the act of March 27, 1871, which provide that "where the price or cost of supplies or printing shall not be fixed by or be ascertainable under the laws relating to the public printing and binding, then the price or cost of the same shall be fixed and determined between the Superintendent of Public Printing and the Public

Printer before the same shall be furnished or supplied and shall not exceed the lowest rate at which such articles or supplies of like quantity and quality can be obtained elsewhere." The Printer claims that he is not bound by the prices mentioned in this schedule, and that the prices for his work—in other words, for composition and press-work, (for these are the two main items,)—are not fixed by or ascertainable under the schedule. But the schedule provides that *all composition* shall be paid for at the rate of sixty cents per thousand ems, and provides further that that schedule shall be the standard of rates for all objects of charge by the Public Printer against the Commonwealth.

Not only that, but upon investigation of the matter, the committee found that it was provided in the law that, *under no pretence whatever, should any other rate for composition be allowed than the rates prescribed in the schedule.* The committee therefore were of opinion that the Printer was entitled to be paid for plain composition sixty cents per thousand ems, subject to the discount at which the public printing and binding was awarded to him, and to no more, "under any pretence whatever."

I desire to say, with regard to the allegation of the Printer, that this price is not a compensating one, that the Committee on Accounts and Expenditures did not consider that matter at all. They were acting on behalf of this body as an auditing committee. They believed that their only and their very plain duty was to ascertain what prices the Printer was entitled to be paid under his contract, and to award those prices, leaving the question of the sufficiency of compensation to the Convention itself, which had made the contract with him. We had nothing to do with what the contract was. Our duty was simply to ascertain the legality of the claim according to the contract. If, as claimed, the Printer is not fully compensated by the prices which are due to him under the contract, according to the report of the committee, then it will be a proper matter for his subsequent appeal to the Convention for any just relief; but I do not think it is a proper matter to be brought into the question of this settlement.

The Committee on Accounts and Expenditures have fully reported upon this whole subject. I have stated the basis of their action, and I do not know that it is

necessary for me to state anything further now than that I will be very glad to answer any inquiries that may be addressed to me, if gentlemen desire to obtain any specific information on this subject in that way.

Mr. NILES. What is the amount of difference between the Committee on Accounts and Expenditures and the Printer?

Mr. HAY. The difference between the amount claimed by the Printer and the allowances of the Committee on Accounts up to the present time, in the three accounts, I suppose will be about \$16,000. I have not the exact sum before me, but I think it will be about that; it may be a little more or less. That difference mainly arises because of the difference existing between the charges made by the Printer and the rates fixed in the schedule of the printing acts. There were certain items of charge in his account which were not properly printer's charges, and which, of course, are not governed by the provisions of any printing act. Wherever a charge is made by the Printer for any supplies which he furnished, which, from their character were not governed by the printing acts, which were not legitimately and properly printer's charges, the Committee on Accounts and Expenditures has allowed what, in their opinion, and according to their best judgment and information, was a fair and proper price for the same, awarding full current market rates as they believe in every case. The Committee on Accounts have not only laboriously performed their duty, but have endeavored to perform it with the utmost fidelity to this body and to the State, as well as in a fair spirit to the Printer. It is probable that if the Committee had reported that the Printer was entitled to the full amount of his claim, that without any controversy upon the subject the Convention would have acceded to that report. There would have been no one objecting in that case, and as a matter of course the Convention would have trusted that their committee, which was charged with that duty, would not have reported in favor of the payment of a dollar which was not justly and legally due. The appreciation of that fact only made the committee more solicitous and more determined that they would not report for the payment of one dollar that was not really legally and justly due to any claimant. They were under the very highest obligations of honor and of duty

to their fellow-members so to act that no member should be hereafter visited with a responsibility, in which all alike shared, for an improper or illegal payment, and they have so acted.

Mr. D. W. PATTERSON. I would like to ask the chairman of the Committee of Accounts and Expenditures a question, with his permission.

Mr. HAY. Certainly, sir.

Mr. D. W. PATTERSON. Did the chairman of the Committee on Accounts call this motion up here this morning.

Mr. HAY. I did not.

Mr. D. W. PATTERSON. Had the memorial of the Printer been printed and distributed by the Convention?

Mr. HAY. It has not been printed, or it is not here, and if the gentleman will permit me to explain, I will say that at the outset I stated the fact that it had not been printed and distributed, and I endeavored to give, as fully as I could, the substance of the memorial to the Convention.

Mr. D. W. PATTERSON. I am obliged to the chairman of the committee for his explanation. I did not suppose the Committee on Accounts and Expenditures would call up in the Convention their report upon this subject when the memorial of Mr. Singerly was not printed.

Mr. CORBETT. We have nothing to do with the memorial.

Mr. STANTON. I would like information upon this subject. I believe it was the understanding of this House, when that memorial was read yesterday, that before action should be taken upon the subject, the memorial should be printed and distributed. It was understood that the whole subject was to be postponed until the memorial should be printed and laid on the tables of members. That, I think, was the impression in the Convention. I voted under that apprehension, and think I made the motion to postpone and print.

The PRESIDENT. The gentleman from Philadelphia is right. Those requisites were complied with, and the memorial was ordered to be printed.

Mr. J. W. F. WHITE. I would like the attention of the Convention for a few minutes. I am not an attorney for Mr. Singerly, do not rise here in that capacity, never was, am not now, and do not expect to be in the future. Being from our county and being personally acquainted with me, he has talked with me about this matter, and perhaps I am as well ac-

quainted with the facts as alleged by him as any other member of the Convention, and as a member of the Convention I think it is my duty to present this matter to this body as Mr. Singerly understands it.

The chairman of the Committee on Accounts and Expenditures says that he thinks in their report they have asserted all the facts alleged by Mr. Singerly in his memorial except the simple one that if their construction of his contract be sustained, he would be a loser by the contract. There is one other very material fact alleged, and I think several others when we come to examine the memorial carefully, not contained in the report of the committee. That leading fact to which I refer is this. There is a difference between the Committee on Accounts and Mr. Singerly as to the true construction of this act of Assembly. That fact is reported, but the fact that Mr. Singerly, at the time he made this contract, believed that his construction of the act was the true one, and under that belief made his contract, is a fact that does not appear in the report of the committee.

It is true that the mere understanding of Mr. Singerly at the time he makes the contract, as to what the law is upon that subject, will not relieve him legally from the effect of his contract, or the proper construction of the law. Yet it may and ought to have something to do with the action of this Convention. Now, to understand this matter properly, the great difference between Mr. Singerly and the committee is with reference to the composition of the Debates and Journal. There is the great point of difference between them. You are all familiar of course with our Debates and Journal. They are what is called solid matter, and very solid, very heavy.

Mr. DARLINGTON. Ledged.

Mr. J. W. F. WHITE. Well, perhaps they are heavy from the leads. I do not know how that is. One thing we all do know, that no such printing is ever done by the State Printer for the State. That is a fact. Mr. Singerly, as State Printer, never has done any such work as this for the State of Pennsylvania. The only work similar at all to this done for the State is the printing of the Legislative Record. That is done by another party, and although under the law, he as State Printer is bound to do all the printing of the State, yet that Legislative Record has never been given to him and never been

understood to be a part of his contract with the State, but is paid for by the State at a much higher rate than the contract of Mr. Singerly with the State. It is a very important fact to be borne in mind, that this kind of work never was done for the State by the State Printer, but the only kind of work similar to it is done by another party, it not being regarded by the State authorities as belonging to him under his contract with the State—under the very act of Assembly that we are considering here. The act of 1871, which is the act of Assembly governing the compensation to be allowed the State Printer, gives a schedule of prices to be paid for nearly all kinds of work, printing, material, binding and everything of the kind. That act of Assembly fixed the price of composition of printed matter at sixty cents per thousand ems for all kinds of type.

Mr. HAY. I beg the gentleman's pardon. "Plain composition" is the language of the act.

Mr. HAZZARD. May I ask the gentleman from Allegheny a question? If this is not the kind of State Printing that the State Printer is accustomed to do, why did he claim it under his contract?

Mr. J. W. F. WHITE. I will answer the question of the delegate from Washington. He did claim it under his contract with the State. The question now is as to compensation; and if the delegate will bear with me a moment, I will answer the question more fully hereafter, and perhaps all the questions may be answered in the same way. I was about to say that the act of 1871, in a schedule, fixed the prices of composition, of press-work, of binding, and nearly everything else.

There was another section of the act of 1871—I cannot refer to it now—which provided that any other kind of work, not provided for by the schedule, should be regulated by the Superintendent of Printing, and be at the lowest rate of similar work. Under the sixth division of the second section of the act, any work not provided for in the schedule was to be paid for at the prices agreed upon, or at the lowest rate. Mr. Singerly understood that this printing would come under that section, and not under the schedule prices. He alleges that at the time he made this contract, that was his understanding of the law; and to sustain him in that understanding of the law, he refers in his memorial (and for that rea-

son I think I can refer to it) to the speech made by the delegate from Lycoming, (Mr. Armstrong) not now in his seat. I refer to this to show that there was a difference of opinion even among able lawyers on this question. Mr. Armstrong, in his remarks at the time this resolution was before the Convention to give the work to Mr. Singerly, State Printer, said:

"If, then, we accept the act and transfer the printing into the hands of the Public Printer, we transfer to him and the Superintendent of Printing, under the very terms of this act, not only the right to superintend the printing, but to affix the price to be paid between themselves, and then, too, to affix and determine the price wholly and totally beyond the power of this Convention or its control. We cannot accept part of this act without accepting it all."

That was the construction put upon this act of Assembly during the time the Convention, had the resolution before them, and by one acknowledged to be among the able lawyers of the State. The Convention awarded the work to the State Printer with that understanding on the part of Mr. Singerly as to what the construction of this act of Assembly was; and I may say here, as he asserts in his memorial, that no one in the Convention contravened this construction of the act of Assembly; and it was fair then for the Printer to believe that that was the construction of the act. These remarks of Mr. Armstrong were not called in question by any member of the Convention. The resolution passed, and Mr. Singerly made this contract with the Commonwealth with his understanding that the composition would come under that other section, and not under the schedule of prices referred to by the Committee on Accounts.

Now, Mr. President, suppose he were mistaken in the law, I do not say that that would give him a legal claim upon us; that is not my position, but I am referring to these facts to explain Mr. Singerly's position and show to this Convention that even if the law be against him, is he not entitled to some relief? The fact appears in his memorial uncontroverted by the Committee on Accounts.

Mr. HAY. I beg the gentleman's pardon. My desire has been to separate entirely the question of relief, of reasonable allowance, from the question of what is due to him under the law and under the contract. Let one question be determined,

and then the other may be fairly and properly considered; but it is doing great injustice to the Committee on Accounts to mingle up their settlement of the account under the contract with the question of future relief to the Printer.

Mr. S. W. F. WHITE. At this very point the question comes in, is the report of this committee conclusive of the law? That is an important question. We have the opinion of lawyers on the opposite side of this matter. Is not this Convention to look at the question of law, as well as the facts of the case? The chairman of the committee says that he informed Mr. Singerly that he would be heard by counsel. I think there is some misapprehension or mistake on that point. Mr. Singerly says that no such remark was made to him.

Mr. HAY. I desire then to explain that, in my own office in Pittsburg, Mr. Singerly made me one or two visits for the purpose of explaining sundry matters in connection with these accounts, and that I then more than once suggested to him that we should be very glad to hear any argument that he might be disposed to address to the committee, either by himself or by counsel; and my suggestion that he could appear by counsel was more than once repeated.

Mr. J. W. F. WHITE. That was during the recess.

Mr. HAY. During the recess and before the special meeting which the committee had at Harrisburg.

Mr. J. W. F. WHITE. That was during the recess and after the committee had made their report. They made a report in July.

Mr. HAY. Not this report under consideration.

Mr. J. W. F. WHITE. On the 14th day of July they made a report deciding the question against Mr. Singerly, settling the accounts in accordance with their decision, and no intimation was given to Mr. Singerly; no hearing was had by Mr. Singerly on the question of law up to that time, unless it might have been in private conversation with the chairman of the committee or in ordinary conversation with the members of the committee. The offer to hear him by counsel after they had decided the question was rather late.

But I say that this question of law and the construction of the contract is a matter before this Convention. I do not know what effect this may have on the contract.

of Mr. SINGERLY. I do not know whether the action of this Convention will be conclusive on him or not. His contract, as you all know, is directly with the State of Pennsylvania. His contract, as signed by him, is with the Commonwealth of Pennsylvania, and not with this Convention, but will the members of this Convention now pass upon this report without giving him an opportunity to be heard directly on the question of law involved in the case? From the chairman's statement he had no such opportunity before their first report when that question was settled, and they do not argue it in this report. They refer to their former report as settling it, a fact also to be stated in Mr. SINGERLY's benefit.

Mr. CORBETT. Will the gentleman allow me to interrupt him?

Mr. J. W. F. WHITE. Certainly.

Mr. CORBETT. How does Mr. SINGERLY want a hearing of the question? Does he expect this Convention to take it up and try it, or does he expect to meet the Committee on Accounts, or a new committee constituted for that purpose?

Mr. J. W. F. WHITE. I do not know what Mr. SINGERLY wants in the matter. His memorial before us simply requests that he may have an opportunity to present all the facts in the case, and to be heard by legal counsel on the question of law. That is his request of this Convention. It is for the Convention to decide whether they will grant the request and in what form. I do not know what he desires, because I have not heard from him on the subject.

Mr. DODD. Allow me to ask what question of law is involved?

Mr. J. W. F. WHITE. The question is whether the composition of the Debates and Journal comes under the schedule prices, or under the second section of the act of 1871.

Mr. DODD. That is a question of fact to be settled by reference to the law.

Mr. J. W. F. WHITE. If a question of fact, it shows the importance of having all the testimony in the case.

Mr. DODD. I think no printer anywhere can doubt what "plain composition" means.

Mr. J. W. F. WHITE. The delegate may be a very good witness, and he may give his testimony in the Convention or before a committee. That is proper. I do not pretend to give testimony in the case, because I do not know. I am merely stating that I desire the members of

the Convention to know the position of Mr. SINGERLY, and I want to impress one further fact on the Convention now. The committee have allowed him (supposing it to come under the schedule prices) thirty-five and one-fourth cents per one thousand ems for the composition of our Debates and Journal. Mr. SINGERLY pays, as he says in his memorial, forty cents per one thousand ems to the men who put up the type, in addition to paying proof-readers and all other incidental expenses connected with the work, amounting to at least sixty cents per one thousand ems for the composition of these books. The fact cannot be disputed, it can be abundantly established by evidence, that it costs Mr. SINGERLY at least sixty cents per thousand ems for the composition of these volumes. The report of the committee would allow him thirty-five and one-quarter cents per thousand ems, losing twenty-four and three-quarter cents per thousand ems on the composition of these volumes. A delegate before me asks, "Is not that his lookout?" Well, it is his lookout if he did it with his eyes wide open; but if Mr. SINGERLY had a special understanding of this act at the time he made this contract, according to the construction maintained by Mr. ARMSTRONG in the Convention, and not controverted by any person at the time, should not this fact have some influence on the minds of the Convention, and move us to give him at least a careful hearing on the subject, and an opportunity to present all the facts before we decide?

I am not here to make an appeal for Mr. SINGERLY; but it does strike me when I look at it individually in this way: I get thirty volumes of these Debates; I confess as an individual I shall feel rather mean to take those books home and distribute them among my friends and others with a consciousness that the man who printed those volumes, and they are the neatest and handsomest volumes of any Constitutional Convention ever held in the Union—I should feel very mean if I should keep those volumes and distribute them, knowing at the time that the Printer who printed them would lose several thousand dollars actual loss, not in profit, but actual loss of money under the contract.

The PRESIDENT. The delegate's time has expired.

Mr. HOWARD. Mr. President: I understood yesterday when the memorial of Mr. SINGERLY was handed in and read that

the direction of the Convention was that it should be printed, and it was to be laid on the desks of members before this question was to be considered again. It seems to me that this matter is all out of order. It is contrary to the order of the Convention yesterday that we are now considering it to-day. I do not see that there is any distress about it so that we need hurry ourselves in any way with it. There has not been time to have that memorial printed and laid on the desks of members. I therefore move that the further consideration of the report be postponed for the present.

Mr. T. H. B. PATTERSON. Is that motion debatable?

The PRESIDENT. It is not. The question is on the motion of the delegate from Allegheny (Mr. Howard.)

The yeas and nays were required by Mr. J. Price Wetherill and Mr. Edwards, and were as follow, viz:

YEAS.

Messrs. Ainey, Alricks, Baily, (Perry,) Baker, Bartholomew, Black, Charles A., Bowman, Edwards, Ewing, Gibson, Hemphill, Howard, Lamberton, MacVeagh, Mann, Minor, Niles, Rooke, Runk, Stanton, Wetherill, J. M., White, Harry, White, J. W. F. and Walker, *President*—24.

NAYS.

Messrs. Achenbach, Bailey, (Huntingdon,) Beebe, Black, J. S., Brodhead, Broomall, Brown, Buckalew, Calvin, Campbell, Church, Corbett, Curry, Curtin, Darlington, De France, Dodd, Elliott, Fulton, Gilpin, Guthrie, Hall, Hay, Hazzard, Hunsicker, Kaine, Landis, Lawrence, Lilly, Long, McClean, McCulloch, Mantor, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Reynolds, Ross, Russell, Sharpe, Smith, H. G., Smith, Henry W., Smith, William H., Stewart, Struthers, Turrell Wetherill, John Price, Woodward and Wright—53.

So the motion to postpone was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Baer, Bannan, Barelay, Bardsley, Biddle, Bigler, Boyd, Bullitt, Carey, Carter, Cassidy, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Cuyler, Dallas, Davis, Dunning, Ellis, Fell, Finney, Funck, Green, Hanna, Harvey,

Heverin, Horton, Knight, Lear, Littleton, MacConnell, M'Camant, M'Michael, M'Murray, Metzger, Mitchell, Newlin, Parsons, Patterson, D. W., Porter, Pughe, Purman, Read, John R., Reed, Andrew, Simpson, Temple, Van Reed, Wherry, White, David N. and Worrell—56.

The PRESIDENT. The question is on the resolution.

Mr. BUCKALEW. We have a provision in our amendments which forbids the Legislature from ever paying an additional amount to a contractor or party after the service is performed. That will exclude any appeal to the Legislature or to any other authority in this Commonwealth for public work after it has been performed; but I am not sure that the true construction of that provision will not be this; that it will apply to contracts and work performed after this Constitution shall be adopted. It may perhaps comport with the analogies of law to hold that it will apply only to future cases, to contractors or parties who make contracts and do work in view of such a constitutional provision. It is possible therefore that the Public Printer may still appeal to the Legislature, although we have such a provision to cut off such applications hereafter; but if that provision does apply to him, in my judgment he is without any remedy, if this be a hard bargain, unless it is afforded by this Convention. He is placed in a situation which no contractors heretofore has held in our Commonwealth.

This morning the gentleman from Allegheny, (Mr. J. W. F. White,) to whom I always listen with attention, appeals to us to give the Public Printer a hearing. I did not understand exactly what sort of a hearing he meant. He said "by counsel." I suppose he meant a hearing before the Committee on Accounts and Expenditures. Well, that committee has already passed upon the subject, formed its opinion, and its judgment is recorded in two solemn reports made to this Convention. It seems to me that a hearing before that committee would be very much like hearing a party after a judgment has been rendered and to a certain extent sentence executed; that it is all idle to send this subject to that committee for learned and laborious legal argument upon the question whether this composition falls under the rate fixed in the schedule of 1871. As, therefore, it does not seem likely that there is to be any further argument on the subject, we shall be at liberty to express

our individual opinions, and mine is that the act of 1871 is clear beyond all question or dispute upon this point, that all composition of every description performed by the Printer for the State shall be under the rates fixed in the schedule of that law; so that the committee, in my judgment, is completely right in the construction which it has given to the agreement of the Public Printer.

But in their first report, their former report, to us, they stated what will be worth considering before this Convention shall finally adjourn. They say in that report that it will be for the Convention to consider whether under all the circumstances the rigid letter of the bond shall be exacted from the Printer or not. And so I have endeavored to prepare my mind for a fair, candid and charitable hearing of the question on behalf of the Public Printer when it shall be presented hereafter; I mean the question whether he shall be allowed pay for composition—that is the main item, I suppose, and the other side items need not be involved in this debate—whether he shall be paid for composition at the rate of, say forty-five cents a thousand ems, if that is the amount, or shall be paid the actual cost of that work as he can prove it. If he has no remedy hereafter by an appeal to any other tribunal we are bound to give him a fair, a complete, an impartial and patient hearing upon this question before we adjourn; and I am prepared to do it; but at present, as I am called to vote simply on this report, on the question whether the committee have given a correct construction to the act of 1871, I must vote with them, and I only make these remarks in order to exclude a conclusion, to-wit: That I, for one, shall have hereafter my mind and judgment closed against considering an appeal by the Public Printer to us upon this question of compensation; I mean particularly on the subject of composition; for if he shall bring in here conclusive proof that what we pay him forty-five cents for actually costs him sixty, and is honestly paid for by him at that rate, I do not know but that I shall be induced to say that he has a case for our consideration, not for construing the law otherwise than strictly according to its letter but for fixing, as the law authorizes us to do, the rate of compensation of persons employed by us on just and fair principles.

Mr. HAY. I desire to state for myself, that my mind is in precisely the condi-

tion of that of the gentleman from Columbia. I do not consider that in making this report, I am concluded from hereafter considering whether this man or any other man who has presented an account to this committee is not entitled to, or should not be made an allowance on account of any hardship that may exist in his bargain; nor do I consider that any person in voting for the report of the committee, has concluded himself upon that question. I only desire to keep those two questions entirely distinct and separate. I ask the Convention to say whether or not the committee is right in its construction of the law applicable to this contract; and hereafter, when the other question properly arises, let it say whether it will grant relief or not. The question of relief does not arise at this time. What is now to be settled is, what did the Convention by its contract with the State Printer, agree to pay.

Mr. COCHRAN. Mr. President: I am a member of this Committee on Accounts, or else I should say nothing at all on this subject at the present time, because gentlemen seem to be anxious to reach a vote on the question.

Sir, I believe that our committee acted with perfect fairness, with justice, without prejudice as against Mr. Singerly, for there was no reason why any man should entertain that prejudice, and with a simple desire to discharge their duty as a committee of this body, and to settle this account as every other account should be settled, according to the rules which have been established by the body itself, and the law under which we acted in making the settlement.

Now, sir, this report of the committee was not made up without giving Mr. Singerly a hearing. I protest against the suggestion being made here that the committee in secret conclave went to work and without granting a hearing made up the first or any other report. That gentleman was before us. We heard everything he had to say, and would have been willing to hear anything that he proposed or desired further to say, whether by legal counsel or otherwise; but no application was made to the committee to be heard by legal counsel at any time, and if such an application had been made I have no doubt it would have been granted. It was not certainly incumbent upon the committee, unless they felt that there was a difficulty with the question in their own minds, to ask that coun-

sel should be brought before them. The right of being heard before the committee was not denied and the Public Printer was heard as to everything which he proposed or desired to present to their consideration.

Now, sir, with regard to this question, whether this compensation be adequate or not, whether he loses or makes by this bargain, that certainly was not an element to be taken into view by your Committee on Accounts. You never gave that committee authority to entertain any equitable consideration of that kind. We were simply your auditors, and we had to act as such, and to act according to the rules which you had prescribed for us; and if there be equitable considerations which should be taken into view, they must come properly before the Convention itself as matter for future consideration, when proper application shall be made to this body. If Mr. Singerly thinks that he is not compensated, and if this Convention thinks that he ought to receive a further compensation than that which the law allows, it is only necessary for that proposition to be brought before the Convention, and the Convention, through some committee or otherwise, to ascertain the fact with regard to the adequacy of the compensation; and if they think more should be allowed let that committee report and let this Convention by the warrant of its presiding officer allow what further sum they may determine should be paid.

Now, sir, with regard to the construction of this act, if it were worth while to discuss that question here, certainly my mind is entirely clear on that point. The remarks of the gentleman from Lycoming on a former occasion have been referred to here. Why, sir, on that very same occasion the gentleman from Allegheny (Mr. J. W. F. White) also spoke, and he said distinctly in his remarks that this work should be granted to the Public Printer under the prices fixed by the act of Assembly, the general printing law. That was as distinct notice to Mr. Singerly on the one hand as anything that could have fallen out in debate on the other from the gentleman from Lycoming. But those things do not enter legitimately into the consideration of this question; they are not part of it. The question here is simply, what was the price to be paid, and have the Committee on Accounts allowed that price? The price fixed in the act of 1871 for composition was sixty cents

a thousand ems, according to my recollection. Mr. Singerly presented bills asking seventy-five cents a thousand for composition. What could your committee do? They must pay him according to the prices fixed by the act of Assembly, and that act fixed the price for all composition at sixty cents, less whatever rate of deduction should be bid by parties at a public auction, if you may so call it, of the printing of the State. Mr. Singerly bid for it at forty-one and a quarter per cent. below the sixty cents a thousand, and just there your Committee on Accounts fixed the compensation. Could they do otherwise? When you have this state of facts before you on this report, what can you do but sanction the action of your own committee, for they have acted simply according to the rule which you yourself prescribed for them in the contract, and which was previously laid down in the act of Assembly which controlled the contract.

Now, with regard to the particular character of the work, it was known beforehand what it would be. Every person understood what it was to print a volume of Debates, and the manner of the composition of this volume of Debates was as much in the mind of the Printer as it could have been in the mind of any member of the Convention. He must have known the kind of work to be done. It is said that it is solid work. It is just as solid as any other book-work, and no more so. It is not so *very* solid, for it is leaded all through, and in addition to that it has an open space between the columns of the page, and all that is paid for as solid composition, at the rate of so much per thousand ems. If there is any difference in the work from that which is ordinarily done for the State, it is a difference which was well known, and the work is just of the character of other book work.

The *Legislative Record* does not present an analogous case to this because what is paid for the *Record* includes the reporting as well as printing, and I believe the paper as well as the reporting and printing; and so it is a very different kind of work. A very different rate of compensation of course would have to be paid where so much more is supplied.

But, sir, I apprehend that this body does not want to hear an argument on these questions, and therefore I shall not discuss them further at this time. I only say in regard to the action of this Committee on Accounts that that action was

careful, deliberate and considerate, especially by the chairman of the committee, who I must say acted with perfect candor and fairness, and with great diligence and very great ability on a subject of which none of us who were associated with him, nor himself at the beginning, had any practical, personal knowledge. And, sir, this being the case, and this report having been made exactly in accordance with the rule which you had laid down for the committee, what remains for the Convention except to adopt the resolution appended to the report, and let the consideration of a proper compensation come up in another form, at another time, and be disposed of by the Convention in such manner as it shall think to be just and equitable as between the State and the Printer?

The PRESIDENT. The question is on the resolution reported by the Committee on Accounts.

Mr. J. M. BAILEY. I ask for the yeas and nays.

Mr. MACVEAGH. Certainly there can be no necessity for the yeas and nays, when, after the statements that have been made, I trust the Convention is, if not entirely, certainly very nearly a unit in favor of adopting this report; and there is no possible necessity of calling the yeas and nays and exhausting that much time. The whole Convention appreciates the diligence, the fairness, the intelligence with which this duty has been discharged, and while we leave the considerations which have been alluded to by the delegate from Columbia to a future occasion, are now ready, I think, to adopt this report with entire unanimity.

Mr. J. PRICE WETHERILL. I call for the yeas and nays.

Mr. J. M. BAILEY. I second the call.

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

Y E A S .

Messrs. Achenbach, Alricks, Beebe, Black, Charles A., Black, J. S., Broomall, Brown, Buckalew, Campbell, Church,

Cochran, Corbett, Darlington, De France, Dodd, Dunning, Elliott, Ewing, Fulton, Gilpin, Guthrie, Hall, Hanna, Hay, Hazard, Hemphill, Horton, Hunsicker, Kaine, Lamberton, Landis, Lawrence, Lilly, Long, MacVeagh, McClean, McCulloch, Mann, Mantor, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Ross, Russell, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm H., Stewart, Struthers, Wetherill, J. M., Wetherill, Jno. Price, Woodward, Wright and Walker, *President*—63.

N A Y S .

Messrs. Bowman, Edwards, Howard, Stanton and Turrell—5.

So the resolution was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Bigler, Boyd, Brodhead, Bullitt, Calvin, Carey, Carter, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Ellis, Fell, Finney, Funck, Gibson, Green, Harvey, Heverin, Knight, Lear, Littleton, MacConnell, M'Camant, M'Michael, M'Murray, Metzger, Minor, Newlin, Parsons, Patterson, D. W., Porter, Pughe, Read, John R., Reed, Andrew, Rooke, Runk, Simpson, Temple, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—65.

COMMITTEE ON REVISION.

Mr. BUCKALEW. I desire to state, inasmuch as Mr. Knight, the chairman of the Committee on Revision and Adjustment, is not present, that the committee will probably make a report in the morning.

Mr. LILLY. I move that the Convention adjourn.

The motion was agreed to, and (at two o'clock and ten minutes P. M.) the Convention adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FIFTIETH DAY.

THURSDAY, September 25, 1873.

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

Prayer by Rev. J. W. Curry.

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

DEBATES OF OHIO CONVENTION.

The PRESIDENT. The Chair informs the Convention that he has received from the Constitutional Convention of Ohio ten copies of the Debates of that body for the first ten days of their session. What order will the Convention take on the subject?

Mr. HARRY WHITE. I move that they be accepted and the thanks of this body returned to the Convention of Ohio for the same.

Mr. LILLY. I would suggest as a further addition, "and that the Chair distribute them according to his judgment."

The PRESIDENT. It is moved that the gift be accepted and that the thanks of the Convention be returned to the Constitutional Convention of Ohio for the same.

Mr. MACCONNELL. Will it be in order to move an amendment that we furnish that Convention a set of our Debates and Journal? If it is, I make that motion.

The PRESIDENT. It will be in order after we dispose of this question.

The motion of Mr. Harry White was agreed to.

Mr. MACCONNELL. I now move that this Convention furnish to the Ohio Constitutional Convention a set of our Debates and Journal.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. H. W. SMITH asked and obtained leave of absence for himself for Saturday next.

HALL ACCOUNTS.

Mr. HAY. I am directed to present a report from the Committee on Accounts and Expenditures.

The report was read as follows;

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

I. That it has carefully examined the account of the Chief Clerk for the expenditures made by him, from the 26th day of May to the 22d day of September, instant, showing the payment during that time of \$3,257 56, and a balance in his hands on the last named date of \$452 35; and that the same is correct according to the vouchers exhibited to the committee. An abstract of the account is herewith submitted, marked "A."

In the settlement of so much of this account as includes the expenses incurred in the care of the Hall and the property therein during the recess of the Convention, from July 15th to September 16th, the committee has been governed by the action of the Committee on House, communicated to the Chief Clerk, September 20, 1873; which communication is hereto appended, marked "B."

The committee would respectfully recommend that it be referred to the Committee on House, to ascertain and report whether any reduction can properly be made in the number of persons employed in the service of the Convention.

II. The following accounts have been under consideration:

Daniel M'Nichol & Bro., for placing tan on the street in front of the Hall, by order of the Convention, and removing the same.....	\$75 00
Gillin & Nagle, for marking names of members on morocco for desks.....	43 50
Field & Hardie, for tack hammers.....	2 25
Thomas L. Stone, for repairing locks, keys, bolts, ventilating windows, &c.....	52 85
James H. Orne & Son, two and one-half yards of carpet for steps in Hall.....	6 25
W. T. Chambers, for soap, tacks, &c.....	22 37
Together amounting to.....	202 22

These bills, excepting the last, are presented from the Committee on House and certified to be correct by its chairman. That committee has in charge the property of the Convention, and having in

the exercise of its discretion incurred obligations relative thereto, the Convention is bound for their payment; and said bills are therefore reported, without further inquiry into their character by the Committee on Accounts.

The following resolution is accordingly reported:

Resolved, That the accounts above mentioned, together amounting to the sum of \$202 22, are hereby approved, and that the Chief Clerk be authorized to pay the same.

The resolution was read twice and agreed to.

STATE CAPITAL.

Mr. MACVEAGH. There is a section reported from the Committee on the Legislature which has never been acted upon in committee of the whole. It is a matter relating to the Capital and is very brief, and I move that the Convention resolve itself into committee of the whole for the purpose of considering that supplementary section.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole on the report (No. 23,) of the Committee on the Legislature, Mr. Joseph Baily in the chair.

The CHAIRMAN. The committee of the whole have had referred to them report No. 23, being the supplementary section with reference to the location of the Capital of the State. It will be read.

The Clerk read as follows:

"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."

Mr. MACVEAGH. It is not necessary, I suppose, to state that this is in the direction of the other action of this Convention, to prevent the perpetual agitation of the question of the removal of the State Capital, which is special legislation, and which it can readily be understood is of injurious character alike to the interests of the State and the representative body. This section does not prevent a future removal of the Capital. It only prevents improper action or improper considerations for action on the part of the Legislature, and I do not apprehend that any serious opposition will be made to it.

Mr. DALLAS. This is a special report from the Committee on the Legislature. My colleague, (Mr. J. Price Wetherill,)

who is not now in his seat—and I much regret that he is not—and myself joined in a dissenting report. I cannot conceive why a law changing the location of the Capital of the State should be required by the Constitution to be subjected to a special vote of the people any more than a law upon any other subject.

Mr. HARRY WHITE. If the delegate will allow me to interrupt him I will inform him that the Hon. John Price Wetherill is in the building.

Mr. DALLAS. I would be glad if the gentleman would notify him that he is much wanted here.

Now, Mr. Chairman, this proposition is intended simply to put in the way of the enactment of any law making a change in the location of the Capital, an obstruction which does not exist in the case of any law upon any other subject. It is proposed to say to the representatives of the people of the whole State that they shall not pass any law changing the seat of government without referring it to the body of the electors. I trust, sir, that we will not do this. If I thought there were any danger of the passage of this section, I would move as a substitute that Philadelphia should hereafter be the Capital of the State, but I do not think anything of the kind should be in the Constitution, and therefore I refrain from doing anything more than entering my protest against the action now threatened.

Mr. J. N. PURVIANCE. I move an amendment to strike out the word "people" in the third line and insert the words "qualified electors of this Commonwealth."

Mr. MACVEAGH. I accept that amendment.

The CHAIRMAN. It cannot be accepted. There must be a vote taken upon it.

The amendment was agreed to.

Mr. W. H. SMITH. I offer the following as a substitute for the article:

"The seat of government of this State during and after the year 1876 shall be in the city of Philadelphia."

I believe, Mr. Chairman, this is the right way to dispose of this question. I have heard the opinions of a great many citizens from different parts of the State, and they generally concur in the belief that this is the proper place for the seat of government of the State. It is in every respect desirable that we should improve the atmosphere in which our legislators make the laws, and Harrisburg is not, as I think, a very pleasant place for those who are obliged to go there upon State busi-

ness, nor is it the best place for conducting the business of the State.

I believe that this is the time and the place to settle this matter so that there shall not be any further trouble about it. The reason why it should be fixed here and now is this: If this Constitution be adopted the House of Representatives will hereafter consist of two hundred members, and there will be an absolute necessity for another State Capitol. Now the question is, are we prepared to say that it shall be built in the city of Harrisburg? For one, I say no. The Hall of the House that we have will hardly answer the purpose much longer, and cannot be made to accommodate two hundred members at all, and the one that will be needed ought not to be built there.

I would suggest to this Convention as a matter of very great economy, as probably lessening the great expense to which the State will be subjected, in consequence of the increase of the number of members, if this amendment should now be passed, in the erection of the Centennial Exhibition buildings, provision will be made for all the offices and places to hold the sessions of the Senate and House of Representatives as an *incident* in the construction of those buildings. They may be so erected as to be useful for Centennial celebration and also answer the purposes of the State government after the exhibition shall be over. The Legislature could either appropriate money to assist in the erection of the buildings and thus arrange them to suit them, or to purchase them for the State after the exhibition shall be over.

It may be objected that it will take more than three years to erect these buildings. I do not know how that may be. I should suppose if the Constitution be adopted and this proposition be agreed upon, the buildings could be ready by 1876. One thing I repeat is certain, Mr. Chairman, and that is, that the expense to the State would be greatly lessened in this way, for it is to be expected that the Centennial buildings will be erected much more cheaply under its efficient management, than they would be if they were erected in the usual jobbing way by the State.

Mr. ALRICKS. I rise to a question of order. I ask if it is in order for any gentleman to poke fun at this Convention and say the Centennial building would do for the State Capitol?

Mr. W. H. SMITH. It *may* be fun to us, but the gentleman thinks doubtless would be death to Harrisburg. I will say nothing, only that I am entirely in earnest in this proposal. I only wish to tell the members of the project which others as well as myself have thought of as a reasonable and proper mode to dispose of this subject, and provide a proper location and accommodations for the government. I think it is not good policy to build a new State House in the city of Harrisburg, and there are abundant reasons why the legislative business would be better conducted in this city, although I presume the city of Harrisburg would not be favorable to the change.

I trust this matter will be settled now, and in the way I have suggested, for the reasons which I have stated. I only suggest the matter of the connection of the State Capitol with the Centennial buildings as one inducement to remove the seat of government.

Mr. COCHRAN. Mr. Chairman: It seems to me that it will be a great deal better to leave all regulation of this matter out of the Constitution entirely, and just place it where it has been in times past, and where it may well remain for the future. It is not probable any change will be made from Harrisburg without good and sufficient reasons, and without a popular demand for it based upon them.

Now, to go to work and encumber the Constitution with a provision that the Capital shall not be changed without a vote of the people seems to me to be very unwise; and to provide that the State Capital shall be brought to Philadelphia at the close of the third year after this seems to me to be still more unwise. We are not aware that the people of Philadelphia want it, and we know that the expense, if that is an item to be considered, would be far greater in Philadelphia than it would be in Harrisburg or at other points in the State, provided it is necessary to erect new Capitol buildings.

There is talk about the superior purity of the atmosphere of Philadelphia; I doubt from what I have seen and heard here whether the political atmosphere is any more pure in Philadelphia than at Harrisburg. I suppose if you want a purer atmosphere you will have to go somewhere into the Allegheny mountains.

Mr. LILLY. I hope you will not spoil any other region. [Laughter]

Mr. COCHRAN. It is hard to tell what the presence of the Legislature would spoil, or where it would get a place where its influence would not be deleterious upon the moral sentiment of the community in which it should sit; but as we have undertaken by various restrictions—whether they are empirical or according to the true system of physic on such subjects, I do not know—to purify that body, it might be possible that it could be taken to some place without doing much harm.

At all events, Mr. Chairman, it does strike me that it is entirely unnecessary to introduce into the Constitution at this time any provision on the subject; that it may be safely left where it has been heretofore, and there has been no popular demand coming up to us for putting any provision of the sort into the Constitution.

Mr. KAINE. Mr. Chairman: I do not desire to say a word upon the moral influence of Philadelphia or the supposed immoral influence of Harrisburg on the subject of legislation. I leave that to the gentleman from Allegheny who desires to have the Capitol built in conjunction with the Centennial buildings at Philadelphia. The Legislature can meet almost anywhere. The gentleman could have a large tent built at Pittsburg, and the Legislature could meet there, or he might build a caravansery of boards, or something of that kind. Many expedients might be resorted to to shield members of the Legislature whose sessions, it is to be hoped, will not be very long under this amended Constitution.

What I understand the object of the original proposition to be, and the desire of members to place it in the Constitution, is to have a settlement of this question. You, sir, know very well, and so do I, that for years past hardly a session of the Legislature has occurred without there being a resolution or bill introduced there for the purpose of removing the Capital of the State from Harrisburg to Philadelphia. For the purpose of settling that question and fixing the Capital permanently at Harrisburg until the people themselves say otherwise, we propose to put a provision into the Constitution that they shall be consulted on any change. A number of States have in their Constitutions a provision such as this. To obviate the difficulty of continual disputes and to get rid of the interminable disposition to change the Capital by introducing into the Legislature bills for that

purpose, it is desirable to place a provision like this in the Constitution.

I think there are not many citizens of this Commonwealth outside of Philadelphia and its immediate surroundings who are desirous of removing the Capital from Harrisburg. It went from Philadelphia to Lancaster in 1800; and from Lancaster to Harrisburg in 1815, and there it has remained ever since. It is as near the centre of the State as it can be got, and is a suitable point. It is now accessible by railroad from every part of the State. It is certainly a most desirable place to have the Capital. I hope the amendment of the gentleman from Allegheny will be voted down and the report of the committee adopted.

Mr. BIGLER. Mr. Chairman: I shall vote for this proposition mainly for the reason stated by the delegate from Fayette. I think it is entirely proper that this question should be settled. There ought to be no feverishness about it. It ought not to be said that the Constitutional Convention is going to adopt measures to change the seat of government, nor should it be supposed that the Legislature is about to change the seat of government. It ought to be settled. When that question is seriously considered the people are to be consulted, and the change is not to take place without their consent.

I am not at all inclined to discuss the question of where the seat of government ought to be, but I will say, kindly as I have always been treated in the city of Philadelphia, much reason as I have to be partial to this city, I should vote to take the seat of government to many other places before I would give it to the city of Philadelphia. For one, I am entirely satisfied to have it remain where it is.

But I desired mainly to say a word in reply to the remark of the delegate from Allegheny. The suggestion that in any way buildings suitable for a Capitol could grow out of the Centennial buildings is a most palpable mistake. Those structures will have no reference or relation to a Capitol. In their architecture, they will be entirely different. You had better construct an original fabric than attempt to change the Centennial buildings into a State Capitol. A large portion, perhaps three-fourths or more than three-fourths, of the whole acres covered by buildings will be buildings which will be merely temporary and will be taken down and sold. The memorial building, the building in memory of the Declaration of

Independence, and in commemoration of the great fact that self-government has triumphed, will be, I hope, a very fine specimen of architecture, but it will not be in the style of a Capitol, and cannot be used for that purpose.

Besides, sir, it is to be devoted to the purposes of exposition hereafter, not only the products and arts of our own State, but those of the entire country. So my friend from Allegheny is totally mistaken. There could be no such use made of the Centennial buildings.

Mr. W. H. SMITH. Will the gentleman allow me to interrupt him?

Mr. BIGLER. Certainly.

Mr. W. H. SMITH. I am fully aware that buildings prepared for the Centennial exposition with reference only to all the purposes of that exposition would not answer for a State Capitol, but I say that the buildings may be made to answer for the purposes of the exposition out of the great number that are to be built, many of which will be temporary; but buildings can be erected within the buildings for the Centennial exposition that would answer for that purpose very well and be permanent. That is my idea.

Mr. BIGLER. Well, it is possible that some of these materials could be used; but when the State intends to build a Capitol, I take it for granted that it will build it out of original materials, and I do not see that there is the slightest force in that reason. I object to it especially because it is calculated to strengthen the measure of prejudice that is felt in different parts of the State with regard to this very Centennial Exposition. I find it necessary to state in some parts of the Commonwealth that the Centennial Exposition has no relation whatever to changing the Capitol. There is no influence in Philadelphia to-day in the Centennial celebration that would assist in changing the Capitol to Philadelphia, if that city desired to do so. I therefore, once for all, claiming in some measure to represent the organization that has charge of the Centennial building, say that they can have no relation to such work or anything in connection with it whatever.

Mr. HANNA. I am not convinced as to the propriety of inserting this as a constitutional provision. I do not believe that it is proper to be placed in our fundamental law. My friend and neighbor from Fayette (Mr. Kaine) says that this is a much vexed question; that every

winter the Legislature is annoyed and troubled with propositions to remove the Capital of the State of Pennsylvania to the city of Philadelphia. I grant that, but at the same time I submit that the Legislature is the proper place to agitate that question, the very place in which propositions, either to remove or re-locate the Capital of the State, should be presented and decided.

I do not propose to enter into the merits of this question, because I am reminded that comparisons are *odorous*. Therefore I do not desire to enter into the merits of the location of the Capital, but merely to urge upon the Convention that we should not provide for it in the manner proposed. I do not know what I would do if I were in the Legislature and this question were presented. I might be satisfied with the present location, as the proper one, or I might not; but I am satisfied that this is not the place, nor is the Constitution the proper instrument, whereby should be fixed the Capital of the State. As the gentleman from Clearfield (Mr. Bigler) has reminded us, we should not insert anything in the Constitution to promote antagonisms. If we do insert this as a section in the Constitution, we shall provoke antagonisms. We cannot avoid it. My friend from Fayette tells us this morning that nobody in the State of Pennsylvania, except the city of Philadelphia, and the people around this locality, are at all desirous of removing the Capital. If the people of this vicinity are desirous to have this change made, they will certainly express that sentiment when they come to deposit their ballots for or against the adoption of this Constitution, if it contains the provision now under discussion. If you say nothing upon this subject, but simply avoid it, there is nothing about which to create contention; and the desires of the people of this locality, in that respect, will not be thwarted, nor will those of the middle section or those of the western section be affected.

Therefore, I do not see that this is the proper place to fix the Capital of the State. The subject has no place in the Constitution. If we adopt this suggestion we shall prevent the Capital being changed in all probability for an entire generation, no matter how the people of the State may feel upon the question of locating the Capital of the State. Therefore I hope, with all due deference to the gentleman from Fayette, for whose opinions on all

questions I have a great respect, and who I know feels that we ought to fix this question in the Constitution, that as it is a matter of pure legislation it should be left where it is now, namely, in the hands of the Legislature, who can express upon it at any time the wishes and desires of the people they represent.

Mr. HAZZARD. It seems to me that there is just one reason why the Capital of the State of Pennsylvania should be established at Harrisburg. We have been meeting here during the sessions of this Convention, and we have seen the effects of concentrating the power of membership in this city. This power is already great in the Legislature, and if this Constitution is adopted, will be considerably enlarged. The city of Philadelphia will then have the influence of its large membership if the Capital be removed to the city, and will have all the influence of its immense corporations on top of that. I think it would be a great deal better if we were to remove the Capital to Minnetonka. We should certainly get into a purer atmosphere among the hemlocks, and have purer waters among the mountains, away from all the extraneous influences that sometimes effect legislation. I would say, in reply to my friend from Allegheny, (Mr. W. H. Smith,) that there is not now so much reason why the Capital should be taken away from Harrisburg and brought to Philadelphia, because if this Constitution is adopted there will not be so much to do for the professional lobbyists who generally reside, as I understand in this city. Heretofore they have had to travel all the way to Harrisburg, but inasmuch as we have done away with special legislation, these gentlemen will not have so far to go, and probably will not have to travel at all, so that I think we had better allow the Capital to remain at Harrisburg.

Mr. RUSSELL. Why not take it to Bedford?

Mr. HAZZARD. I am willing it should go to Bedford. [Laughter.] I would rather go anywhere else than to this city, for the reasons I have given, on account of the vast membership to which this city is entitled and on account of the outside pressure of its immense population. We might as well settle this question now and put it at rest forever. Harrisburg is not such a bad place after all, and it will be a great deal better with regard to legislation after the adoption of this Constitution.

We can and should settle this question. People are agitated about it and uncertain with reference to it. We shall have to build a new Capitol anyhow, because we cannot get two hundred members into the Hall of the present House of Representatives. This Constitution, if it is adopted, will necessitate the building of a new Capitol, and let us have it on that beautiful hill at Harrisburg, which is just about as proper a place as there is in the State. It is also in the center of the State, easy of access, it divides the travel equally between the different portions of the Commonwealth, and possesses other advantages which, of course, every gentleman in this Convention understands. The Capital of the State should be located there, and I hope this Convention will so determine.

Mr. J. PRICE WETHERILL. I did not suppose for a moment that this matter would be debated with any degree of earnestness in favor of the passage of the report of the majority of the Committee on Legislature. My recollection of the subject is, that it received little or no consideration at the hands of the committee, as can be seen by the report of the minority. The Committee on Legislature did not suppose that this question would be taken up with any degree of earnestness at all. Neither did I believe that it would be considered this morning. As I understood the Committee on Revision and Adjustment were not ready to report, when I heard that we had gone into committee of the whole to consider this subject I supposed it was merely intended to occupy time for an hour or two this morning in the discussion of this subject, without for a moment thinking that the committee of the whole would act upon it and report to the Convention.

Mr. HARRY WHITE. I rise to a point of order. I submit that it is not proper for a delegate to give public information of what he derived from a private member of a committee. [Laughter.] The delegate has told things which he has heard from the Committee on Revision and Adjustment.

The CHAIRMAN. The point of order is well taken. [Laughter.]

Mr. J. PRICE WETHERILL. I believe the distinguished gentleman from Indiana is correct, and therefore I will not say anything more on that subject. If gentlemen of the Convention will, however, refer to the Journal, page 934, they will see the report of the minority of the Com-

mittee on the Legislature on that subject, which reads as follows :

"The undersigned members of the Committee on the Legislature, respectfully dissent from the report of the majority of that committee upon the subject of the locality of the Capital of the State, and respectfully recommend that the word "Philadelphia" should be substituted for Harrisburg, where it occurs in the resolution which accompanies said report of the majority of said committee.

GEO. M. DALLAS,
J. PRICE WETHERILL."

Therefore, if we adopt the report of the minority there can be no law changing the location of the Capital of the State at Philadelphia without submitting to a popular vote. That was the view of the minority. They did not suppose this matter would be considered seriously by this body, and therefore they presented that report in order to show that a matter of this sort, purely a matter of legislation, should not come before this body; it is not a proper matter for its consideration. We were not elected for any such purpose. We were sent here for an entirely different purpose. If the people desire any such law they will instruct their representatives at Harrisburg. It is purely a matter of legislation and does not properly come within our province.

I need not appeal to the good sense of this Convention when I know that on reflection they will endorse that sentiment. The people themselves can say where their Capital shall be, and they say it in the proper direction, through their representatives sent to Harrisburg, knowing much better than we can know whether Harrisburg, or Minnequa, or Petroleum Centre, or any other place is better than Harrisburg. How do we know? I do not know and do not pretend to know and would not pretend to advance an opinion against the wish of a majority of the representatives of the people in this regard, and as I suppose I have quite as good ability to possess myself of the necessary information as possibly a majority of the members of this Convention, I submit that with this want of proper knowledge trenching upon the province belonging to others and not to ourselves we are doing wrong in taking up a matter of this sort. It will not add to the dignity of this body to trench upon duties belonging to other bodies. We have nothing then to do with it, and

therefore I hope that inasmuch as some of the members of the committee did not consider this a serious matter and as it was brought to their attention by a resolution offered by the gentleman from Fayette and considered—I can hardly use that word, I might say it was not considered in a serious way by certainly some of the members of the committee—I hope that we shall not waste further time upon the subject, but that we shall dissent from the report of the majority of the committee.

Mr. J. N. PURVIANCE. Will the delegate please state what members of the committee made the majority report?

Mr. J. PRICE WETHERILL. I do not recollect, as the report of the minority is not printed and therefore not before us; but I am satisfied that the chairman of the Committee on the Legislature was not present at the time and that the majority report was made by some other member.

Mr. J. N. PURVIANCE. Was not the minority report made by Mr. Dallas and yourself?

Mr. J. PRICE WETHERILL. Yes, sir.

Mr. J. N. PURVIANCE. Were you not the only two?

Mr. J. PRICE WETHERILL. That the Journal will I suppose answer.

The CHAIRMAN. The question is on the amendment offered by the delegate from Allegheny, (Mr. W. H. Smith,) which will be read.

The CLERK. The amendment is to strike out the section and insert:

"The seat of government of this State during and after the year 1876 shall be in the city of Philadelphia."

The amendment was rejected.

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

SEVERAL DELEGATES. Let it be read.

The CLERK read the section as follows:

"No law changing the present location of the Capital of State at Harrisburg shall be valid until the same shall have been submitted to the qualified electors of the Commonwealth at a general election, and ratified and approved by them."

The section as amended was agreed to, there being on a division, ayes fifty-two; noes twenty-one.

The article being concluded the committee rose, and the President having resumed the chair the Chairman (Mr. Joseph Bailly) reported that the committee of the whole had had under consideration report number twenty-three, being the section

reported by the Committee on the Legislature on the subject of the State Capital and had instructed him to report it with an amendment.

The PRESIDENT. The amendment will be read.

The CLERK. The amendment is to strike out in the third line the word "people" and insert in lieu thereof the words "qualified electors of the Commonwealth."

Mr. MACVEAGH. I move that we proceed to the second reading of the article.

Mr. DALLAS. Is that motion debatable?

The PRESIDENT. It is not.

Mr. DALLAS. I trust this motion will not prevail. We have a very thin house now, and it is proposed to put it on second reading.

The PRESIDENT. The question is on the motion of the delegate from Dauphin. The motion was agreed to.

The PRESIDENT. The article is now before the Convention on second reading and will be read.

The CLERK read as follows:

"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 qualified electors at a general election, and ratified and approved by them."

The PRESIDENT. The question is on the adoption of the section.

Mr. DALLAS. I ask for the yeas and nays.

Mr. J. PRICE WETHERILL. I second the call.

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

Y E A S .

Messrs. Achenbach Alricks, Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Charles A., Bowman, Calvin, Carey, Carter, Collins, Corbett, Curry, Curtin Darlington, De France, Edwards, Elliott, Ewing, Fulton, Funck, Gibson, Gilpin, Hall, Harvey, Horton, Howard, Kaine, Lamberton, Landis, Lawrence, Lilly, Long, MacConnell, MacVeagh, M'Camant, M'Clean, M'Culloch, M'Murray, Mantor, Minor, Mitchell, Niles, Patterson, D. W., Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, Wm. H., Stewart, Struthers, Wetherill, J. M., White, David N., Woodward, Wright and Walker, *President*—61.

N A Y S .

Messrs. Barclay, Bardsley, Bartholomew, Beebe, Brown, Buckalew, Campbell, Church, Cochran, Dallas, Dodd, Guthrie, Hanna, Hay, Hazzard, Hemphill, Hunsicker, Lear, M'Michael, Mann, Newlin, Palmer, G. W., Palmer, H. W., Patton, Sharpe, Smith, Henry W., Turrell, Wetherill, John Price, White, Harry, White, J. W. F. and Worrell—31.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Armstrong, Baer, Baker, Bannan, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Bullitt, Cassidy, Clark, Corson, Craig, Cronmiller, Cuyler, Davis, Dunning, Ellis, Fell, Finney, Green, Heverin, Knight, Littleton, Metzger, Mott, Parsons, Patterson, T. H. B., Pughe, Read, John R., Ross, Runk, Simpson, Smith, H. G., Stanton, Temple, Van Reed and Wherry—41.

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

The motion was agreed to.

REPORTS OF REVISION COMMITTEE.

The PRESIDENT. There is nothing now before the House. Reports of committees was the last item of business before the Convention. Reports of committees are yet in order.

Mr. BUCKALEW. In the absence of the chairman, I submit a report from the Committee on Revision and Adjustment on the first article and the preamble.

The PRESIDENT. The report will be read.

Mr. BUCKALEW. The formal report to go upon the Journal will not be understood by members from a reading, as it is simply amending certain lines in certain sections. If the Clerk, instead of reading the formal report, will read the amendments from our printed pamphlet, every one can follow him as he reads and see what the changes are. He has a marked pamphlet corresponding with the report.

Mr. MACVEAGH. Will the gentleman allow a further suggestion: That the Clerk shall read slowly so that we with our pens can make the corrections.

The CLERK read the amendments reported by the Committee on Revision and Adjustment.

The PRESIDENT. What order will the Convention take on the report?

Mr. J. N. PURVIANCE. I move that we now take up the preamble and consider

it separately, because it is intended to move an amendment to the preamble.

The PRESIDENT. The question, I presume, is on the adoption of the report of the committee.

Mr. J. N. PURVIANCE. Then I move to go into committee of the whole for special amendment on the preamble.

The PRESIDENT. As yet we are in a state between second and third reading. when the article is transcribed for third reading and is on third reading, then we can certainly go into committee of the whole.

Mr. MACVEAGH. Is it not in order to proceed to the third reading?

The PRESIDENT. It is not in order until it is transcribed for the third reading.

Mr. J. N. PURVIANCE. Then would it be in order to move an amendment at this time?

Mr. MACVEAGH. I move that the report be transcribed for third reading. That is certainly the proper motion.

The PRESIDENT. The gentleman from Dauphin moves that the report be transcribed for third reading.

Mr. LILLY. Before you do that, you ought to accept the report of the committee.

Mr. MACVEAGH. Not at all. The report of the committee is not to be accepted. We have never accepted the report of any committee made in this House.

Mr. COCHRAN. May I rise to a question of order?

The PRESIDENT. Certainly.

Mr. COCHRAN. I wish to make a suggestion. When we concluded the reading of these articles on second reading, the question was then propounded to the Convention: "Shall this article be transcribed for third reading?" Pending that motion the articles were referred to the Committee on Revision and Adjustment, and that committee has reported. Now I conclude that we have never yet acted on the motion to transcribe the articles for third reading, and as the case stands the question before this Convention is: "Shall the article be transcribed for third reading?" When that is done the article comes up in proper form for amendment.

The PRESIDENT. That is what the Chair had arranged in his own mind as the order of business, but he will hear what delegates have to say upon the subject.

Mr. KAINE. I think these articles, as soon as they are reported from the Com-

mittee on Revision and Adjustment, are already transcribed and ready for third reading. In ordinary legislation, when a bill has passed through second reading, the question is then propounded by the speaker, "Will the House or Senate agree to prepare this bill for a third reading," or "Shall the bill be transcribed for third reading? That is passed always almost *sub silentio, nem con.* It supposes in legislative parlance that the bill is then considered, or by the whole House examined and compared and transcribed in that way for a third reading. I think that this Committee on Revision and Adjustment has here taken the place of that proceeding in the Legislature; and in support of that, I hold in my hand the Journal of the Constitutional Convention of 1837-8, and I will read from the second volume, page 161, under date of January 2, 1838. A motion was made by Mr. Hopkinson, and read as follows:

"Resolved, That a committee be appointed to whom shall be referred the amendments made to the Constitution on second reading, and whose duty it shall be to report, prepare and engross them for a third reading."

That motion was agreed to, and a committee was appointed consisting of Messrs. Hopkinson, Denny, Chambers, Cunningham, Clark, of Indiana, Forward, Porter, of Northampton, Dickey and Read.

That is the same committee that we have in this body. That is, our Committee on Revision and Adjustment takes the place of that committee appointed in the old Convention in the manner that I have read. Our Committee on Revision and Adjustment was appointed for the purpose of preparing the articles passed on second reading. They certainly have attended to the duty assigned them; they have prepared and engrossed for third reading the articles submitted to them, and I think those articles are now before this Convention without any further motion.

The PRESIDENT. The articles are not transcribed at present; they are before the Convention in order to be transcribed.

Mr. BIGLER. The Chair is entirely right on that point. The only difficulty that remains now is whether, if the committee have additional reports, the other reports ought not to be received and passed upon, and then the Convention proceed to third reading. That to my mind is the proper order of business. I do not know whether the committee have

any additional reports to make at this time or not.

Mr. MACVEAGH. In order to avoid any more misunderstanding on the subject, I rise to a parliamentary inquiry. I think the Convention will desire to understand what will be the effect when this article is transcribed. Certain amendments have been made here by the Committee on Revision and Adjustment, some of them merely formal, others again which some of us certainly desire to vote upon. These amendments may not all be amendments of form; they may be of substance; and it strikes me that in one particular instance an amendment is an amendment of substance. Certainly in such case the Convention must be called upon, in some measure, to pass upon that amendment. Certainly such amendments ought not to be accepted without some vote of the House upon them. My inquiry, therefore, is whether, if this article is transcribed for third reading, it then becomes, without a vote of this body, an article of the Constitution subject to special and general amendments; or does it require votes for that purpose in order to reach those changes; not changes which this House have put in, but which the Committee on Revision and Adjustment may have put in. If that is so, I think we ought to guard ourselves against that result.

Mr. BIGLER. As I understand the rules, "transcribing" is a phrase used in a legislative body to prepare a bill for third reading. It is perfectly competent for the body then to refuse to transcribe the bill for third reading, and upon that the whole bill falls. In the present attitude of this question if we proceed to the third reading, having received those amendments which were made in transcribing, the amendments submitted by the Committee on Revision and Adjustment become part of the text, and we are to proceed on third reading according to that text. It will be competent, therefore, on third reading to go into committee of the whole to amend any part of the article, including the amendments which the Committee on Revision have made. That is clearly the way in which we must proceed.

The PRESIDENT. That is the idea of the Chair.

Mr. BUCKALEW. Allow me to suggest an idea upon this subject. The question is now, if I understand it, whether we shall order these articles transcribed in their present imperfect state, or will cor-

rect them as they have been revised, and order them to be transcribed in that perfected form. The late President of the Convention insisted that the reference to the Committee on Revision and Adjustment should be made before the House ordered the articles to third reading, so that they should receive their completed form before the order to third reading was entered by the House. Whether he was correct or not in that view, certainly we have acquiesced in his decision upon the subject.

Gentlemen are embarrassed from this fact that in ordinary parliamentary proceedings there is no such committee as this on Revision and Adjustment and no such reports as we have here this morning are made. This is an exceptional proceeding which the Convention has thought proper to inaugurate for the transaction of its business. If I understand it, the proper course to pursue is this. The Committee on Revision were charged with the duty of reporting back the articles corrected as to style, rearranged, improved in verbal expressions, and matters of that sort not affecting substance. They have made their report, and the first question should be, "Shall the Convention accept the report when it comes?" Then I think any gentleman has the right to call for a separate vote on any one of the revisions proposed by the committee. As in any ordinary case the committee makes a report covering a large number of subjects. If no objection is made, all amendments are passed over except those particular revisions upon which members desire a vote. I submit that the question which the Chair ought to submit to the House is, "Shall the report of the Committee on Revision and Adjustment be adopted?"

The PRESIDENT. Certainly.

Mr. BUCKALEW. Then if any gentleman calls for a separate vote upon a particular amendment, the vote can be taken upon that amendment separately.

Mr. MACVEAGH. That certainly relieves us of the fearful difficulty that has occurred, and I therefore withdraw the motion that I made and substitute the other motion that the Convention adopt the report of the Committee on Revision and Adjustment.

Mr. D. W. PATTERSON. I second that motion.

The PRESIDENT. The motion before the Convention is now that the Convention accept the report of the Committee on Revision and Adjustment.

Mr. MACVEAGH. Now on that, sir, I should like to have a separate vote upon the preamble.

Mr. D. W. PATTERSON. Let us take the vote on the report as a whole.

Mr. MACVEAGH. I am opposed to inserting the words in the preamble, "in the future," for I confess that I, for one, need God's guidance in the present as much as in the future. I therefore desire a separate vote on inserting the words "in the future." I see nothing else in these revisions upon which I desire a separate vote.

Mr. D. W. PATTERSON. That is the language of the old Constitution.

Mr. MACVEAGH. I know it is, but we are correcting the old Constitution.

Mr. D. W. PATTERSON. We are a modern age.

The PRESIDENT. The question before the Convention has been stated by the Chair. It is that the report of the Committee on Revision and Adjustment be adopted.

Mr. D. W. PATTERSON. I second the motion and I call for the question.

Mr. J. N. PURVIANCE. I would like to ask here whether it is in order to move an amendment to any part of this report, or whether we must go into committee of the whole for that purpose.

The PRESIDENT. The Chair is of opinion that no amendment can be offered, unless on third reading the Convention will go into committee of the whole to amend. If not, we must either accept or reject the report of the Committee on Revision and Adjustment.

Mr. J. N. PURVIANCE. I would like to understand this. If I understand that I am at liberty to offer amendments hereafter, I shall vote in the affirmative, because I wish to save time. But I shall vote so with the qualification that afterward I shall be at liberty to suggest my amendments, that the Convention may consider them.

The PRESIDENT. The Chair understands that the Convention at some stage has the right to amend.

Mr. BIGLER. The Chair is perfectly right, because to accept the suggestions of the Committee on Revision and Adjustment as offered, without any right of amendment, would bring you to amending your articles in a manner that never existed anywhere. You have had a second reading and must have a third reading. Now you must go into third reading before you can move an amendment.

Mr. DARLINGTON. I move that we proceed to the third reading of the articles as reported by the committee.

The PRESIDENT. That is the motion before the Chair.

Mr. STEWART. Do I understand that the vote is now to be put on the adoption of the whole report?

Mr. MACVEAGH. No, sir. On the preamble.

The PRESIDENT. A separate vote is asked on the preamble.

Mr. STEWART. I desire to say right here, so that the Convention may understand it, that the purpose of the Committee on Revision and Adjustment in introducing the words "in the future," was to avoid ambiguity. As the phrase stood, it seemed to imply that the guidance of God was invoked for the proceedings of this Convention. The purpose was to make it clear and explicit that His guidance was invoked for the future operations of the government and not for the purposes of this Convention.

Mr. MANN. I rise to a question of order. This report is not divisible; it must be accepted as a whole, and then there is opportunity for amendment afterwards, as the Chair suggests. I agree to all the rulings of the Chair, except as to the divisibility of this report. We must accept the report as a whole, or reject it as a whole. If we accept it as a whole, the object of the gentleman from Dauphin can be reached by amendments; but we shall be led into unutterable confusion if we are called upon to divide in the vote upon the report.

Mr. LAWRENCE. Mr. President: Do I understand the gentleman from Potter to say that we must take the whole report on all the articles, or on each article separately?

Mr. MANN. On this one article now.

Mr. LAWRENCE. Then I think he is right. We take up the preamble first, and then the articles *seriatim*.

Mr. T. H. B. PATTERSON. As we are to have a separate vote on the preamble, I ask, if the Convention refuse to adopt the report of the committee on the preamble, would the preamble then be left as it was without the amendment of the Committee on Revision and Adjustment?

Mr. MACVEAGH. Certainly. The effect of refusing to adopt the report is to strike out the amendment; that is all; and then the question is on transcribing for third reading.

The PRESIDENT. The question is on adopting the preamble as reported.

Mr. JOSEPH BAILY. I should like to have the preamble read, as amended by the committee.

Mr. J. N. PURVIANCE. Now I ask is it in order to move an amendment?

The PRESIDENT. It is not.

Mr. COCHRAN. I understand the question to be this: whether the Convention will adopt the suggestion of the committee to amend the preamble by adding the words "in the future." ["Certainly."] Those who are opposed to making that amendment will of course vote "no."

The PRESIDENT. The question is on the preamble as reported.

Mr. JOSEPH BAILY. I want it read.

Mr. MACVEAGH. I trust the Convention will give attention to this.

The PRESIDENT. The Clerk will read the preamble as amended.

The CLERK read as follows:

"We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance in the future, do ordain and establish this Constitution."

Mr. MACVEAGH. As I understand it, the vote is not on the adoption of the preamble, but it is whether the invocation for God's guidance shall have the words "in the future" added, as the committee has suggested, or whether they shall be left out as was originally adopted by the Convention, and those in favor of putting in "in the future" will vote "aye," and those opposed will vote "no."

Mr. MANN. Mr. President: I do not understand what I am to vote on. I thought a moment ago the question was the report.

The PRESIDENT. The delegate from Potter is voting on whether he will agree to insert in the preamble the words "in the future" or not.

Mr. MANN. When was the report of the committee accepted? I have not heard any vote on that yet.

The PRESIDENT. The question is on accepting or rejecting, and the delegate will vote one way or the other. If he is opposed to inserting these words, he will vote to reject the amendment. If otherwise, he will vote in favor of it.

Mr. MANN. It does seem to me that a little reflection will convince delegates that this report should first be accepted or rejected, and then we are in a position to go into committee of the whole to make

amendments upon that report; but if the vote is taken as now suggested, what kind of a Journal will be made up?

The PRESIDENT. I cannot tell you, sir; I only go according to the rules. The Chair has decided that the report is susceptible of division; that any delegate may call for a division where he pleases, and a separate vote then will be taken on that division. If the Convention think the Chair is wrong, they can over-rule him.

Mr. D. W. PATTERSON. The question is on the report.

Mr. MANN. I wish to ask another question: When shall we have an opportunity to go into committee of the whole for amendment?

The PRESIDENT. You will have the opportunity of going into committee of the whole after the article is transcribed and on third reading. The Chair has stated that half a dozen times.

Mr. HANNA. Mr. President: I understand the question before the Convention now to be whether or not we shall insert the words "in the future."

The PRESIDENT. That is the question now before the Convention.

Mr. HANNA. I am opposed to inserting those words. There is no necessity for them whatever, because this Constitution is adopted, if approved by the people, not only for the present but for the future. Those words are entirely unnecessary. Are we to say that "we, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance in the future, do ordain and establish this Constitution?" Do we not invoke that guidance now, and of course in all future time, if this is the Constitution of the Commonwealth of Pennsylvania. The words are surplusage and unnecessary. Why, sir, on referring to the preamble of the present Constitution, I find it reads:

"We, the people of the Commonwealth of Pennsylvania, ordain and establish this Constitution for its government."

Not "in the future." They do not ordain and establish this Constitution for the government of the Commonwealth "in the future." They do not say so. Look at the preamble of the Constitution of the United States. Do we see any such surplusage as that? Not at all. "We, the people of the United States," * * "do ordain and establish this Constitution for the United States of America;" not "for the

future." Now, why insert words entirely uncalled for and unnecessary?

The PRESIDENT. The question is on incorporating the words "in the future" in the preamble.

Mr. STRUTHERS. It appears to me the words introduced by the committee had very much better be left out, not merely because they are surplusage but because putting them in would imply that, for the present, in the adoption of this Constitution, we, the people, do not ask the guidance of the Almighty; that we only ask that guidance hereafter, not in the present and that we are proposing now to do. "We, the people;" it is not the people of the Convention merely, but the people of the Commonwealth. These words invoke the guidance of the people of the Commonwealth in what they are about to do in the adoption of this Constitution; and why shall we say that they shall not invoke His present aid, assistance, and guidance, but merely pass it over to the future and say that at some future time they may need His guidance? I am decidedly opposed to the introduction of these words.

The PRESIDENT. The question is on the amendment made to the preamble by the Committee on Revision.

The question being put, a division was called for, which resulted ayes thirty-five, noes fifty.

Mr. KAINE. I call for the yeas and nays. ["Too late;" "too late."]

Mr. BUCKALEW. It does not make any difference whether the change is made or not; it is a mere question of taste.

Mr. CUYLER. I suppose these words mean nothing but to reflect satirically upon the past habits of our people.

Mr. ANDREW REED. Debate is not in order; the question has been decided.

The PRESIDENT. The preamble has been disposed of. The question now is on the remainder of the report of the Committee on Revision and Adjustment as to the article on the Declaration of Rights.

The question being put, it was determined in the affirmative.

Mr. BIGLER. Now I move to proceed to the third reading of the article.

Mr. BUCKALEW. I rise to another point. I desire to know how the Clerk has the preamble now. There were two amendments reported. I wish to know whether he has included in the preamble as it now stands the second amendment, which struck out the words, "for its government," in the last line.

Mr. MACVEAGH. No vote was taken on that, but simply on the words, "in the future," and I suggest to the Clerk that he journalize our action as an amendment to the report, striking out those words. That certainly will keep the Journal entirely straight; and hereafter if objection is made, I trust somebody will get up and move to strike out the words inserted which are objectionable, and in that way we shall keep the Journal entirely right.

Mr. D. W. PATTERSON. Now I rise to a question of order. The President announced that the question was on the motion to accept the report.

The PRESIDENT. The remainder of the report.

Mr. D. W. PATTERSON. Then there was a division asked for, and a vote asked on the acceptance of the report, not with reference to the amendment to the preamble, as my friend from Dauphin suggested, but on the whole report as made in regard to the preamble. Now, the vote on that adopts what the committee has done as to the preamble, and the other vote will be on the report of the committee on the rest of the section. The committee struck out two or three words besides inserting the words "in the future." The vote we have already taken passes the whole report as to the preamble.

The PRESIDENT. The delegate from Columbia asked that the preamble be read as it now stands according to the action of the Convention.

Mr. BUCKALEW. Yes, sir.

The PRESIDENT. The Clerk will read the preamble as it has been amended.

The CLERK read as follows: "We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution."

Mr. BUCKALEW. Now I move that the preamble and Bill of Rights be transcribed for third reading.

Mr. DARLINGTON. I wish to move an amendment in the first section of the Bill of Rights.

The PRESIDENT. It cannot now be amended.

Mr. DARLINGTON. Excuse me for saying that there has been no vote taken on the adoption of the report. ["Yes." "Yes."] No; the question has been on accepting it—a vote entirely unknown to

constitutional and legislative bodies. No vote is ever taken on the acceptance of a report; but the question is on the adoption of it, and that we have not yet come to.

The PRESIDENT. The motion was to adopt, and it was so put, and is so recorded on the Journal. It is now moved by the gentleman from Columbia that the preamble and the article on the Declaration of Rights be transcribed for third reading.

The motion was agreed to.

Mr. BUCKALEW. I now make a report from the Committee on Revision and Adjustment upon the article on the Legislature.

Mr. DARLINGTON. Would it not be in order now to move to proceed to the third reading of the article on the Declaration of Rights? It is already transcribed.

The PRESIDENT. The gentleman from Columbia has just made a report, and the report will be read.

The CLERK read the amendments reported by the Committee on Revision and Adjustment to the article on the Legislature.

Mr. CAREY. It seems to me it will be utterly impossible for us to perform this important work in the way in which it is now proposed to be done. This whole Constitution should have been re-printed, with the amendments in brackets, so that we could read them in their connection. I defy anybody to go on with this work in this fashion. In twenty-four hours, with proper exertion, the whole may be put before us printed, so that every man can read it for himself and understand it. We cannot do it now; it is impossible.

Mr. LILLY. I have no doubt that will have to be done before we come to a vote upon it.

Mr. BUCKALEW. The question, I presume, is on adopting the report.

The PRESIDENT. Yes, sir.

Mr. BUCKALEW. I beg leave to say a few words in explanation. This article is reduced, I think, about one-fourth, including the two sections which are omitted. There is not a single idea in the article as it passed second reading which is not contained in the amendments. Nor is there anything of substance new in the amendments except the two or three sections which are transposed, two of them from the article on legislation and one from the article on executive department, and placed in this article because

they belong here. Now, sir, the committee have carefully considered these drafts at more than one session. All these changes have been submitted also to the chairman of the Committee on the Legislature and carefully examined by him. Inasmuch as there are no changes of substance in this article, the Convention, perhaps, might take upon trust these verbal changes for the present. In view of the fact that no amendments can be made other than those that the committee reports, and any slight change which members may desire hereafter can be moved on third reading, whether to what is inserted here or what is left out, I beg leave to say to the Chair, and through the Chair to the Convention, that if we can agree, without spending a great deal of time, to make these formal amendments, we shall save one-half the time that we shall otherwise consume on third reading. Then members will only move amendments which relate to substance, and we shall get rid of these interminable debates on questions of taste, questions of propriety in language. To stop now and print all these minute amendments at length, and wait some days for them, and then take them up and go into debate upon them, is going to consume an amount of time which is unnecessary and which we cannot expend. Inasmuch as we have control of every word and line on third reading, when this article will be re-printed and before us, I submit that we need not be very particular now.

Mr. J. PRICE WETHERILL. I desire to ask the gentleman from Columbia one question. I notice that section fifteen as reported by the committee reads thus: "Each House shall keep a Journal of its proceedings and from time to time publish the same." As passed by the Convention the section reads: "Each House shall keep a Journal of its proceedings and publish them daily." I should like to know why the word "daily" was omitted in the section as reported by the Committee on Revision and Adjustment.

Mr. BUCKALEW. The language used is exactly that in the Constitution of the United States, which seems to have been the model. I do not know how the word "daily" got in there, but of course it was an accident.

Mr. J. PRICE WETHERILL. The word "daily" got in there by the "accident" of a vote of the Convention. I desire to know how it got out.

Mr. BUCKALEW. I do not know of a legislative body anywhere whose Journal is published daily. It is impracticable.

Mr. WOODWARD. In consequence of what the gentleman from Columbia has just now said, I rise to call the attention of the Convention, and especially of the gentleman himself, to a mere verbal criticism which is a matter of taste, and which I understand he says should be attended to now before the article is transcribed. The suggestion I have to make has no substance whatever in it; it is a mere question of taste; but, accidentally, the committee have fallen into a very gross violation of good taste, I think, which I will point out. The Declaration of Rights reads:

"That the great and essential principles of liberty and free government may be recognized and unalterably established, we declare that——"

After the word "that" comes a dash, and then it goes on: "Section 1. All men are born equally free and independent," &c.; "Section 2. That all power is inherent," &c.; "Section 3. That all men," &c. "Section 4. That no person," &c.; "Section 5. That elections," &c.; and so on down through all these sections to section twenty-five where the "that" is omitted but we have this morning inserted it.

Mr. MACVEAGH. The committee inserted it.

Mr. WOODWARD. The committee inserted it and the Convention seemed to ratify it. Now, Mr. President, I call the attention of gentlemen to the fact that the first "that," which is printed in capitals, stands for all these sections, and the absurdity of repeating it was so apparent to the committee that in the first section they did not repeat it. But when they got away from the first section they lost sight of that and did repeat it until they got down to the twenty-fifth section, when they did not repeat it. At least, the Convention did not repeat it; the Committee on Revision and Adjustment put it in. Now, there is not a particle of principle in this thing. These principles will read just as well and be just the same without that "that" preceding each section as they will be with it; but the school boys who may read our composition will laugh at us when we repeat that adverb so unnecessarily and improperly. In the *magna charta*, from which these principles were taken, we do not find anything of the kind. I believe you do not find it in the Bill of Rights of the Constitution

of the United States, but I have not that instrument in my hand at present to refer to. It is unnecessary. Every gentleman will tell you that. It is not elegant——

Mr. S. A. PURVIANCE. I rise to a point of order, that we have already passed the first article and considered it so far as it is proper to be considered at the present time.

Mr. WOODWARD. I do not understand that to be the case. One gentleman says that now is the time to correct these matters, and if we do not correct them now there will be no other time to do it. I only desire an opportunity at the proper time to press this amendment, and if this is not the proper time I desire information upon that point.

Mr. S. A. PURVIANCE. As I understand it, it is at the present time not in order to consider this question. It has already been considered as far as it is in our power to do.

Mr. WOODWARD. I want the "thats" stricken out from this article.

Mr. STRUTHERS. I want to ask the gentleman from Philadelphia a question.

Mr. WOODWARD. Well, I am ready to answer any question if I can.

Mr. STRUTHERS. I will remark upon this same subject to which the gentleman from Philadelphia has referred, that I suppose this section was copied by the committee who reported it, from the authorized edition of "Purdon's Digest." It is not in the early editions of that book, nor will it be found in any one of the copies of the Constitution as passed by the Convention of 1837-38. It has crept into the latest editions of "Purdon's Digest," and I apprehend that the Committee on Revision and Adjustment copied it from that.

Mr. MACVEAGH. As the verbal changes in the article last reported are so very numerous and so very important, changes not only of words, but changes of the entire structure in the article on the Legislature, surely it would be well to have the revised article in print before us in order that we may intelligently consider the subject. This will involve no loss of time because we have had reported to the Convention the revised article on the Bill of Rights so slightly amended that we can proceed to consider that subject now. Yet even in reference to that article the discovery of Judge Woodward in reference to the "thats" certainly shows the value of having some printed text clearly before us when we propose amendments.

Still we have that report before us, so that we can proceed to third reading and dispose of it to-day, and we can then have the report of the article on the Legislature printed and submitted to us in intelligent form to-morrow morning. There can be no objection, it seems to me, to that course rather than to proceed with the consideration of this subject in this manner. Certain it is that gentlemen have not been able to understand the amendments and revisions of the Committee on Revision and Adjustment. I tried to follow the Clerk, who certainly read very intelligently, but it was impossible for me to get such an understanding of these matters as I would like to have before voting upon the subject.

The PRESIDENT. Do I understand the delegate to move to postpone the further consideration of the article, and that it be printed?

Mr. MACVEAGH. Yes, sir, printed with the amendments.

Mr. S. A. PURVIANCE. Before that question is decided, I should like to know what has become of the section which was passed yesterday. I mean the last section of the article on the Legislature.

Mr. MACVEAGH. That has been referred to the Committee on Revision, and will be annexed to this report.

Mr. S. A. PURVIANCE. It ought to be.

Mr. DALLAS. I desire to suggest to the gentleman from Dauphin, before the vote is taken on this question, that he add to his motion, "and that all the reports of this committee shall be presented in print." They have already leave to print their articles, and I suggest to him that he accept this amendment so that they will be instructed to do so.

Mr. MACVEAGH. I will accept that modification.

Mr. STRUTHERS. I would also suggest that the gentleman add that then the printed reports be laid upon the tables of members.

Mr. MACVEAGH. That, doubtless, will be done without a motion.

The PRESIDENT. The question is upon the motion to postpone the further consideration of this article and to direct the Committee on Revision and Adjustment to have this and all other reports submitted by them presented in print.

The motion was agreed to.

Mr. WOODWARD. I want to know now how I am to get at my amendment.

Mr. MACVEAGH. You must move to reconsider the vote by which the first report was adopted.

Mr. WOODWARD. Then I move to reconsider the vote by which the report on the Bill of Rights was adopted.

Mr. BUCKALEW. I rise to a privileged question. I desire to ascertain how the Chair decided the last vote.

The PRESIDENT. The Chair decided that it was adopted.

Mr. BUCKALEW. Then I desire to call for a division on the question. The gentleman from the city was on the floor and prevented me from calling for a division before the Chair made his decision. If we are to stop our proceedings and wait until these reports are sent by the Committee on Revision and Adjustment to Harrisburg, there printed, and brought back to this Convention, as often as they are reported, we shall have a very protracted session. Let the committee make their reports to the Convention, and if there is anything important enough in them to be printed, the Convention can order it to be done here the same night. I ask for a division on the question of printing the reports.

The PRESIDENT. The Chair has announced his decision.

Mr. BUCKALEW. Then I ask for a reconsideration. I consider that the gentleman from Philadelphia, by taking the floor before the vote was declared fully, cannot prevent me from calling for a division.

The PRESIDENT. The delegate from Philadelphia did not prevent the gentleman from Columbia from calling for a division, nor has the Chair any intention to prevent either the gentlemen from Columbia or any other gentleman from calling for a division on any question.

Mr. CUYLER. I would suggest, if we are to reconsider at all, and are going to print anything, that we had better reconsider all that we have done and commence *de novo*. Why restrict it to this one article?

The PRESIDENT. The question is on the motion to reconsider.

A division was called for, which resulted fifty-two in the affirmative and twenty-six in the negative.

So the motion to reconsider was agreed to.

The PRESIDENT. The question recurs on the motion of the gentleman from Dauphin.

Mr. BUCKALEW. I now call for a division of the question, so as to separate the printing of the reports to be made by the committee from the reports that have been made.

The PRESIDENT. The first division is on the motion to postpone further action on this subject and to direct the report on the legislative article to be printed.

The first division was agreed to.

The PRESIDENT. The second division is that the Committee on Revision and Adjustment be directed to present their reports in print hereafter.

The division was rejected.

Mr. WOODWARD. Now, sir, at the suggestion of the gentleman from Columbia, I ask the unanimous consent of the House that the subsequent "thats" in the Declaration of Rights be stricken out after the first "that," at the commencement of the section.

Mr. MACVEAGH. Yes, and in the midst of sections.

The PRESIDENT. Shall the gentleman from Philadelphia have unanimous consent to move his amendment? ["Aye." "Aye."] The question now is, will the Convention agree to the amendment of the gentleman from Philadelphia?

The question being put, Mr. Woodward's amendment was agreed to.

The PRESIDENT. The question recurs on the adoption of the report on the Declaration of Rights as amended.

Mr. BUCKALEW. I now rise to object to this mode of amendment. If we are to go outside of the report of the committee on these articles to select any other mode for amendment, we are virtually having a fourth reading of these articles. I think the way should be for the gentleman from Philadelphia to ask for unanimous consent to make his amendment.

Mr. MACVEAGH. Suppose it is not given.

Mr. BUCKALEW. Then he ought not to make that motion, and if he cannot make that motion he cannot make any other motion to amend this article.

The PRESIDENT. It was done by unanimous consent, as I understood.

Mr. KATNE. No, sir; it was not by unanimous consent by any manner of means. I will never agree to change the Declaration of Rights. I voted against it in the beginning and I intend to vote against it to the bitter end.

Mr. BUCKALEW. Then I raise a point of order—

The PRESIDENT. The delegate from the city of Philadelphia asked the unanimous consent of the Convention to amend. The Chair, as he recollects, put that motion, and there was no objection.

Mr. KATNE. I voted "no."

Mr. NILES. There were several other objections.

Mr. DARLINGTON. Would it be in order for me to move to reconsider the vote on the proposition of Judge Woodward?

The PRESIDENT. No, sir. The question now is on adopting the report of the committee as amended in the first article.

Mr. HOWARD. Before that question is put, I want to understand what that amendment is to the first article.

The PRESIDENT. To strike out the word "that" wherever it occurs except in the first instance.

Mr. HOWARD. I do not understand that this body has the right to amend that. That is a general amendment. I understand that we are acting upon the report of the Committee on Revision and Adjustment. If we have a right to make this amendment, I think it opens the whole question to amendment.

The PRESIDENT. I am aware of that.

Mr. HOWARD. I say it is out of order. We have no right to agree to such a proposition as that.

The PRESIDENT. There was a time when the gentleman could have interposed that objection, but the gentleman did not then interpose, and it is too late to raise that question now.

Mr. HOWARD. I did interpose.

The PRESIDENT. The delegate from the city of Philadelphia asked the unanimous consent of the Convention to move his amendment. There was no objection to his having the unanimous consent, as the Chair understood.

Mr. KATNE. Allow me to say that the Chair is entirely mistaken. With all due deference to the President, he is entirely mistaken, because I objected and so did the gentleman on my right, and so did several other gentlemen around me. In order to settle the question let the vote be taken over again.

The PRESIDENT. The Chair is not mistaken. The gentleman objected to the amendment when the question was put on the amendment. He did not object to the unanimous consent to put the motion.

Mr. HARRY WHITE. I rise for information. I understand now that the ques-

tion before the Convention is the adoption or rejection of the report of the Committee on Revision and Adjustment as amended.

The PRESIDENT. Yes, sir.

Mr. HARRY WHITE. Would it not be in order to reconsider the vote by which the amendment of the delegate from Philadelphia was adopted? It seems to me that if this question is put to the Convention it will be the easiest way of solving the problem.

Mr. DARLINGTON. That is certainly my motion, to reconsider.

Mr. MACVEAGH. It is not in order to reconsider a vote to reconsider.

The PRESIDENT. The Chair decides that a motion to reconsider when a motion to reconsider has already been had, is not in order and cannot be made.

Mr. HAZZARD. It seems to me that we ought to make the article sensible, and there ought to be no objection to making these verbal changes.

Mr. MACVEAGH. The changes are made. The question is now on the adoption of the report, and I trust the vote will be taken.

Mr. HARRY WHITE. I think the best way to solve this difficulty will be to vote down the report.

Mr. HUNSICKER. There is no difficulty.

Mr. HARRY WHITE. Well, for one, I shall certainly vote against the adoption of the report.

Mr. BIGLER. I desire to suggest what I hope will be a solution of this subject. Certainly it cannot be that we are to consider the question of the forms of the amendments. It is simply the adoption of the report that we are to consider. We have discovered that there are so many and such grave changes in the article that it ought to be printed. Now, I suggest the recommittal of the report to the committee with instructions to bring it back to-morrow morning printed.

Mr. MACVEAGH. Will the gentleman allow me to say that this whole difficulty arises from the manner in which the gentleman from Philadelphia put his motion. He asks to have unanimous consent to move an amendment. No objection was interposed, and the Chair held that the Convention had unanimously consented, and took the vote. On the vote, gentlemen voted "no," but the vote was carried and the amendment was made. Now, the only question is on adopting the amended report.

Mr. BIGLER. The delegate from Dauphin does not understand that amendment to be incorporated into the article.

Mr. MACVEAGH. Certainly. The gentleman from Clearfield will understand that we are on the Bill of Rights, and not on the Legislature.

Mr. BIGLER. I think the proper way is to order the article printed for to-morrow.

Mr. MACVEAGH. Not this one.

Mr. BIGLER. We have made no progress in it, and I move to re-commit the report with instructions to report it back to the Convention in printed form.

Mr. JNO. R. READ. I second that motion.

Mr. BIGLER. The whole report—all that has been passed upon and all that has been submitted.

The PRESIDENT. The Chair will state to the gentleman from Clearfield that a motion was made to print the second report and the motion was agreed to. It is now ordered to be printed and to be laid on the tables of members.

Mr. LILLY. I take it that we have got into this snarl without understanding the condition of the question. I hold that, as this committee has made a report, the report must either be voted down or voted up, without amendment. There is no other question but that one before the Convention, and no amendment can be offered to the report whatever.

The PRESIDENT. The Chair held that opinion, but the Chair was over-ruled and the House in its wisdom permitted the delegate from the city to move an amendment. Now, the Chair would not certainly try to ride over the order of the House. If it had been left to the Chair and no person had interposed, he would have decided that that motion of amendment could not have been made.

Mr. HALL. If the Convention now adopts the report as amended it will then be properly in order for third reading.

The PRESIDENT. Certainly.

Mr. HALL. Then why is not the adoption of the report as amended the best way to get out of this difficulty?

Mr. MACVEAGH. It is.

The PRESIDENT. Those in favor of the adoption of the report will say "aye"—

Mr. DARLINGTON. Is not that debatable?

The PRESIDENT. Not at this time.

Mr. DARLINGTON. I was addressing the Chair.

The PRESIDENT. The Chair cannot be addressed while a vote is being taken.

Mr. DARLINGTON. I desire to debate the question.

The PRESIDENT. That cannot now be done. The question is on the adoption of the report of the committee as amended.

Mr. HARRY WHITE. On that I call for the yeas and nays.

Mr. DARLINGTON. Cannot I address the Convention before the yeas and nays are taken?

The PRESIDENT. The yeas and nays are called for and the Clerk will proceed with the call.

Mr. LANDIS. The call is not seconded.

The PRESIDENT. Who seconds the call? There being no gentleman rising to second the call the Chair will withdraw his order for calling the yeas and nays.

Mr. DARLINGTON. I wish to say that in my apprehension no such question as accepting the report —

Mr. HUNSICKER. It is adopting the report.

Mr. DARLINGTON. The acceptance of the report which has been so much talked of here is out of order. It can neither be accepted in that form, nor not accepted. The question is to be put on adopting the report as made by a committee of this body and thus necessarily before the House. Therefore, the only question that can arise is the question upon the adoption of it or the rejection of it or on proceeding to dispose of it in some way. The question now pending, being on the adoption of the report, what will be the effect of that adoption if this Convention agree to it? If it will be to preclude all amendments hereafter —

Mr. MACVEAGH. No; it will do no such thing.

Mr. DARLINGTON. Then now is the time to amend the entire report. Is this the time when all of this report is open to amendment?

Mr. HEVERIN. No.

The CLERK. Amendments will be in order when the report is on third reading.

Mr. DARLINGTON. What is this third reading? As I understand, we have already disposed of this article on second reading and left it in its present shape. There ought to be some time when this article will be open for amendment. Any report submitted by a committee, containing no indecent or improper matter, is as a matter of course, properly before the Convention when it is reported by the

committee, and it has to be disposed of by adopting or rejecting or amending it. Now, the question before the House is, shall the report be adopted? I say not in its present shape; because if I say "yes," then this action will be perhaps thrown in my teeth hereafter, as a conclusive decision. If this report is adopted, it will then be said that it was the sense of the body that the report is exactly right, and I do not think that it is. I submit that the only order left for us is to proceed to the consideration of this report on third reading, and to make the proper amendments that are necessary for the perfection of the article.

Mr. J. N. PURVIANCE. I wish to say that I intend to vote for the adoption of this report, but with the present understanding as explained to me by many of the delegates who profess to understand parliamentary rules better than I do, that it does not commit us to the report. I understand that we are to adopt it because it facilitates the business of the Convention and brings it up in the ordinary way, so that hereafter, when adopted and printed on third reading, every member will have a right then to move amendments in the consideration of that report when it is before us on third reading. If it were otherwise, as the gentleman from Chester has intimated, that the adoption of the report would preclude amendments hereafter, then I should vote to reject the report. I vote for it therefore with the understanding that it does not prevent amendments in the future.

Mr. MACVEAGH. The gentleman certainly understands that we cannot get rid of third reading by adopting this report, and of course we must go into third reading for the purpose of amendment.

Mr. J. N. PURVIANCE. Then let it be adopted now.

The PRESIDENT. The Chair will state, so that there may be no misunderstanding of his ruling, that when an article comes up on third reading, any delegate can move to go into committee of the whole for general or special amendments. If the Convention, by the vote of a majority, determine to go into committee of the whole, amendments can be offered; but if the Convention refuse to go into committee of the whole, the report will stand.

Mr. MACVEAGH. That is exactly the state of the case.

The PRESIDENT. The question is on the adoption of the report of the committee as amended.

Mr. HARRY WHITE. On that I call for the yeas and nays.

Mr. H. W. SMITH. I second the call.

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

Y E A S .

Messrs. Achenbach, Alricks, Andrews, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Bigler, Black, Charles A., Bowman, Buckalew, Calvin, Campbell, Carey, Carter, Cochran, Corbett, Corson, Curry, Dallas, De France, Dodd, Elliott, Fulton, Funck, Gilpin, Guthrie, Hall, Hanna, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Lamberton, Landis, Lawrence, Lear, Lilly, Long, MacConnell, MacVeagh, MCamant, M'Culloch, M'Michael, M'Murray, Mann, Mantor, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Russell, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Struthers, Turrell, Van Reed, Wetherill, J. M., White, J. W. F., Woodward, Wright and Walker, *President*—73.

N A Y S .

Messrs. Darlington, Edwards, Ewing, Horton, Howard, Kaine, M'Clean, Reynolds, Smith, Henry W., Stanton and White, Harry—11.

So the report was adopted.

ABSENT. — Messrs. Addicks, Ainey, Armstrong, Baer, Baker, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Brown, Bullitt, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curtin, Cuyler, Davis, Dunning, Ellis, Fell, Finney, Gibson, Green, Harvey, Knight, Littleton, Metzger, Mott, Newlin, Parsons, Patterson, T. H. B., Pughe, Reed, Andrew, Ross, Runk, Simpson, Temple, Wetherill, Jno. Price, Wherry, White, David N. and Worrell—49.

Mr. J. N. PURVIANCE. I now move that the report of the committee be printed and laid on the desks of members to-morrow morning; and that the amendments proposed be printed in brackets; and that the article be transcribed for a third reading.

Mr. MACVEAGH. One moment. I submit that with reference to this Bill of Rights, the only change now existing is the word "general," and the changes of the letter "s" once or twice from the printed copy that we all have before us.

Mr. J. N. PURVIANCE. And the word "that" wherever it occurs, except the first time. Therefore it had better be printed with the others.

Mr. MACVEAGH. Those are all the changes that are made, and we have it all here in legible print before us. Why can we not go right on and consider that on third reading and vote upon it? ["We can."] I move that we proceed to the consideration of this article on third reading.

The PRESIDENT. Mr. Purviance had better divide his motion so as to make the transcribing for third reading a distinct motion.

Mr. J. N. PURVIANCE. Very well.

The PRESIDENT. The question is on transcribing the article for third reading.

The motion was agreed to.

Mr. MACVEAGH. Now I move that we proceed to the third reading of that article.

The PRESIDENT. The Chair believes there is another report ready to be made.

Mr. CAREY. Mr. President: Have we ordered the printing of the second article?

The PRESIDENT. Not the article, the report.

The CAREY. Then I move that the article be printed, with the amendments in brackets.

Mr. MACVEAGH. That certainly was my motion.

The PRESIDENT. The Chair understood it to be to print the report. It is now moved that the article with the report be printed, with the amendments in brackets.

The motion was agreed to.

Mr. CAREY. Now I move that all the other articles be printed in the same manner.

Mr. MACVEAGH. That was carried.

The PRESIDENT. That was included in the motion. That was carried before, as I understood.

Mr. MACVEAGH. I withdraw my motion to allow the delegate from Columbia to make a further report.

Mr. BUCKALEW. I report, from the Committee on Revision and Adjustment, the article on legislation. I move to dispense with the reading, and that it be printed in the same way as the others.

The PRESIDENT. That motion is before the Convention.

Mr. BUCKALEW. Now, Mr. President, let us understand what we are to do about

printing hereafter. If the whole article on legislation is to be printed as amended, it will take some time. There are but very few sections changed. If we print the articles now, before we consider the report, it will not be necessary to reprint these articles again for third reading. I do not want them printed twice. My own idea was that we should act upon them now, perfect them, and then have them printed in perfected form for action on third reading, but if the Convention choose to take this course of printing them in connection with these amendments, I hope it will not be necessary to have a reprinting hereafter. I will then, as soon as this motion is disposed of, move a reconsideration of the resolution directing the committee to have all their amendments printed before they are reported.

The PRESIDENT. The question is on the motion of the delegate from Columbia, that this report be printed.

The motion was agreed to.

The PRESIDENT. The article will be postponed for the present, and printed with the amendments in brackets.

Mr. BUCKALEW. I now move to reconsider the resolution directing the Committee on Revision and Adjustment to print their reports before making them.

Mr. MACVEAGH. I really think we shall not save any time by reconsidering that vote. The gentleman will remember that I had a motion before the Chair. I yielded for the purpose of allowing him to make a report and not to make this motion. That motion was to proceed to the third reading of the article on the Bill of Rights.

The PRESIDENT. The motion to reconsider by the delegate from Columbia is before the Convention.

The motion to reconsider was agreed to.

Mr. BUCKALEW. Now I hope the motion will be voted down, and that our reports when made will be ordered to be printed.

The PRESIDENT. The motion is that the committee have their reports printed.

The motion was not agreed to.

The PRESIDENT. It will stand now that when the reports are made the articles, with the amendments in brackets, shall be printed for the use of members.

THIRD READING OF BILL OF RIGHTS.

Mr. MACVEAGH. Now, I move that we proceed to the third reading of the article on the Declaration of Rights as reported.

Mr. LILLY. I hope not we are not ready for that.

The PRESIDENT. It is moved that the Convention proceed to the third reading of the article on the Declaration of Rights.

Mr. STRUTHERS. A motion has just been carried deciding that this whole matter, as I understand, should be printed and laid on the desks of members before we proceed further. ["No."]

Mr. LAWRENCE. All but the Declaration of Rights.

Mr. MACVEAGH. This was not embraced in that order. "All subsequent reports" was the language of the resolution.

Mr. HARRY WHITE. I understand the motion of the delegate from Dauphin is now to proceed to the third reading of the article reported by the Committee on Revision on the Declaration of Rights. I am opposed to that, for one, at this time and desire to vote against that motion for this reason: Some amendments have been made that I am not familiar with, and I wish to have them printed before I am called on to vote upon them.

Mr. MACVEAGH. The only changes now remaining are striking out the letter "s" in several places and inserting capital letters.

Mr. J. N. PURVIANCE. And striking out the word "that"

SEVERAL DELEGATES. The motion is not debatable.

The PRESIDENT. The question is on the motion of the delegate from Dauphin.

The motion was agreed to.

The PRESIDENT. The article will be read.

Mr. HANNA. I move that the Convention resolve itself into committee of the whole, for the purpose of amendment.

The PRESIDENT. The article must first be read, before any motion is in order.

The CLERK read as follows:

PREAMBLE.

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God, for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT—

SECTION 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

SECTION 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

SECTION 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

SECTION 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

SECTION 5. Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SECTION 6. Trial by jury shall be as heretofore, and the right thereof remain inviolate.

SECTION 7. The printing press shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak write and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury;

and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

SECTION 8. The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and no warrant to search any place or to seize any persons or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation, subscribed to by the affiant.

SECTION 9. In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

SECTION 10. No person shall, for any indictable offence, be proceeded against criminally, by information, except in cases arising in the land or naval forces or in the militia when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.

SECTION 11. All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

SECTION 12. No power of suspending laws shall be exercised unless by the Legislature or its authority.

SECTION 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted.

SECTION 14. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be sus-

pendent unless when in case of rebellion or invasion the public safety may require it.

SECTION 15. No commission of oyer and terminer or jail delivery shall be issued.

SECTION 16. The person of a debtor, where there is not strong presumption of fraud shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SECTION 17. No *ex post facto* law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

SECTION 18. No person shall be attainted of treason or felony by the Legislature.

SECTION 19. No attainer shall work corruption of blood, nor except during the life of the offender, forfeiture of estate to the Commonwealth; the estates of such persons as shall destroy their own lives shall descend or vest as in cases of natural death, and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SECTION 20. The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address, or remonstrance.

SECTION 21. The right of the citizens to bear arms in defence of themselves and the State, shall not be questioned.

SECTION 22. No standing army shall, in time of peace, be kept up without the consent of the Legislature, and the military shall in all cases and at all times be in strict subordination to the civil power.

SECTION 23. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

SECTION 24. The Legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment of which shall be for a longer term than during good behavior.

SECTION 25. Emigration from the State shall not be prohibited.

SECTION 26. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate.

The PRESIDENT. This article has now been read the third time, and the question is on its final passage.

Mr. J. N. PURVIANCE. I now move to go into committee of the whole for special amendment of the preamble, and I will suggest to the Convention the amendment which I desire shall be made. I indicate the following amendment: Strike out the word "Almighty," and after the word "God" insert, "the Sovereign Ruler of the Universe;" and in the third line after the word "His" insert the words "favor and." The preamble would then read in this way:

"We, the people of the Commonwealth of Pennsylvania, grateful to God, the Sovereign Ruler of the Universe, for the blessings of civil and religious liberty, and humbly invoking His favor and guidance, do ordain and establish this Constitution,"

The PRESIDENT. The delegate from Butler moves to go into committee of the whole on the preamble, indicating the amendment he has just stated.

Mr. J. N. PURVIANCE. Mr. President: If it be in order, I will now give my reasons for this amendment. In the first place, I desire that the word "Almighty" should be erased, for the reason that it is attaching importance to one attribute of the Deity. When we use the term "God" we embrace within its meaning—

Mr. BEEBE. Mr. President: I rise to a point of order, that it is not in order—

Mr. J. N. PURVIANCE. I am merely explaining.

Mr. BEEBE. My point is that it is not in order for any delegate to speak at this time, unless the Convention, by consent, go into committee of the whole ["No." "No."]

The PRESIDENT. The delegate from Butler will proceed.

Mr. J. N. PURVIANCE. I was about to remark that the term "Almighty" is applicable only to one of the attributes of the Deity. Without it the term "God" is more expressive, because it expresses in itself omniscience, omnipotence and omnipresence. It embraces fully all the meaning, more than if you attempt to qualify it by the term "Almighty" before it. Therefore I would erase "Almighty" and leave the term "God" unqualified, as a more full and better expression of the sovereignty of the Supreme Being in all things.

Then I propose to insert the words, "the Sovereign Ruler of the Universe." It

will be remembered by this Convention that we have had petitions before us from almost every portion of the State asking that the sovereignty of the Deity should be recognized in the Constitution.

The amendment which I propose is a recognition of it somewhat in the language of the petitioners; and whilst we are grateful to God for the blessings of civil and religious liberty, and so express ourselves in the preamble, we should also express our recognition or acknowledgment of His sovereignty and of His supreme rule over this universe. The preamble then, I think, would be more acceptable to the people of the State generally. I know it would gratify the moral portion of the community with whom I have conversed on this subject, and I know, too, that they attach very much importance to the particular language we may use in the preamble.

It is a subject, therefore, not lightly to be passed over by this Convention. It will go very far to satisfy a large portion of the people of the State. Then as to the invocation of God's guidance, we also should invoke His favor as well as His guidance. It is, I think, an addition to the expression which renders the preamble on the whole more acceptable, and I trust the Convention will go into committee of the whole for the purpose of its consideration.

The preamble so amended would read thus: "We, the people of the Commonwealth of Pennsylvania, grateful to God, the Sovereign Ruler of the Universe, for the blessings of civil and religious liberty, and humbly invoking His favor and guidance, do ordain and establish this Constitution."

Mr. COCHRAN. I wish to say that I hope the Convention will not resolve itself into committee of the whole for either general or special amendment in these articles without very good and sufficient cause. If we do resolve ourselves into committee of the whole for special amendment, nothing remains for the committee to do but to make the amendment which has been indicated in the motion and immediately to rise again and report it to the Convention. If we resolve to go into committee of the whole now on this proposition, we adopt the proposition as the declaration of the Convention itself, and therefore the whole merits come up on this motion.

Now, I do not wish to discuss a question like this, of great seriousness and

gravity, at any length here, but I submit, with great respect to my friend the gentleman from Butler, that we had better leave this preamble as it is. When we say Almighty God we certainly recognize His sovereignty in the direction of the affairs of this world. It strikes me that to make the amendment which the gentleman from Butler proposes, is simply to make a pleonasm, to introduce a phrase which is already embodied and included in the very idea of the word "Almighty" as it stands in the preamble as reported to us now.

Therefore I think it is not important, not desirable for us to go into committee of the whole for the purpose of making this special amendment, nor do I think that the invocation of "favor and guidance" is any improvement or strengthening of the invocation which we make asking for His guidance alone. That is what we need. If we have His guidance, it comes to us because we have His favor, and therefore, sir, I think it is entirely unnecessary for us to go into committee of the whole on this proposition, and that the Convention had better decline to do so and retain the preamble in its present form.

Mr. CORSON. I hope this motion will not prevail, for the reason that this question was most elaborately discussed in committee of the whole. We went over it for days. The Quaker side of the House was represented very ably on that occasion by the distinguished gentleman from Delaware (Mr. Broomall.) The other side was fully represented here. I was in favor of the report of the committee, because that preamble was drafted by the late distinguished gentleman from Washington, Mr. Hopkins.

Mr. J. N. PURVIANCE. Not at all.

Mr. CORSON. I happen to know because I was on the committee.

Mr. J. N. PURVIANCE. But not in the way we have it now.

Mr. CORSON. No; it was changed. That is the reason why I oppose this motion. We reported it in this form: "We, the people of the Commonwealth of Pennsylvania, recognizing the sovereignty of God and humbly invoking His guidance in our future destiny, do ordain and establish this Constitution." That did not suit the fastidious churchmen of the Convention, and we Quakers had to go under. Now we have got it in the best possible shape to suit all parties; we are satisfied and you ought to be. I hope

the Convention will stand by the report as we have it now.

Mr. LAWRENCE. I do not rise to discuss this question, although this is the time for discussion if it is to be discussed, because, as the gentleman from York (Mr. Cochran) has said, an affirmative vote here carries the amendment. I rise merely to say that I endorse all that has been said by the gentleman from Butler (Mr. J. N. Purviance.) Although I have no hope that this amendment will be made. I should be very glad if, in accordance with the feeling of the people in the north-western part of the State at least, it should be made. I have no doubt that four out of every five of the people of that section of the State would endorse the amendment, and I shall vote for it.

The PRESIDENT. The gentleman must not assume to represent the whole north-western part of the State on that subject. [Laughter.]

Mr. LAWRENCE. The gentleman only speaks for himself.

Mr. MITCHELL. I wish to state that as far as I understand it, the people of the north-western part of the State do not require anything more than is already in the preamble, and I do not think they ask that much.

The PRESIDENT. The question is on the motion of the delegate from Butler (Mr. J. N. Purviance.)

The motion was not agreed to.

Mr. HALL. I move to go into committee of the whole for special amendment so as to strike out of section four, article one, these words: "and a future state of rewards and punishments," so that the section will read:

"No person who acknowledges the being of a God shall, on account of his religious sentiments, be disqualified to hold any office of trust or profit under this Commonwealth."

The PRESIDENT. The delegate from Elk moves to go into committee of the whole for the special amendment which he states.

Mr. HANNA. If it be in order I will offer a further amendment.

The PRESIDENT. It is not now in order. When the question is disposed of, the gentleman can move to go into committee of the whole on a new amendment.

Mr. HALL. I wish to make a few remarks on the amendment before it is acted upon.

So far as this section is an attempt to prevent the proscription of men on ac-

count of their religious sentiments, I am in favor of it; but it seems to me that the clause as to a future state of rewards and punishments ought not to be there, and if there, may preclude from holding office a large class of respectable church-going and religious people.

Mr. KAINE. If the gentleman will allow me a single moment, I hope all these amendments, according to rule, will be reduced to writing, sent to the Clerk's desk, and read.

Mr. HALL. The Clerk has the amendment.

Mr. KAINE. Under the rule when a motion is made to go into committee of the whole on a special amendment, it must be reduced to writing, sent to the Clerk's desk, and read.

The PRESIDENT. Properly, every amendment of this character should be reduced to writing and forwarded to the Clerk in order that the Journal may be correct. In this instance the amendment is at the desk. The delegate from Elk will proceed.

Mr. HALL. For myself I do not see the propriety of adopting a different rule as to qualification for office from what obtains as to an elector. It seems to me that every person who has the qualifications of an elector should be entitled to hold office if his fellow-citizens see proper to entrust him with an office. This particular clause was agreed to by the Convention before on the assumption that some construction the Supreme Court had given to this phrase, "a future state of rewards and punishments," would not preclude persons who believe that those rewards and punishments are had in this life instead of hereafter. But, sir, the only decision that I know of on that subject was one made by the Supreme Court in which they were divided on the rule of the competency of witnesses, where they were bound only by precedents, which they could follow or over-rule at pleasure. The Supreme Court were then in a province where they could make the law. But it seems to me that if they were brought face to face with this constitutional provision and were bound to construct its express words, it would be very hard for them to say that "a future state of rewards and punishments" meant this present state of life. For that reason I think it ought to be stricken out. I know it is in the old Constitution; but that is not sufficient argument for retaining it here if it were we should make no am-

ments whatever. But under the old Constitution that clause was practically a dead letter; it never was enforced. Therefore that affords an additional reason why it should be stricken out. I hope the Convention will adopt the amendment.

The PRESIDENT. The question is on the motion of the delegate from Elk, to go into committee of the whole, for the purpose of striking out the words "and a future state of rewards and punishments," in the fourth section.

Mr. HALL. Let the section be read as it will stand if amended as proposed.

The CLERK read as follows:

"No person who acknowledges the being of a God shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth."

The yeas and nays were required by Mr. Hemphill and Mr. D. W. Patterson, and were as follow, viz:

YEAS.

Messrs. Bartholomew, Beebe, Buckalew, Campbell, Corbett, Dallas, Darlington, De France, Dodd, Dunning, Ewing, Gilpin, Hall, Hanna, Hemphill, Howard, Lilly, Long, M'Michael, Mann, Niles, Purman, Reynolds, Smith, H. G., Stanton, Van Reed and Wetherill, J. M.—27.

NAYS.

Messrs. Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Charles A., Bowman, Cochran, Corson, Curry, Curtin, Edwards, Elliott, Fulton, Funck, Gibson, Guthrie, Harvey, Hay, Hazzard, Horton, Hunsicker, Kaine, Lamberton, Landis, Lawrence, M'Clean, M'Culloch, Mantor, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Porter, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Smith, Henry W., Stewart, Struthers, Turrell, White, David N., White, Harry, White, J. W. F., Woodward and Walker, *President*—50.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Baker, Bannan, Barclay, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Brown, Bullitt, Calvin, Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Cuyler, Davis, Ellis, Fell, Finney, Green, Heverin, Knight, Lear, Metcalf, MacConnell, MacVeagh, M'Intosh, M'Murray, Metzger, Newlin, Niles, Patterson, T. H. B., Pughe,

Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H. Temple, Wetherill, John Price, Wherry, Worrell and Wright—56.

Mr. HANNA. I move that the Convention resolve itself into committee of the whole for the purpose of special amendment to section four. The amendment that I propose to offer is to strike out from and after the word "person," in the first line, to and including the word "punishments," in the fourth line; so that the section will read:

"That no person shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth."

I propose by this amendment to go a little further than the gentleman from Elk (Mr. Hall.) I believe that we live in a day of enlightened civilization, when almost every civilized section of the world recognizes the broadest and the freest civil and religious liberty. I have the highest respect for religion. By that I understand the teachings of our Saviour. I hope I shall ever remember the instructions received from a pious mother; I hope to be guided in all my life by the sentiments taught us in the Sermon on the Mount; but, sir, I trust I shall never forget that every other man has the same right that I claim for myself. I claim to worship God according to the dictates of my conscience, and I am willing to give every man, woman and child on the broad earth the same right.

I will go further, sir. I say that if any man has not yet been taught to believe in the existence of a God, does not realize his responsibility to his Creator, he has a right to his belief, so far as we are concerned. I cannot call in question his belief. I have no right to do it, holding the sentiments I entertain. If a person does not believe in a future state of rewards and punishments, but that he will receive in this life the punishment due to his wrong actions and his sins, I say he has a right to that belief; I claim not to be his judge; but if his conscience leads him and his judgment teaches him to that belief, he has a perfect right to entertain it. I believe in the fullest liberty; I believe in what is called soul liberty; and I have no right to set up a bar and call upon my fellow-men to march up to my rule of thought and conduct in these matters.

Now, what do we propose by this section? We propose to say that no person who does not acknowledge the being of a

God, and does not believe in a future state of rewards and punishments, shall be qualified to hold any office of trust or profit under this Commonwealth. Is that right? Does it agree with our present state of civilization? I say it does not.

Again, the language is: "No person who acknowledges the being of a God." What does that mean? Is it the God of the Christian, the God of the Hindoo, the God of the Mahomedan, the God of the Japanese, or the God of the Indian? "The being of a God." What kind of a God? What God? What man's God? My God or yours?

If it should read that no person who believes in a Supreme Being of some kind or other shall be disqualified, &c., then we would include all, because I understand there are but few on this broad earth who do not believe in some superior being; and yet there are those who do not, and I venture to say that many of those who do not believe in a superior being are not thereby disqualified from holding any office of trust or profit under the Commonwealth.

Why, sir, if we are to apply religious tests in the Constitution of the Commonwealth, where are we to stop? I do not believe that the subject of religion should be approached in the fundamental law of a free Commonwealth; it should not be mentioned. Does any gentleman on this floor recognize any connection between the religion of a people and the government of that people? Does any one believe that the State should have anything to do with the consciences of men? Certainly not. If we once admit that principle, where does our liberty of conscience stand and upon what foundation does it rest?

I offer this amendment in good faith, after much reflection upon the subject, and upon my sincere, conscientious conviction that we have nothing whatever to do with the private, individual religious sentiments of the people. Why, sir, how many of our best citizens, upright, honest, temperate and honorable in all their dealings toward their fellow-men, might be excluded under just such a provision as this, and yet who, as far as the eye of man is concerned, are far more worthy to hold an office of trust or profit under the Commonwealth than he who oftenest bends his knee, perhaps in hypocrisy? Therefore I say I am prepared to trust the people and go no further than to declare that no person, on account of his re-

ligious sentiments, no matter what they may be, if otherwise qualified, shall be disqualified to hold any office of trust or profit in the gift of the people.

Mr. HUNSICKER. Suppose he has none at all?

Mr. HANNA. Now, Mr. President, I hope —

The PRESIDENT. That delegate's time has expired. Is the Convention ready for the question on the motion he has submitted?

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

Mr. CORBETT. I second the call.

The yeas and nays were ordered, and being taken, resulted as follow, viz:

YEAS.

Messrs. Bartholomew, Buckalew, Campbell, Corbett, Darlington, Ewing, Hall, Hanna, Hemphill, Howard, Lilly, Mann, Read, John R., Reynolds, Smith, H. G., Stanton and Wetherill, J. M.—17.

NAYS.

Messrs. Achenbach, Alricks, Bailly, (Perry,) Beebe, Bigler, Black, Charles A., Black, J. S., Bowman, Carter, Cochran, Curry, Curtin, Dallas, Dodd, Edwards, Elliott, Fulton, Funck, Guthrie, Harvey, Hay, Hazzard, Horton, Hunsicker, Kaine, Lamberton, Landis, Long, MacConnell, M'Clellan, M'Culloch, M'Michael, Mantor, Minor, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson T. H. B., Patton, Porter, Purviance, John N., Purviance, S. A., Reed, Andrew, Russell, Sharpe, Smith, Henry W., Stewart, Struthers, Turrell, White, David N., White, Harry, White, J. W. F., Woodward and Walker, *President*—57.

So the question was not agreed to.

ABSENT—Messrs. Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Biddle, Boyd, Brodhead, Broomall, Brown, Bullitt, Calvin, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Cronmiller, Cuyler, Davis, De France, Dunning, Ellis, Fell, Finney, Gibson, Gilpin, Green, Heverin, Knight Lawrence, Lear, Littleton, MacVeagh, M'Camant, M'Murray, Metzger, Newlin, Parsons, Pughe, Purman, Rooke, Ross, Runk, Simpson, Smith, Wm. H., Temple, Van Reed, Wetherill, John Price, Wherr—5.

Mr. RUSSELL. Mr. President: I move, that the Convention resolve itself—

committee of the whole for the purpose of amending the Declaration of Rights by inserting the word "that" at the beginning of each section, which I think was without due reflection stricken out.

The PRESIDENT. The question is on the motion of the delegate from Bedford.

Mr. RUSSELL. I think, on reflection, the Convention will see that the word "that," at the beginning of the different sections, ought to be re-inserted. I do not think there is anything ungrammatical in it, and it should be there as our fathers thought—

Mr. HAZZARD. I wish to suggest that if the first "that" in the introductory clause is stricken out, we can then leave the word "that" at the beginning of each section. As it now reads, it is, "we declare that," and it is now proposed to insert another "that" at the beginning of each section. If we leave the word "that" in the introductory clause, it is useless to repeat it in each section.

Mr. RUSSELL. We can leave off the word "that" in the introductory clause if we insert it after the word "section one." Then it will read:

"That the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare—"

"SECTION 1. That all men are born equally free and independent," &c.

Mr. HARRY WHITE. I beg to call the attention of the delegates to the fact that in the Constitution of 1838, which I have in my hands, the expression is: "That the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare." The word "that," following "declare" in the introduction, is not in that instrument.

Mr. RUSSELL. The delegate from Indiana is mistaken. The Constitution of 1838 reads in this way: "That the general, great and essential principle of liberty and free government may be recognized and unalterably established, we declare that," &c.

Mr. HARRY WHITE. I beg pardon; I have here the original draft of the amended Constitution of 1838.

Mr. RUSSELL. It is printed with a "that" in the copy I have.

Mr. HARRY WHITE. I have it as it was revised by the Committee on Revision and Adjustment of the Convention of 1838. I would suggest the propriety,

however, of striking out the first word "that" here.

Mr. WOODWARD. The gentleman from Indiana states the thing correctly. As it stands in the Debates, the word "that" is not there in the beginning of the sentence, and therefore there was a necessity for applying it to each section, as that Constitution does. Here it was in both places; it was in the introductory clause, and then it was in each section afterwards, which would make the article tautological, inelegant, not ungrammatical it is true, but violative of the laws of taste, and therefore it should not be done. I understand that in Purdon's Digest—I have not got it before me—where a revised copy of our present Constitution is to be found, there is no "that" at the beginning of each of these sections.

Mr. RUSSELL. I have Purdon's Digest before me now, and it reads: "We declare that," and it is so in every copy of the Constitution I ever saw, in the Digest or elsewhere.

Mr. HARRY WHITE. I desire to understand the gentleman from Bedford. If his motion is to go into committee of the whole for special amendment, to strike out the word "that," at the end of the recital previous to the first section, and to re-insert the word "that" at the beginning of every section, I will vote with him, because I desire to conform to what I understand was done in 1838. If he does not move to do that, I shall not vote with him, because we do not want the word "that," in the introductory clause and then again at the beginning of every section.

Mr. RUSSELL. I propose to do just what the gentleman from Indiana suggests.

Mr. HARRY WHITE. Then the motion is right.

The PRESIDENT. That is not the motion which the delegate first made. He made a motion to go into committee of the whole for special amendment of the article by inserting the word "that" wherever it had been previously stricken out on the motion of the delegate from the city (Mr. Woodward.) He now modifies his motion, and he will state it as modified.

Mr. RUSSELL. I accept the modification of the gentleman from Indiana. My motion is to go into committee of the whole for the purpose of striking out "that," after the word "declare," in the introductory clause, and inserting the

word "that" at the beginning of each section subsequent.

Mr. BUCKALEW. This question was not thought of or acted upon by the Committee on Revision, so that no approval has been given by them to the article as it would stand after their report was made in this respect. I do not think it is of any consequence at all which of these ways we fix this article, whether we have a general "that" introductory to all these sections, to be read in connection with them, or repeat the word at the commencement of each section. I shall vote against going into committee of the whole and for retaining the present form simply because it will make ten or twenty words less in the article.

Mr. BEEBE. I wish to call the attention of delegates to the fact that if we retain the first "that" in the general declaration and then apply it to each section, it would read, when connected, in every section, "We declare that that!" It is merely a question of choice. We have the word "that" once, and that is enough.

Mr. WOODWARD. When I spoke of the Constitution as it stands in Purdon's Digest, I did so in the authority of a gentleman near me without having the book before me. The gentleman from Bedford, with the book, tells me that it is not so, that the word "that" is in the Constitution as published in Purdon's Digest. I therefore rise now to correct the statement which I made before.

Sir, this is a question that involves no principle whatever. It is simply a question of taste in the use of the English language. This Convention owes it to the public and to its posterity to use good, clear, elegant (if we can) English language. Now, sir, we have on this floor some scholars who do not often present themselves to the attention of the body. There is a gentleman on my right, (Mr. McMichael,) who has been writing the English language all his life. I should prefer that some gentleman like him would give their opinion upon this proposition to the Convention. Here a series of great truths are introduced by an introductory sentence, and the word "that" occurs in that introduction. Now I saw that, according to the idiom of the English language, that "that" is carried down and applied to all the details and subsequent provisions. It is inaccurate and inelegant, I do not say ungrammatical, to repeat that word "that," which is not a pronoun in this

place, but only an adverbial expression; and therefore I moved to strike it out as unnecessary and inelegant, and before the Convention recede from that position I hope they will listen to the gentleman to whom I have referred.

Mr. KAINE. Mr. President: I hope the amendment of the gentleman from Bedford will prevail. I differ with my learned friend from Philadelphia. I say that putting the word "that" in as it is in the printed pamphlet, after the word "declare," and making every subsequent section depend upon that, is not more elegant or better grammar than the present Declaration of Rights. The Declaration of Rights as contained in the Constitution of 1838 is the same word for word, and letter for letter, as that appended to the Constitution of 1790, and I think the word "that" placed before every section of the Bill of Rights is more emphatic, and better English, and certainly as good grammar as the other form; and, besides, it is more in accordance with what should be written in a Constitution. A Constitution should be plain, emphatic, and simple English, nothing more, nothing less. The word "that" at the beginning of each section will make the Bill of Rights much more forcible than in the form in which it now stands before the House. I hope, therefore, that the motion now made will prevail.

Mr. HAZZARD. The article in that shape is certainly ungrammatical unless you strike out the word "that" in the introduction.

Mr. KAINE. The gentleman should understand that the motion is to strike out the word "that" after the word "declare" and then to insert the word "that" at the beginning of each section. That is the motion.

Mr. HAZZARD. Very well, if we do not strike out the word "that" in the introductory clause we declare that "that all men are created," &c. If you strike out the first word "that" and then insert that word at the beginning of each section, you have it right. But why not let it remain as it is, with the first "that" in it and no others. Then you declare "that all men are born equal," "that all power is inherent in the people," "that all men have certain inherent rights," &c. It is right as it is, because as the article stands the word "that" is understood as being repeated at the beginning of every section.

Mr. MACCONNELL. I think the only thing involved in this motion is wheth

we shall make one "*that*" do the work of *twenty-seven thats*. We have already struck out *twenty-seven thats* and retained one. Now it is proposed to put back the *twenty-seven thats* and strike out the one. That is not good economy, according to my notion, and I do not think it is very good sense. I am, therefore, opposed to the motion. I am in favor of using as few words as possible to express the idea, and I think the good sense of the Convention will agree with me in that.

Mr. MACVEAGH. I think that exhausts the argument.

The PRESIDENT. The question is on the motion of the delegate from Bedford (Mr. Russell.)

The motion was not agreed to.

Mr. STRUTHERS. I move that the Convention go into committee of the whole, for the purpose of specific amendment, by inserting in the twenty-first section, after the word "citizens," in the first line, the word "openly," so as to read: "The right of the citizens openly to bear arms in defence of themselves and the State, shall not be questioned."

The first suggestion as to this matter was made to me by his honor, Judge Pearson, and he gave me this information, that although there was an act of Assembly which prohibits the bearing of arms secretly, yet when persons get into broils, one pulls out his dirk and sticks the other, or a pistol and shoots him. Although the act of Assembly is against carrying arms secretly in that way, yet they fall back on the Constitution, which they say authorizes the bearing of arms, and therefore the act of Assembly is unconstitutional. A construction has been given by the courts, I believe, that sustains the procedure under the act of Assembly; but that has been made constantly a matter of defence, and it gives the courts great annoyance. During our recess I met several judges of the courts, Judge Trunkay, Judge Wetmore and Judge Vincent, and they all seemed anxious that something of this kind should be introduced. The bearing of arms secretly has produced great mischief, and the only effect of the introduction of the words I propose would be to prohibit it by constitutional provision.

Mr. HUNSICKER. I think this amendment should prevail and the word "openly" should go in for this simple reason, that in some portions of the State they have local laws against carrying con-

cealed deadly weapons, and when that question was brought before one of the courts of Philadelphia, one of the judges declared that a person upon the witness stand who had a pistol concealed on his person had a constitutional right to carry that pistol concealed, and in other portions of the Commonwealth they fine and imprison a man for carrying a concealed deadly weapon. The spirit and intention of the section is to allow men to bear arms for their own defence, and not arms for aggressive purposes.

And just here let me parenthetically remark that the Convention on second reading had an opportunity to have this question, as all questions of law should be, referred to the Supreme Court for adjudication. If there was a right to review the judgments of the courts of criminal jurisdiction, there would be no such conflict of law as now exists with reference to the construction of this very section of the Bill of Rights; and for fear that the Convention will not finally adopt that provision, which I had the honor to offer in committee of the whole and on second reading, I think the word "openly" should now go in this section so that every judge in the Commonwealth will know exactly what is meant by the provision allowing citizens to bear arms.

Mr. MACVEAGH. For one, I shall vote against the proposition. In the first place, I think the present Constitution is perfectly explicit and satisfactory on this subject; and in the second place, I have never been able to understand why a man might not be under the necessity of protecting himself by carrying a weapon of defence. Suppose an epidemic of garroting breaks out in the city of Philadelphia, as it did in the city of London a very few years ago; to tell me that I am to walk the streets of this city at night without any protection whatever from ruffians, is to state something to which I will never agree. Suppose I may be required, as I have been on different occasions, coming from the city of Washington upon a delayed train, to walk at half-past one or at two o'clock in the morning from the depot at Broad and Prime streets, and have my steps dogged all the way to the hotel, am I to have no possible protection? I understand that among other things that cannot be taken from a man, is the privilege he has to defend his life and to protect himself. Of course he is answerable to the fullest extent for the use of it, and your law against carrying concealed

weapons does not interfere with the habit among the dangerous classes. But there are periods in every community, periods of excitement, when it may be necessary for a man to say in his own behalf, "Say what you please and do what you please, but you must not beat or maltreat me," and with all the inequalities of physical condition that exist, it is the very worst thing in the world to say that if a man of my condition offends a man like Judge Woodward, he is to take a severe beating whenever his enemy chooses to inflict it. I do not believe in it. I believe in the right of self-defence of the weak against the strong, and I do not propose to allow any man to maltreat me at his pleasure, as long as there are any weapons of defence to be had by which I can equalize my strength with his.

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

Mr. MACVEAGH. Certainly.

Mr. HUNSICKER. I would like to ask him whether he believes the laws which are passed against carrying concealed deadly weapons are constitutional or unconstitutional.

Mr. MACVEAGH. I have no doubt whatever that a law properly framed against the carrying of concealed deadly weapons might be constitutional, but I understand the words in the old Constitution are used in the public sense of bearing arms in defence of person and life, as our ancestors did, and not for offensive purposes.

Mr. HUNSICKER. Let it be more explicit then.

Mr. BROOMALL. Will the gentleman tell me if the Legislature have a right to pass a law against carrying concealed deadly weapons, why they have not a right to pass a law against carrying open deadly weapons?

Mr. MACVEAGH. If you put it upon that ground, I cannot see that the constitutional difficulty is avoided. I cannot see why the Constitution should prohibit a man from carrying weapons to defend himself unless he carries them openly, why you should require him to sling a revolver over his shoulder. If you mean that the militia shall be armed, you will find that provided for in another article.

Mr. HUNSICKER. To be more explicit then, does the gentleman consider the law constitutional which prevents a man from carrying a revolver concealed be-

neath his coat in the streets of Philadelphia.

Mr. BARTHOLOMEW. Under the laws of the State of Pennsylvania, there are certain counties in which it is lawful for a man to carry concealed weapons.

Mr. MACVEAGH. Yes, that is one of the evils of the legislation upon this subject, that it is special. There should be a general provision on the subject or none.

Mr. HUNSICKER. Does the gentleman consider those laws constitutional or unconstitutional.

Mr. MACVEAGH. I do not know whether they are constitutional or unconstitutional. It is well for this Convention to consider whether we ought not to make such a provision that laws on this subject will be uniform. But there are times of excitement and passion and danger, in every community, when I will never consent that an individual who carries weapons for his own defence shall be adjudged guilty of a crime, and I do not believe that the laws now existing would so declare.

Mr. BEEBE. I trust the Convention will not go into committee of the whole for the purpose of putting in this amendment. For more than four years in the oil regions of Pennsylvania, during the excitement of speculation and during the war, no man's life would have been safe had it not been well understood that every man carried concealed weapons. No man had any business to be there without them. Highway robbery even was best prevented by the assailed getting frequently the advantage of the first shot. Thieves and murderers never would and never do regard any law of this kind, and the revolver under such circumstances is the best conservator of the public peace in the hands of law-abiding men. No man desires to be in the position of being assailed by a lot of drunken bullies who are reckless of anything they may do unless restrained by fear.

I agree with the gentleman from Dauphin that there are circumstances where a man has the right and must have that right for protection to himself, unless he expects to be knocked down and beaten by a dozen drunken bunniers who may be out upon a raid, and who may inflict upon him any violence or any base practices by which they may desire to humiliate or degrade him.

Mr. HOWARD. I am in favor of the amendment; I hope it may be adopted.

No man ought to carry any weapon smaller than a musket or a double-barrelled shot-gun so that any other man can see it. I do not think that there is any necessity for carrying a pocket-pistol, bowie-knife, or anything of the sort.

Mr. NEWLIN. I suggest mountain howitzers. [Laughter.]

Mr. GIBSON. I wish to make but a single remark, and that is that in the acts of Assembly with regard to concealed weapons the word "maliciously" or "feloniously" is used, and there is something in the act itself which relates to the intent of carrying these concealed weapons. Take up any of these acts of Assembly, and you will find something that makes the case turn upon the evil intent with which the weapon is carried. Hence it is constitutional to pass such laws in order to restrain persons from carrying concealed weapons with malicious intent.

Mr. DALLAS. I am in favor of the amendment for the consideration of which it is proposed that we shall now go into committee of the whole. I do not think that the bearing of that amendment has been precisely understood by the gentleman from Venango, (Mr. Beebe,) and by others who have opposed it. It is not intended to compel the Legislature to pass a law against the carrying of concealed deadly weapons. There is nothing of the kind in it. If the amendment should be adopted, the section as amended would read: "That the right of citizens openly to bear arms, et cetera, shall not be questioned." That is all there is of it. It would leave it to the Legislature to pass or not, as it might deem best, such laws as have heretofore been enacted to prevent the carrying of concealed deadly weapons. If in the county of Venango, for instance, there exists the condition of lawlessness to which the gentleman from that county has referred, and the constituted authorities there are not able to suppress it, and to protect peaceable citizens, then it certainly would be right that the Legislature should pass no law applicable to that section, to punish the carrying of weapons, even though concealed, by peaceful citizens. There would be nothing in this section, even if amended as proposed, in the nature of a mandate to the Legislature, and the section itself would not contain a single word that could be construed to prohibit citizens from carrying arms in any manner they might see fit.

I hope this amendment will pass for the reason that while I concur with the gentleman from Dauphin in thinking that the section is sufficiently clear as it stands, still I cannot set up my opinion against judges of our courts who have held otherwise, and it is enough for me to know that there may be a difference of opinion on this question to make me desire that it shall be placed beyond doubt. I confess I do not understand the force of the argument of the gentleman from Dauphin. He does not want the amendment adopted because he says that being himself slight of stature but strong of nerve, he should not be deprived of the equality with greater physical force, which the possession of a pistol might secure to him. Where the Legislature may recognize the existence in any part of the State of a condition of affairs making it proper for a man to carry a pistol, they would be at liberty to say so under this amendment; but whatever may be true of the county of Venango, here in this well regulated city of Philadelphia I do not believe that the carrying of concealed deadly weapons is necessary for the protection of orderly people.

Mr. EWING. Will the gentleman from Philadelphia allow me to ask him a question?

Mr. DALLAS. With pleasure.

Mr. EWING. Have there not been repeated occasions within the past ten years when it has been unsafe for people to go abroad in Philadelphia upon the public streets without carrying deadly weapons?

Mr. DALLAS. I think not, to the extent which the question implies. Here, as in every other large city, men have been assaulted and robbed on the street; but we are speaking now not of isolated cases, but of a state of society that would warrant peaceable citizens generally in arming themselves for the protection of their lives and property. No such state of society exists in Philadelphia; and why, let me ask, should not the Legislature be permitted to say that concealed deadly weapons shall not be carried here, or that the person who carries them shall be punishable for it, and that when they do say so, the constitutionality of their act shall be beyond question?

But the purpose of such laws is not to prevent peaceable citizens from protecting themselves from the superior muscular power of ruffians, but to prevent the ruffians from arming themselves against

peaceable citizens. The gentleman has no right to ask that he may exercise a power outside of the law to protect himself, when the law itself is sufficient for his protection. That very law which he complains of is made for him and not against him; and I appeal even to those gentlemen who think that there should be no law against carrying concealed deadly weapons to vote for this amendment, for the reason that there is nothing in it which would compel the Legislature to enact such a law. It would leave the whole subject to the representatives of the people, and its only purpose is to make clear a constitutional provision in regard to which there has been some conflict of opinion.

THE PRESIDING OFFICER. [Mr. Bartholomew in the chair.] The motion is that the Convention go into committee of the whole for the purpose of amending, by inserting after the word "citizen," in line twenty-one, the word "openly."

MR. BEEBE. I would ask the gentleman from Philadelphia, if convictions have been repeatedly had in this city, under this section as it stands, for carrying concealed deadly weapons, why the necessity of the change?

MR. DALLAS. Those trials were before judges who never doubted the constitutionality of the law. Other judges have doubted it. I desire it settled.

THE PRESIDENT. The question is on the motion to go into committee of the whole for the specific amendment proposed by the delegate from Warren (Mr. Struthers.)

MR. MACVEAGH. On that I call for the yeas and nays.

MR. DALLAS. I second the call.

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

Y E A S .

Messrs. Andrews, Bartholomew, Bigler, Curtin, Dallas, Dunning, Ellis, Fulton, Hazzard, Horton, Howard, Hunsicker, Mann, Newlin, Purviance, John N., Purviance, Samuel A., Smith, H. G., Smith, Henry W., Smith, Wm. H., Struthers, Turrell, Wright and Walker, *President*—23.

N A Y S .

Messrs. Achenbach, Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Black, Charles A., Black, J. S., Bowman, Broomall, Buckalew, Carter, Cochran, Corbett, Curry, Darlington, De France, Edwards, Ewing, Funck, Gibson, Gilpin, Guthrie, Hall, Hanna, Harvey, Hay,

Hemphill, Kaine, Landis, Lear, Lilly, Long, MacConnell, MacVeagh, M'Clean, M'Culloch, M'Murray, Mantor, Minor, Mitchell, Mott, Niles, Palmer, G. W., Patterson, T. H. B., Patton, Reynolds, Russell, Sharpe, Stanton, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Woodward—54.

So the motion was rejected.

ABSENT.—Messrs. Addicks, Ainey, Armstrong, Baer, Baker, Bannan, Barclay, Bardsley, Biddle, Boyd, Brodhead, Brown, Bullitt, Calvin, Campbell, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Cronmiller, Cuyler, Davis, Dodd, Elliott, Fell, Finney, Green, Heverin, Knight, Lamberton, Lawrence, Littleton, M'Camant, M'Michael, Metzger, Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purman, Read, John R., Reed, Andrew, Rooke, Ross, Runk, Simpson, Stewart, Temple, Van Reed, Wetherill, John Price, Wherry and Worrell—56.

MR. NEWLIN. I move that the Convention resolve itself into committee of the whole for special amendment to section nine, and indicate the following amendment: To insert after the word "himself," in the ninth line, the words, "but may at his option testify in his own behalf, and his omission so to do shall not be commented upon."

MR. PRESIDENT, the object of the amendment in all criminal cases to allow the accused at his option to testify in his own behalf; and it further provides that if he sees fit not to testify his omission shall not be commented upon in the trial of the cause. That is to say, his option is entirely free, and nothing can be construed against him on account of his omission to take advantage of this proposed change. It goes just that far and no further. It does not compel a man to testify against himself, nor does it put it in the power of the prosecuting officer to make remarks to the jury upon his omission so to do.

This may seem to many minds as a radical change and as going too far, but I will call the attention of delegates to the fact that of late years we have progressed very rapidly in the way of reform in the law of evidence. It is only a short time ago that even in a civil proceeding no party in interest could testify at all, and the books are full of the nicest distinctions as to what sort of interest disqualified a man from testifying. Then a change was made, and a party might call his opponent; and now we have gone further and have permitted parties to testify in their

own behalf, husband and wife being excluded, and notwithstanding the conservative element in the profession of the law was opposed to that change, I believe it is universally admitted that it was wise. Subsequently, in divorce, husband and wife were permitted to testify. Only recently in this State another step in advance was taken, this time in the criminal law, and as it now stands a man may testify in his own behalf in all cases of misdemeanor.

This opens the door wide, and if the logic of the proposition is good as to misdemeanors, certainly it must be so as to all other offences. The same arguments and the same reasons which induced the Legislature to provide that parties might testify in civil cases ought to work equally well in criminal proceedings. Why, sir, what a brutal farce it is when a man has been tried and convinced with his mouth shut, to ask him if he has anything to say why sentence should not be pronounced upon him. He can say then anything that he likes; but it is wind, mere words; it has no effect; his doom is sealed; and it is a farce, a brutal farce, to ask him such a question. Our criminal law in this respect is behind nearly every civilized country in the world.

Now, I want to say a word to what some one has called the thirty-three honest men of this Convention, the laymen. I have no doubt a great many of the legal gentlemen will be opposed to this change, for the reason that the legal mind is very conservative from its nature and narrowed from its education; it is admirable in the elaboration of details, but it is slow to grasp the great, broad principles of reform. But this is something that is not a matter of law; it is a matter of common sense and humanity that a man who being tried for his life or for some grave felony should have an opportunity to say what he has to a jury of his countrymen before they convict him. It has been the history of every law reform that it has been opposed by the legal profession, and nearly every beneficial change that has been adopted in the law of evidence or in legal procedure has been opposed by the narrow-minded element in the profession. When Sir Samuel Romilly first proposed to repeal the act of 8 Elizabeth, chapter 4, which made it a capital offence to steal from the person, so that the punishment would be seven years transportation, the Attorney General and the judges and most of the professional men in Par-

liament opposed that beneficial change, and the only proposition they would agree to was that the offence might be punished with transportation for life, because seven years were not enough; and so it was with very many reforms that Romilly proposed. For instance, in the matter of punishment for high treason, a part of the sentence was that the prisoner should be disembowelled whilst alive and that his bowels should be burned before his eyes, and as late as his time, when it was proposed to do away with that barbarous provision, it was opposed bitterly as making a change in the ancient ways of the law and as being an innovation which should not be tolerated.

Now, sir, I hope that the laymen of the Convention will, out of pure reason and common sense, vote for this humane proposition, and I trust that the legal gentlemen will forget for a while that they are lawyers and vote from their hearts as men.

MR. J. N. PURVIANCE. MR. President: I hope the Convention will not go into committee of the whole for the purpose of amendment as suggested by the gentleman from the city (Mr. Newlin.) Under the present law as passed by our Legislature, in civil cases, the parties, as well plaintiff as defendant, can testify for themselves, and in all criminal cases less than felonies, they can also testify. There is ample power on the part of the Legislature, if they see proper to extend the law to felonies, to do so without any constitutional provision on the subject; and therefore I regard such an amendment as wholly unimportant and uncalled for; no necessity whatever exists for it. Even as to misdemeanors, the Legislature has provided that where the accused refuses to testify, that fact cannot be commented upon before the jury to his prejudice, or in any way whatever. I am reminded of that by the gentleman from Lancaster (Mr. D. W. Patterson.)

Now, if we expect to terminate our labors here speedily, there is nothing that we should more avoid than going into committee of the whole. We should only go into committee of the whole when it is absolutely necessary, because the moment we get there we open a wide field of discussion upon all sides, giving such a range as would occupy perhaps days and days upon very unimportant questions.

I therefore hope that the motion of the gentleman from the city will not prevail.

Mr. HARRY WHITE. Mr. President: I concur in what the delegate from Butler says in opposition to going into committee of the whole. I sincerely hope the Convention will not go into committee of the whole upon this very material question. Apart from the prejudice I have, if prejudice it be, against hasty reforms, I am exceedingly averse to changing this rule of law. The Convention will pardon me for saying that I had the honor as chairman of the Judiciary Committee of the Senate to report originally, and I had the honor also of writing, the act of April 15, 1869, which allows parties to testify in their own behalf in civil cases, and I also reported the law which we now have, allowing parties to testify in a certain class of criminal cases. Now, I will remind the Convention that that was a compromise in the Legislature between the extreme radicals and those who were more conservative on these questions, and I submit that the Legislature upon these questions can be trusted. They, I think, will act judiciously, and when popular demand actually requires a change of the rule of law as now fixed, the Legislature will yield to that demand, and I hope we shall not put any rule into the unchangeable lines of the Constitution which will embarrass the Legislature in this regard. The experience of every gentleman who has observed the action of the Legislature in this regard has been that reforms or changes proposed in the practice of our profession never go backwards, and I submit that when the popular voice of the State, when the voice of the profession actually requires the enactment of a statute which opens the door so that in all criminal prosecutions the party accused shall be allowed to testify, that law will be passed. I hope we shall refuse to change it here.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Newlin) to go into committee of the whole for the specific amendment stated by him.

The motion was not agreed to.

Mr. DALLAS. I move to go into committee of the whole for special amendment for the purpose of making the following amendment to section seven: To add after the word "conviction," in the ninth line, the words "or recovery;" and after the word "prosecution" in the tenth line the words "or suit," so as to read:

"No conviction or recovery shall be had

in any prosecution or suit for the publication of papers," &c.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia.

Mr. DALLAS. Mr. President: I have no wish to re-open the discussion of the entire subject involved in that portion of the seventh section which I now propose to amend. As is well known generally to this body, that part of the section is not all that I would have it in several respects; but it is due to the Convention, that at this late stage of its proceedings, and after having already made every effort in my power to incorporate my views upon this subject into our fundamental law, that I should not now seek to reverse its deliberate action upon the main question. For instance, the words, "or negligently," and the word "official," were introduced, as I think, improperly, but I will not now ask the Convention to strike them out, and the words "privileged communication," which I sought to add are not in the section, but I will not again ask that they be placed in it. I am seeking at this time to do only that which, in my judgment, it is requisite to do, to render the section consistent with itself. As it stands now, it is that "no conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury."

Now, if this proposition is to be confined in its operation to criminal prosecutions, then the words "or negligently" are the purest surplusage which could be imagined, because the gist of the offence in a criminal prosecution is malice, and negligence, wherever shown to exist, would of course be evidence of malice. But, sir, as malice is in all criminal prosecutions the true criterion of crime, so in civil suits for libel the question of negligence should always be the chief subject of investigation, just as it is in other actions of tort. Therefore I insist that no recovery should ever be had in a civil action where there is an absence both of malice and of negligence, and that in suits for libel, as in cases of personal torts of all kinds, a mere accident should not entitle the plaintiff to a recovery, nor subject the defendant to pay a sum of money

which he must feel it to be equally unjust that he should be compelled to pay whether as a fine or as a verdict for damages.

Now, sir, I am contending for no principle which the Convention has not already adopted, but for the general application of that principle; that is, that in all publications on matters proper for public investigation, or relating to the official conduct of public officers and men in public capacity, the ordinary rule of law shall apply in civil suits as well as in criminal, and that the man who is charged with the offence in the criminal suit or who is sued civilly shall in either case be allowed to show the absence both of malice and of negligence. This is simply making one uniform rule for both sides of your court, so that whether the case is tried upon the criminal side or in the civil court you shall have the same rule of decision. If the principle is correct and this Convention has decided that it is, all that I ask now is that it shall be made applicable, as it properly is to both forms of action, to criminal persecutions and to civil suits for damages as well.

The PRESIDENT. The question is on the motion of the delegate from the city (Mr. Dallas) to go into committee of the whole for the purpose of making the amendment he has stated.

Mr. DALLAS. On that question I call for the yeas and nays.

Mr. SHARPE. I second the call.

The yeas and nays were ordered and being taken, resulted as follows:

YEAS.

Messrs. Alricks, Beebe, Bigler, Campbell, Carter, Curtin, Dallas, De France, Edwards, Ewing, Gibson, Guthrie, Hanna, Hay, Hemphill, Hunsicker, Landis, Lear, Lilly, Long, Newlin, Patton, Purviance, John N., Sharpe, Smith, H. G., Smith, William H., Stanton, Struthers and Woodward—27.

NAYS.

Messrs. Achenbach, Andrews, Bailey, (Huntingdon,) Baker, Bartholomew, Black, Charles A., Black, J. S., Bowman, Broomall, Buckalew, Cochran, Corbett, Corson, Darlington, Dunning, Fulton, Funck, Gilpin, Hall, Harvey, Hazzard, Horton, Lamberton, MacConnell, MacVeagh, M'Culloch, Mann, Mantor, Minor, Mitchell, Mott, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds,

Russell, Smith, Henry W., Turrell, Wetherill, J. M., White, Harry, White, J. W. F. Wright and Walker, *President*—44.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Armstrong, Baer, Baily, (Perry,) Bannan, Barclay, Bardsley, Biddle, Boyd, Brodhead, Brown, Bullitt, Calvin, Carey, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Elliott, Ellis, Fell, Finney, Green, Heverin, Howard, Kaine, Knight, Lawrence, Littleton, M'Camant, M'Clean, M'Michael, M'Murray, Metzger, Niles, Palmer, H. W., Parsons, Porter, Pugh, Purman, Read, John R., Reed, Andrew, Rooke, Ross, Runk, Simpson, Stewart, Temple, Van Reed, Wetherill, John Price, Wherry, White, David N. and Worrell—62.

Mr. EWING. I move to go into committee of the whole, for special amendment of the seventh section. The amendment that I propose is to strike out the words "or negligently," in the fourteenth line.

I merely wish to call the attention of the Convention to this matter, and not to make any speech. As the section now stands, that part of it refers merely to a criminal prosecution. Malice is a proper element of crime. Negligence is not usually considered an element of crime. I do not think it should, in any case, be considered criminal. Negligence may be evidence of malice, and may properly go to the jury as evidence of malice. In a civil suit, negligence is a proper question of inquiry; and if the publisher has been negligent he probably should be made to suffer for it; but I can see no reason why mere negligence should be a crime on the part of a publisher any more than it is on the part of any other person. Hold him, if you will, civilly for it, but not criminally. This word "negligently" was put in here when the section applied to civil suits as well as to criminal prosecutions. Afterwards the words "or recovery" were stricken out; and while it was proper to insert the word "negligently" when it applied to a civil suit, it should not have been left in after we struck out the words "recovery" and "suit." I think if it were stricken out, it would leave the provision so that no one would have a right to complain. The great subject of complaint I believe to be—and I think it is a just one—that the publisher of a paper, who may have ex-

erolised good faith, and who may have supposed that the publication was entirely true, or who may have been entirely ignorant of the publication made in his paper, is brought into court and is convicted of a crime, and punished infamously, where there was no malice whatever, and no elements of crime that would be recognized in any other case.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Ewing.)

Mr. EWING. I ask for the yeas and nays.

Mr. DALLAS. I second the call.

The yeas and nays were taken, and the call having been concluded—

Mr. MANTON. Am I at liberty to vote?

The PRESIDENT. The delegate from Crawford under the rule is not entitled to vote; but the Chair can state that the vote discloses the absence of a quorum.

SEVERAL DELEGATES. Let us adjourn.

Mr. CARTER. I ask unanimous consent to offer a resolution at this time, which will not occupy three minutes and which will lead to a saving of hours.

The PRESIDENT. Shall the delegate from Lancaster have leave to offer a resolution at this time?

SEVERAL DELEGATES. Let it be read for information.

Mr. MACVEAGH. I object to the reception of any resolution at the present time.

Mr. CARTER. I should like to be allowed to say a word in explanation, and then I think my proposition will commend itself to gentlemen.

The PRESIDENT. Objection is made, and it is not in order.

Mr. DALLAS. I move that we adjourn for want of a quorum.

The PRESIDENT. There is a question now before the House unsettled and the result of the vote which has been taken has not yet been announced because there was no quorum voting.

Mr. HARRY WHITE. I ask for a call of the House.

The PRESIDENT. The roll will be called to ascertain whether there is a quorum present or not.

Mr. D. W. PATTERSON. Is not a motion to adjourn always in order?

The PRESIDENT. Not while a vote is being taken.

Mr. D. W. PATTERSON. But the taking of the vote had been concluded.

The PRESIDENT. The roll will be called to ascertain whether a quorum is present.

The CLERK called the roll and sixty-eight members responded.

The PRESIDENT. There is a quorum present. The pending question is the motion made by the delegate from Allegheny, (Mr. Ewing,) upon which the yeas and nays were being taken but it appeared upon a vote that there was not a quorum voting. There is now a quorum present. Is the call for the yeas and nays insisted upon on the motion of the delegate from Allegheny? ["No." "No."] The call for the yeas and nays will be considered as withdrawn and the question is on the motion of the delegate from Allegheny.

The motion was not agreed to.

Mr. HARRY WHITE. I now move to go into committee of the whole for special amendment of the seventh section by striking out all after the word "liberty," in the ninth line to the word "jury" in the fifteenth line, and inserting in lieu thereof: "In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence."

The PRESIDENT. The question is on the motion of the delegate from Indiana.

Mr. HARRY WHITE. Mr. President: This is a return to the old Constitution in this regard. I am favorable to it. It is better for the public, and it is better for the press, in my opinion. I observe that the words inserted on second reading are:

"No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury."

I submit that the rule of law under the old Constitution was well understood; the falsity of the publication presumed malice; but we have changed the rule. After the word "malice" we have added the word "negligence." Now, I submit that if an editor is indicted for the publication of a libel under this section and it is not proved that he published it maliciously, if the malice is not inferred from the falsity alone, the prosecutor can go further and he can prove negligence in the publi-

cation. I submit that this is harder upon the newspaper editor than the old Constitution was in that regard. It is only confusing that which has been well understood by the profession heretofore. It is a step to the rear instead of a step in advance. I am in favor of being conservative in this regard and adhering to the old Constitution.

Mr. BROOMALL. Mr. President: I trust this question will not be again opened. We spent weeks upon this section and settled it, as I believe, to the satisfaction of a great majority of the members of the Convention. I trust it will not be opened again. Notwithstanding what the gentleman says, it is a step in advance. It is now saying, not merely that the truth shall be given in evidence, but that if the matter is true and is proper matter for public investigation, no conviction shall be had where the thing was not maliciously or negligently done; the question shall not be submitted to a prejudiced jury whereby the printer might be damaged. I maintain that it is a step in a direction in which we were asked, at least by the press of the country and a great many of the lawyers of the country, to go a great deal further. The Convention were willing to go this far. I trust they will not now take a step backwards.

Mr. McCAMANT. Mr. President: I desire to place on record my reasons for voting for this seventh section. It does appear to me that when the truth is published with good motives, and for justifiable ends, it should be received in a court of justice in the trial of libel cases. With these restrictions thrown around its admission, private rights would be amply protected, and the idiosyncracies of individuals could not with impunity be paraded before the public gaze. The press would then be free to discuss all proper subjects, while they would be responsible for the abuse of that liberty. As faithful sentinels upon the watch-towers of liberty, they could more effectually warn us of danger, and being forewarned we could be forearmed. The old adage of "the greater the truth the greater the libel" has long since lost its force, and the demand for a reform calls for a higher standard in the administration of justice. We cannot trust to the Legislature to do this, and therefore this clause should be inserted in our organic law, and forever removed beyond legislative interference.

The suppression of truth in whatever form presented is repugnant to our idea of purity and right, and a court of justice should be the last place in which it should be countenanced. Even error may be tolerated where truth is free to combat it. The good sense of an impartial jury drawn from the vicinage certainly can be relied upon to sustain the character of parties in action without bridling the press and preventing men discussing through the public papers subjects with good motives and for justifiable ends.

Mr. H. G. SMITH. I trust the motion of the gentleman from Indiana will not prevail. While it is true that this Convention did not show that liberal sentiment which the spirit of the times seemed to demand, and while this Convention of Pennsylvania refused to go as far as a number of other Commonwealths have gone in this important matter, I do contend, with the gentleman from Delaware, that the change which was made in a slight step in advance. It at least gives an opportunity for a publisher, when arraigned in a criminal court, to claim under the Constitution the right of presenting his whole case to the jury. That certainly ought to be granted.

In this State the difficulty has been the diverse opinions of judges on this question. They have not held the same opinion in regard to the old clause of the Constitution which relates to libel. Under the old clause of the Constitution such a thing as this might happen: Two scoundrels in the city of Paris might this day deliberately determine to blackmail Mr. Childs, of the *Ledger*. One of them being on familiar terms with the agents of the press association might cause to be sent across the ocean cable a telegram stating that the other had been arrested for some criminal offence in Paris. They might come to Philadelphia together; the one with regard to whom the telegram was sent might institute in the courts of this city a criminal prosecution against Mr. Childs, and under the ruling in the case of Cathcart-Taylor, in this very city, Mr. Childs' mouth would be shut and he could not under any circumstances lay the whole of his case before the jury. The accomplice might be ready to go on the stand and swear to all the facts, but the judge might prevent what is so eminently fair and right.

The clause before us, lame and imperfect as it is, will, it seems to me, give the

publisher an opportunity to lay his whole case before the jury in all criminal prosecutions for libel. It will at least be regarded by the judges of this State as an instruction to them which they will feel bound to obey, and I hope the Convention will not recede from what I think is really a slight step taken in advance and taken in the right direction.

The PRESIDENT. The question is on the motion of the delegate from Indiana (Mr. Harry White.)

The motion was not agreed to.

ADJOURNMENT.

Mr. CARTER. I move that when this Convention adjourns to-day, it be to three o'clock to-morrow. ["No." "No."] I am desirous to save for work some hours to-morrow.

The PRESIDENT. It is moved that when the Convention adjourn—

Mr. MACVEAGH. I submit that that is not in order.

Mr. BARTHOLOMEW. I offer an amendment that when the Convention adjourn it be to meet on Monday at 10 o'clock. ["No." "No."]

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

Mr. CARTER. I desire to say two words which I think will commend this to the judgment of the Convention. My only motive is—

Mr. HUNSICKER. I rise to a point of order. The point of order is that the hours of meeting and adjournment of this body are fixed by a standing resolution, and the period has passed for the offering of resolutions.

Mr. MACVEAGH. I submit that it is not in order to offer a resolution at this hour to change the hour of meeting.

Mr. CARTER. Only temporarily. Certainly we changed it the other day from half-past nine o'clock to ten o'clock.

Mr. MACVEAGH. Nobody objected.

The PRESIDENT. The point of order is not sustained. The motion is before the House.

Mr. CARTER. My desire is to save three hours' time for this body. It is well known that many gentlemen composing this body have an interest in certain proceedings which are to take place to-morrow. Now I have no personal interest in that matter myself, nor am I instigated by any gentleman who has to offer this resolution—

The PRESIDENT. It is not a subject of discussion.

Mr. CARTER. I wish simply to save three hours' time.

The PRESIDENT. The question is on the amendment to adjourn until Monday at ten o'clock.

Mr. J. PRICE WETHERILL, Mr. RUSSELL and Mr. MACVEAGH called for the yeas and nays.

The yeas and nays were ordered, and being taken resulted as follows:

Y E A S .

Messrs. Andrews, Baker, Bartholomew, Bigler, Black, J. S., Buckalew, Dallas, Gibson, Guthrie, Hall, Hanna, Hemphill, Lamberton, Landis, M'Clellan, M'Culloch, Newlin, Palmer, G. W., Smith, Wm H., Wetherill, J. M., White, J. W. F. and Worrell—23.

N A Y S .

Messrs. Achenbach, Alricks, Bailey, (Huntingdon,) Beebe, Bowman, Broomall, Campbell, Cochran, Corson, Curtin, Darlington, De France, Edwards, Ewing, Funck, Gilpin, Harvey, Hay, Hazzard, Horton, Hunsicker, Lilly, Long, MacConnell, MacVeagh, Mann, Mantor, Minor, Mitchell, Mott, Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Struthers, Turrell, Wetherill, Jno. Price, White, Harry, Woodward, Wright and Walker, *President*—47.

So the amendment was rejected.

ABSENT. — Messrs. Addicks, Ainey, Armstrong, Baer, Baily, (Perry,) Bannan, Barclay, Bardsley, Biddle, Black, Charles A., Boyd, Brodhead, Brown, Bullitt, Calvin, Carey, Carter, Cassidy, Church, Clark, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Finney, Fulton, Green, Heverin, Howard, Kaine, Knight, Lawrence, Lear, Littleton, M'Camant, M'Michael, M'Murray, Metzger, Niles, Palmer, H. W., Parsons, Porter, Pughe, Purman, Read, John R., Rooke, Ross, Runk, Simpson, Stewart, Temple, Van Reed, Wherry and White, David N.—63.

SEVERAL DELEGATES called for the order of the day.

The PRESIDENT. The hour of three o'clock having arrived, the Convention stands adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FIFTY-FIRST DAY.

FRIDAY, *September 26, 1873.*

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. REYNOLDS asked and obtained leave of absence for Mr. Biddle for to-day.

Mr. T. H. B. PATTERSON asked and obtained leave of absence for Mr. Harvey until Tuesday next.

Mr. MACVEAGH asked and obtained leave of absence for himself for to-morrow.

Mr. STEWART asked and obtained leave of absence for himself until Tuesday morning next.

Mr. COCHRAN asked and obtained leave of absence for himself on Monday and Tuesday next.

Mr. HARRY WHITE asked and obtained leave of absence for himself for Monday and Tuesday next.

Mr. BUCKALEW asked and obtained leave of absence for himself for Monday next.

Mr. S. A. PURVIANCE asked and obtained leave of absence for Mr. Fulton for a few days from to-day.

Mr. FUNCK asked and obtained leave of absence for himself for to-morrow and Monday.

Mr. MINOR asked and obtained leave of absence for Mr. Mantor for a few days from to-day.

ADJOURNMENT TO MONDAY.

Mr. LILLY submitted the following resolution, which was read twice and considered:

Resolved, That when this Convention adjourns to-day, it will be until ten o'clock A. M., on Monday next.

Mr. RUSSELL. I call for the yeas and nays on the passage of the resolution.

Mr. LILLY. I second the call.

Mr. BROOMALL. Before the yeas and nays are ordered I desire to ask a question. Are the reports from the Committee on Revision and Adjustment printed?

Mr. BUCKALEW. One of them is in print.

The CLERK. One of them will be here in five minutes.

The PRESIDENT. The yeas and nays have been called for, and the Clerk will proceed with the roll.

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

Y E A S .

Messrs. Alricks, Baker, Bartholomew, Beebe, Bigler, Broomall, Buckalew, Calvin, Curry, Curtin, Dallas, De France, Dunning, Ellis, Ewing, Funck, Guthrie, Horton, Hunsicker, Kaine, Landis, Lilly, MacVeagh, M'Michael, Minor, Newlin, Palmer, H. W., Purviance, John N., Rooke, Sharpe, Smith, Henry W., Stanton, Stewart, Turrell, Wetherill, J. M., Woodward and Walker, *President*—37.

N A Y S .

Messrs. Barclay, Black, Charles A., Bowman, Campbell, Carter, Cochran, Collins, Corbett, Darlington, Edwards, Fulton, Hemphill, Lawrence, MacConnell, Mann, Mantor, Mott, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, Sam'l A., Reed, Andrew, Reynolds, Russell, Smith, H. G., Smith, Wm. H., Struthers, Temple, Wetherill, Jno. Price, White, David N., White, Herry and Wright—34.

So the resolution was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Aincy, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Brown, Bullitt, Carey, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Cuyler, Davis, Dodd, Elliott, Fell, Finney, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Lear, Littleton, Long, M'Camant, M'CLean, M'Culloch, M'Murray, Metzger, Mitchell, Niles, Palmer, G. W., Parsons, Porter, Read, John R., Ross, Runk, Simpson, Van Reed, Wherry, White, J. W. F. and Worrell—62.

PAY OF OFFICERS.

Mr. DUNNING. I offer the following resolution:

Resolved, That the President of this Convention be authorized to draw his warrant on the State Treasurer for one-half of the salaries of officers and members due and unpaid.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, and the ayes were thirty-one, not a majority of a quorum.

RESTRICTION OF DEBATE.

Mr. CARTER. I offer the following resolution:

Resolved, That on motion to go into committee of the whole on third reading, the time of speakers be limited to five minutes.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, and the ayes were thirty-one and the noes twenty-seven. So the resolution was ordered to a second reading, and it was read the second time and considered.

Mr. CARTER. I think, Mr. President, that this will undoubtedly save us several days' time, which is certainly a matter of much importance. The resolution is offered without any intention of abridging debate where debate be necessary; but, sir, we have gone over all these matters so fully on two different occasions that further lengthy discussion is really unnecessary. It is right that a gentleman making a motion to go into committee of the whole should have the opportunity of stating the grounds on which he makes that motion, but without going into elaborate argument. We have had the singular spectacle exhibited here, of a speech of some length being made and not a single person voting for the motion to go into committee of the whole but the mover. This is an absolute waste of time. It may be that a change may have taken place in the minds of members, and when that be the case and the object is stated by the mover, it will be adopted, and it is unnecessary to re-open the whole question certainly at that time, because no change can be made in the opinion of the body by debate, which has been so extended; but if there be a change effected through further thought, in individual minds, there will be time then to exhibit it by voting to go into committee of the whole.

I really believe this resolution, if adopted, will economize the time of this Convention very much indeed.

Mr. LILLY. I think the reading of the resolution would limit the debate on the question of going into the committee of the whole.

Mr. CARTER. That is what it is.

Mr. LILLY. Debate on going in?

Mr. BROOMALL. That is what it is for.

Mr. LILLY. It should be debate on amendments.

Mr. BEBE. Inasmuch as the mover of the resolution did not consume more than five minutes in advocating it, I shall support it.

Mr. DARLINGTON. Mr. President: I hope we shall not any further limit debate. It is only another advance towards stultification of ourselves to deny to a gentleman who conceives upon his honor and responsibility that he has a proposition which ought to be submitted to the body, the privilege of advocating it in a ten minutes' speech. It seems to me to be limiting the right of debate very unduly. That is little enough time for the gentleman from Columbia who is on the Committee on Revision and Adjustment, to have to explain the differences that exist between the report and that which we have before us. We shall run into extremes and into mischief to ourselves by denying the right to speak at least ten minutes.

Mr. MACVEAGH. There are certainly three articles yet to come before this House upon which we ought not to limit debate in this manner. They are those upon Private Corporations, upon Railroads and Canals, and upon the Judiciary. The judiciary article is certainly in a totally unsatisfactory condition to every member of this House, I think, of the legal profession. I think that is a universal statement; and now, if we are to say that while fixing the judiciary system of this State even ten minutes are too long a time to allow a man to state what he thinks will influence his fellow members upon such questions as are yet to come before us, I confess I do not see what we are to do but pass this book as it is with all the imperfections that every man in this Hall knows exist in it and which we hope to remedy. I insist that there are very few who can even state their propositions, if they are of any ramifications whatever, clearly and distinctly in five minutes. I think the ten minute rule is an abridgement ample to protect this

body, ample to secure the speedy discharge of our duties here.

Mr. DARLINGTON. I move to postpone the further consideration of the resolution indefinitely.

Mr. HARRY WHITE. I second the motion.

Mr. BROOMALL. That motion is debatable?

The PRESIDENT. It is.

Mr. BROOMALL. I only desire to say that motions to go into committee of the whole for the purpose of special amendment are upon some single point, and if it requires more than two minutes to state any single point, the stater ought to learn how to abridge his language somewhere else than by learning it here. If the gentleman had seen the operation of the five minutes rule, as I have for years, he would see that if men will school themselves to it a little, they can say more in five minutes than many of us do in twenty. I hope the resolution will pass.

Mr. W. H. SMITH. I trust the motion to postpone will be voted down, and that the resolution limiting debate to five minutes will be adopted. Those who sit here and notice the want of attention to every one speaking more than ten minutes, cannot see why it is necessary to give more than five minutes, or of what use it is to talk beyond that time. It is with the greatest difficulty that a man can get a hearing at all for that time, no matter what he has to say.

In regard to this third reading, I will say that I did suppose, and I think most members supposed, that all these propositions were to be fully discussed and developed on second reading and that the third reading would be simply a review, to make obvious, plain and needed corrections, and not to open the questions again to be discussed. I do not believe discussion now will aid us, unless some circumstances should happen in the meantime that would have a tendency to change our votes. I therefore hope that discussion will be limited to five minutes, and I think two minutes is enough for anybody to make a statement in the present state of our work.

Mr. BUCKALEW. I desire to state that if this motion to postpone is lost, I shall move to amend the resolution by inserting at the end of it these words: "unless by leave of the Convention, to be determined by a division." That will exclude the calling of the yeas and nays. A large

mass of these notions can be explained in five minutes; and yet there will be some questions before us upon which it will be necessary that a little time more than that shall be permitted. By the amendment I suggest, the Convention will then always have power to retain our present rule, and it will be determined by a simple division, which will take but a moment, and the yeas and nays cannot be called, so that time cannot be consumed. I shall, therefore, vote against this motion to postpone and shall then move the amendment which I have mentioned.

Mr. COCHRAN. I hope the motion to indefinitely postpone this resolution will not prevail, and that the resolution as offered originally —

Mr. DARLINGTON. If there is any serious objection to the motion I will withdraw it.

The PRESIDENT. The motion to indefinitely postpone is withdrawn. The question is on the resolution.

Mr. COCHRAN. Then I wish to say with regard to that, that I hope the resolution will be adopted, and that no amendment will be permitted which will make the invidious distinction of allowing certain members to speak more than certain other members. I think that is a most invidious distinction to be drawn in a body of this kind, and no such favoritism towards individuals should be tolerated. It seems to me it has gone too far already.

Now, sir, with regard to the proposition itself, we have had discussion in committee of the whole and on second reading at great length on these propositions; and why now should we go over the whole ground again on third reading?

Why, sir, I should like to know if any one of all the propositions which were offered here yesterday was anything new or anything that had not been talked over at least twice to the full extent? When a motion is made to go into committee of the whole for the purpose of special amendment, to introduce those modifications which concur with the views of the gentlemen who propose them, I think experience has taught us that five minutes is ample and more than ample for any gentleman to set forth the views which he has and the purpose which he desires to accomplish, and having done that, I think it is all we should be expected to do or expected to submit to on the third reading of these various articles.

Mr. BUCKALEW. I now submit my motion. I move to amend the resolution by adding at the end, "without leave of the Convention on a division, without debate."

Mr. President, this is not proposed as a matter of favoritism to any member. It is that the Convention shall discriminate not between members, but discriminate as to the subject-matter of a motion, whether it is of sufficient importance to permit it to be fully explained, or one of those smaller matters upon which time should not be consumed. As I now make the motion, there cannot be any considerable delay in any case in determining the point whether more time should be allowed. Sir, there are questions in the judiciary article and in the article on railroads which must not be passed upon finally by this Convention without being understood. It would be a pity if at the close of our work, for the want of a little explanation and fair understanding of some of these very vital questions, we should send forth an imperfect instrument to the people.

Mr. CURTIN. Allow me to ask the gentleman a question. If the Convention should decide to extend the time of a member who occupied the floor after the expiration of his five minutes, is there any limitation after that?

Mr. BUCKALEW. Certainly; the present rule.

Mr. CURTIN. How long?

Mr. BUCKALEW. The ten minute rule.

Mr. CURTIN. Then I shall vote for it.

Mr. DALLAS. I am opposed to the resolution, and would be even more strongly opposed to it if the amendment of the gentleman from Columbia should prevail. I am against the resolution because the articles on the judiciary, on corporations, and on railroads and canals will certainly still require prolonged consideration from this body; and I see no remedy for unnecessary debate but that which has been proposed by the gentleman from Columbia, and that is, in my opinion, very objectionable, and, therefore, I know nothing better we can do than trust to the good faith and good sense of our members to prevent their speaking longer upon their propositions than should be devoted to the subjects which they may introduce.

The gentleman from Columbia says that the amendment he has offered would create no invidious distinctions. With all respect, I think he is mistaken. If this House, on a division, without debate,

should determine to extend a gentleman's time, that is certainly a distinction in his favor, at least to the extent to which such a vote would endorse his judgment as to the greater importance of his proposition than those of other members; when, on the contrary, if this House should decline to extend the time of any gentleman, it would be a discrimination against that member, who might think his proposition just as important as any introduced by others.

Mr. TURRELL. The effect of the adoption of the amendment of the gentleman from Columbia, it seems to me, would not aid us much. His construction of it is, that a member's time should extend to ten minutes after taking the question by a division. A large portion of the extra five minutes would be consumed in taking the division, and therefore it seems to me better to leave it as it now stands. Ten minutes is not a very long time; and there are subjects, as has been appositely stated by the gentleman from Dauphin, which must occupy our time and our earnest, careful attention. There are the articles on railroads and corporations. We all know that since our adjournment in July, the subject of railroads especially has been growing and looming up before the country as one of the greatest subjects, if not the greatest, that now present themselves to the public mind. The question of how they are to be controlled and limited, as to what limitation can be put upon them, and the whole subject has been growing steadily until, as I said before, it is one of the greatest that presents itself to the country for consideration.

I voted for most of the railroad article, but it is manifest that it needs revision, and in view of the circumstances which surround the subject, debate upon it should not have too much limit upon it. I think we should leave the ten minutes' rule where it now is.

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

The PRESIDENT. The delegate will state his point.

Mr. HUNSICKER. This is a motion to alter the rules, and I desire to read from page thirty-six of the printed rules, Rule 21, which bears upon this subject:

"Every resolution to alter the rules of this Convention shall lie on the table one day."

The PRESIDENT. The Chair cannot sustain the point of order.

Mr. BROOMALL. Is it not too late to raise that question after the consideration this subject has received? After the body considers a subject, is it not too late to raise the question of order that it ought not to be considered?

The PRESIDENT. The Chair cannot sustain the point of order of the delegate from Montgomery.

Mr. HUNSICKER. Then I hope this resolution to limit debate will not pass in this shape. It is a most inopportune time to apply a limitation. Just as we are about to put the finishing touches to our work, at the very time when every member should give his undivided attention to the business before this Convention, and when every member should have the privilege of explaining himself and his propositions in the fullest manner, is not the time, I submit, when a limitation upon the right of debate should be put upon him.

Take the Judiciary article. When that article first came from the Committee on the Judiciary, and was reported to the committee of the whole, it was torn all to pieces. The author of it did not know it after it was passed through the committee of the whole. It then went to second reading, and there it was again mangled and massacred until it was disfigured out of all shape. Now it comes up on third reading, and there are a variety of amendments that I know the members of the bar in this Convention have prepared for submission, and it will be utterly impossible for them to explain in five minutes to an eager, impatient Convention, that will not listen to debate upon scarcely any subject. But if you have ten minutes time, almost any member who has carefully matured his amendment can in that time properly illustrate his idea.

It will not do for gentlemen to say that these are trivial motions and that they receive no vote except the vote of the person who offers them. We are all peers in this Convention. There ought to be no favorites here. This Convention should not allow one member to have any greater privilege upon this floor than any other, and yet we do know that members upon the floor of this Convention have occupied an hour's time or an hour and a quarter. For my own part I have never more than occupied my time. I have never asked for an extension of time, but I do submit that it is unjust, it is unfair, it is dangerous to the symmetry of your instrument, to cut

off debate now just at the very time when you are going to send your Constitution out to the people for their adoption or rejection.

Mr. BIGLER. Another question will arise very soon before the Chair, and the decision of that question will control my vote on the motion now pending. That is, whether the report of the committee of the whole is to be debated. A motion is made to go into committee of the whole for the purpose of specific amendment, and in the committee of the whole there is really nothing done. The chairman simply takes his place, and then retires, and makes his report. It is agreed all around that a motion to go into committee of the whole is debatable; but is the report debatable? If we decide it to be debatable, then I should hold that five minutes were quite enough on the question of going into committee, which covers the whole ground; but if there is to be no debate and only a vote taken on the report of the committee, then I would not change the rule. Ten minutes will be quite short enough for many subjects which are coming up; but the question which I have stated is one which will shortly come before the Chair for decision. If my experience is worth anything at all, I should say that if the report is not debatable, and there is to be no debate upon it, all debate on these questions must occur on going into committee of the whole.

My vote upon this pending proposition will depend on the decision of the Chair on that. If we have no right to debate the report of the committee of the whole, then I say that ten minutes is short enough time to debate the motion to go in for specific amendment.

Mr. LAWRENCE. I feel some anxiety on this subject; and I suppose that every member of the Convention who wants to get home this fall some time before winter, shares the same feeling. Is it possible now at this late stage of our sessions, after we have been here seven months, that we propose to launch out on the sea of debate on all these general questions again, when they have each and all been discussed from day to day, and permit a man to take part in that debate, go on, and speak as long as he pleases, because if the motion of my friend from Columbia prevails that will be the effect? If a man starts to speak five or ten minutes the Convention will not want to call the rule on him, and if one mem-

ber takes the privilege another may do it.

The gentleman from Clearfield understands the rules well enough to know that if a motion is made to go into committee of the whole for specific amendment it brings up the merits of the whole question. Not the simple question upon going into committee of the whole, but the whole subject itself is to be discussed. I say that any man who wants to make a motion on a special part of any article can state what he desires in five minutes if he chooses, and my friend from Delaware says he ought to do so. I think we ought to have learned by this time that gentlemen sometimes get up and speak ten or twenty minutes when nobody listens, seeming to take it for granted that nobody understands the question but themselves, that nobody has thought on the question and that it is necessary that they shall speak and elucidate it and present it in a logical and cogent light, so that every man can understand it as well as they do. Now, I want gentleman to understand that members here think for themselves on these questions and are prepared often to vote long before those who speak are ready to vote.

Do you not know, Mr. President, that in regard to some of the propositions which have been discussed most lengthily here, it has been apparent to everybody from the first that they could not carry? How long did we discuss the question of female suffrage, my friend from Delaware (Mr. Broomall) and my friend from Chester (Mr. Darlington) and others speaking for weeks. I was in the chair for three weeks on that question, and yet there was not a man in the Convention and not a man in the State who had any brains that did not know the measure would not pass; and yet it was discussed. Why? I am told to give the public information; but we have not time to do that now. We want to get through.

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

Mr. LAWRENCE. I did not refer to the gentleman from Potter, and I hope he will keep quiet. [Laughter.]

Mr. DARLINGTON. I want to explain. The gentleman has referred to the delegate from Chester. The gentleman from Chester did not speak more than one week on the woman suffrage question. [Laughter.]

Mr. LAWRENCE. Does the gentleman from Potter ask a question.

Mr. MANN. I want to ask how much of that three weeks' time was occupied by the advocates of woman's suffrage?

Mr. LAWRENCE. It was necessary for its opponents to show that you were in the wrong, and we had sometimes to reply to you; but you occupied most of the time. [Laughter.]

Now, to come down to this question, I say that any man who is able to present his thoughts in a condensed form will say all that ought to be said in five minutes.

The PRESIDENT. The point of the argument of the gentleman from Clearfield is this: It is to speak five minutes before you go into committee of the whole. The committee of course, you must agree to what is ordered by the House. You cannot speak five minutes after you come out again.

Mr. LAWRENCE. That is the point of his argument, but it is not the question before the Convention. The Chair agrees with me I think on that. Would not the Chair decide that the merits of the question were to be discussed on a special motion to go into committee of the whole?

The PRESIDENT. Of course.

Mr. LAWRENCE. Then I understand the Chair agrees with me. Here are gentlemen this morning that have voted against having a session to-morrow, when some of us are three hundred miles from home, anxious to sit to-morrow, and when this report is printed and ready to be taken up; for here is my friend from Montgomery, Mr. Hunsicker,) and others who vote against having a session to-morrow, and then they turn around and want to open debate and keep us here.

Now, I think it is about time we should understand this thing. Some of these articles do need amendment; we all admit that. I think the article on railroads might. The chairman of that committee (Mr. Cochran) is anxious to limit debate; but I think that article needs modification. I think the article on taxation will need some modification; and some of the other articles; but is it possible that we are to open all the subjects and have all the questions debated again as they have been heretofore? I hope not. We must take it for granted that some members understand these questions quite as well as those who talk most about them. That is all I have to say.

My friend from Lancaster (Mr. D. W. Patterson) asks me to state what rule is in Congress. My friend from Delaware

(Mr. Broomall) referred to that, and my friend on my left, from Philadelphia, (Mr. Woodward,) knows that some of the most pointed debates we have had there were under the five minute rule, and we got along with business on great national questions, speaking only five minutes. Sometimes the time was extended, but very seldom indeed, for the rule was enforced very strictly.

Mr. BROOMALL. Never was the time extended.

Mr. LAWRENCE. Not towards the last of the session. We got through admirably. We shall get through just as well here with five minutes as we do with ten minutes, and if the amendment of the gentleman of Columbia carries, we might as well open up the whole question and give half an hour. Who would call a question of order on the gentleman from Columbia? Suppose he was speaking, you would not confine him to the rule. You would not confine my friend from Philadelphia (Mr. Woodward) to the rule, or any of these gentlemen; you would permit them to go on and speak as long as they pleased. You must make some limit. Let us put it at five minutes, and stand to that.

Mr. CAMPBELL. The amendment of the gentleman from Columbia is so manifestly unfair and discriminates so unjustly that we ought to vote it down at once. I think we ought to pass the resolution limiting debate to five minutes. Gentlemen say that they will want an opportunity upon third reading to offer amendments and to advocate them. They have had ample opportunity in committee of the whole and upon second reading, and I think it is but due to the people of the Commonwealth, who are now justly complaining of the delay of our work, that we should hurry it up as fast as we can and get it before them. I venture to say that there is not a single idea that will be put forth or a single proposition that will be offered on third reading that has not been already advanced or offered either in committee of the whole or on second reading; and therefore the members are prepared, no doubt, to vote upon anything that is offered, and there is no necessity of having long debates upon the same subjects over and over again. Some gentlemen occupy this floor too much. By turning over the Debates this morning, I find that one gentleman here the other day obtained the floor twenty-six times. We ought to put a stop to this

kind of thing. If we had a five minutes' rule we could do it and at the same time get the substance of all the arguments that are worth listening to.

SEVERAL DELEGATES. Name him. Who is he.

Mr. CAMPBELL. It is a matter of record. Gentlemen can examine for themselves.

Mr. BOWMAN. Mr. President: I have one word to say on this question. I hope we intend to carry out and give effect to the resolution found on the first page of our pamphlet edition of the Constitution, viz :

"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, and in case of adoption by the people, on or before the first day of January next."

If we intend to give force and effect to that resolution and carry it out, it must be apparent to everybody that the time of debate must be limited. Now, here we are approaching the first of October. Under the act of Assembly of 1872, calling this Convention, we are bound to give thirty days' notice to the people before they vote upon the question. That certainly cannot be done if members get up here and talk ten, fifteen and twenty minutes upon the various questions that will be under discussion. The people are impatient to vote upon our work. They desire, I think, that it shall be submitted to them for their ratification or rejection, so that if it is adopted it may take effect at the beginning of the session at the next Legislature.

For these reasons I think we must, as a matter of necessity, conform ourselves to the most limited period of time in discussing the questions that will be brought before the Convention in the further consideration of the articles that will be considered.

The PRESIDENT. The question recurs on the amendment of the delegate from Columbia (Mr. Buckalew.)

The amendment was rejected.

The PRESIDENT. The question recurs on the original resolution.

Mr. CAMPBELL, Mr. CARTER and Mr. STEWART called for the yeas and nays.

Mr. HARRY WHITE. I rise for information. What is the exact question before the House? [Laughter.]

The PRESIDENT. The Clerk will read the resolution.

The CLERK read as follows:

Resolved, That on a motion to go into committee of the whole on third reading for the purpose of amending articles, the time of speakers shall be limited to five minutes.

Mr. HARRY WHITE. I thought I understood the question before it was discussed. [Laughter.]

The PRESIDENT. 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:

YEAS.

Messrs. Baker, Barclay, Beebe, Black, Charles A., Bowman, Broomall, Campbell, Carter, Cochran, Collins, Corbett, Edwards, Funk, Horton Landis, Lawrence, Lilly, MacConnell, Mantor, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, Wm. H., Stanton, Wetherill, John Price, White, David N., Wright and Walker, *President*—35.

NAYS.

Messrs. Alricks, Bartholomew, Bigler, Buckalew, Calvin, Carey, Curtin, Dallas, Darlington, De France, Elliott, Ellis, Ewing, Fulton, Guthrie, Hemphill, Hunsicker, Kaine, MacVeagh, M'Michael, Mann, Minor, Mott, Newlin, Niles, Palmer, H. W., Pughe, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Struthers, Temple, Turrell, Wetherill, J. M., White, Harry and Woodward—37.

So the resolution was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Brown, Bullitt, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Fell, Finney, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Lear, Littleton, Long, M'Camant, M'Clean, M'Culloch, M'Murray, Metzger, Mitchell, Parsons, Patton, Porter, Read, John R., Ross, Runk, Simpson, Van Reed, Wherry, White, J. W. F. and Worrell—61.

HOURS OF MEETING.

Mr. D. N. WHITE. I move that we take up the first article on third reading.

The PRESIDENT. Resolutions are yet in order.

Mr. S. A. PURVIANCE. I offer the following resolution:

Resolved, That from and after Monday next the Convention will meet at nine and a half o'clock A. M., and adjourn at one P. M.; meet again at three P. M., and adjourn at seven P. M.

On the question of ordering the resolution to a second reading, a division was called for and resulted, ayes thirty-eight, noes thirty.

So the resolution was ordered to a second reading, and it was read the second time and considered.

Mr. KAINE. I move to amend the resolution by striking out "seven" and inserting "six" as the hour of adjournment.

Mr. S. A. PURVIANCE. I hope that amendment will not prevail. This resolution, if carried, simply adds two hours to our daily sessions; it gives a recess of two hours in the middle of the day; and certainly it seems to me, if we desire to get through our labors this fall, we ought to add two hours to our daily session. The days are becoming shorter and the evenings longer. It does seem to me that we ought to try to hasten on with our work.

Mr. DARLINGTON. If it is in order, I will move to strike out "three" and insert "two." That will give us an hour longer.

The PRESIDENT. The amendment is not in order at present. There is an amendment pending offered by the delegate from Fayette (Mr. Kaine.)

The amendment was rejected.

Mr. BUCKALEW. I propose to amend the resolution so that there shall be no hour fixed for the adjournment of the afternoon session, but we shall adjourn according to the state of our business. I move to strike out the words "and adjourn at seven o'clock P. M." Then if we have an article or a section under consideration and pretty well advanced we can sit on until we finish it.

The amendment was agreed to, ayes fifty-one, noes seventeen.

Mr. MACVEAGH. I suggest to the mover of the resolution to modify it so as to adjourn at one and meet at half-past two, because now with the final hour of adjournment stricken out we shall not sit until seven o'clock or anything like it. That will give an hour and a half for dinner.

Mr. HARRY WHITE. I intend to vote against the resolution for the simple reason that I discovered last spring, as well as within the last few days, that we do more work in one daily session than in two. I find that we always make more progress when we have but a single session. Members sometimes discuss some pet measure during the whole morning session, and then come back in the afternoon recruited and re-invigorated and debate it over again. I confess my own feeling would be for two sessions, but I am satisfied that we do more in one.

Mr. TEMPLE. I believe about as much time has been taken up in the discussion of motions similar to this as have been devoted to the Constitution itself. I therefore move to postpone the further consideration of this whole subject for two weeks, and on that question I call for the yeas and nays.

Mr. NEWLIN. I second the call.

Mr. LILLY. The gentleman from Philadelphia who has just taken his seat (Mr. Temple) appears to be bent on spending all the time he can on this subject, and hence he made this motion.

The PRESIDENT *pro tem.* The question is on the motion of the delegate from Philadelphia, (Mr. Temple,) upon which the yeas and nays are called.

The question being taken by yeas and nays resulted as follows:

Y E A S.

Messrs. Baker, Bartholomew, Broomall, Calvin, Carey, Collins, Corbett, Curtin, Dallas, Darlington, Dunning, Ewing, Guthrie, Hemphill, Hunsicker, M'Michael, Mann, Mantor, Mott, Newlin, Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Turrell, Wetherill, J. M., White, Harry and Walker, *President*—31.

N A Y S.

Messrs. Achenbach, Alricks, Barclay, Beebe, Bigler, Black, Charles A., Bowman, Buckalew, Campbell, Carter, De France, Edwards, Elliott, Fulton, Funck, Hall, Horton, Landis, Lawrence, Lilly, MacConnell, MacVeagh, M'Camant, Minor, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Stanton, Struthers, Wetherill, John Price, White, David N. and Wright—40.

So the question was not agreed to.

ABSENT—Messrs. Addicks, Ainey, Andrews, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Brown, Bullitt, Cassidy, Church, Clark, Cochran, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Ellis, Fell, Finney, Gibson, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Kaine, Knight Lamberton, Lear, Littleton, Long, M'Cléan, M'Culloch, M'Murray, Metzger, Mitchell, Niles, Parsons, Patton, Porter, Read, John R., Ross, Runk, Simpson, Van Reed, Wherry, White, J. W. F., Woodward and Worrell—62.

Mr. NEWLIN. I move to strike out "one" and insert "two" as the hour of adjournment of the morning session. ["No." "No."] I call for the yeas and nays on that motion.

SEVERAL DELEGATES seconded the call.

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

Y E A S.

Messrs. Armstrong, Bartholomew, Black, Charles A., Broomall, Cuyler, Dallas, Hemphill, Mann, Newlin, Sharpe, Smith, Henry W., Temple, Wetherill, J. M., White, Harry and Woodward—15.

N A Y S.

Messrs. Achenbach, Alricks, Baker, Barclay, Beebe, Bigler, Bowman, Buckalew, Calvin, Campbell, Carey, Carter, Cochran, Collins, Corbett, Curtin, Darlington, De France, Dunning, Edwards, Elliott, Ewing, Fulton, Funck, Guthrie, Hall, Horton, Hunsicker, Kaine, Landis, Lawrence, Lilly, MacConnell, MacVeagh, M'Camant, M'Michael, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., 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, William H., Stanton, Stewart, Struthers, Turrell, Wetherill, Jno. Price, White, David N., Wright and Walker, *President*—63.

So the amendment was rejected.

ABSENT—Messrs. Addicks, Ainey, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Brown, Bullitt, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Ellis, Fell, Finney, Gibson, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Lear, Littleton,

Long, M'Clellan, M'Culloch, M'Murray, Metzger, Mitchell, Parsons, Porter, Read, John R., Ross, Runk, Simpson, Van Reed, Wherry, White, J. W. F. and Worrell—55.

Mr. T. H. B. PATTERSON. I call for the yeas any nays on the original resolution.

Mr. DALLAS. I desire to move a further amendment, by striking out "three o'clock" and inserting "two o'clock," as the hour of re-assembling in the afternoon.

The PRESIDENT. That amendment has been voted down already.

Mr. D. N. WHITE. I call for the previous question.

The PRESIDENT. It requires eighteen delegates to second the call for the previous question.

Messrs. Horton, Temple, Andrew Reed, M'Camant, Stanton, Edwards, Minor, Turrell, Lilly, G. W. Palmer, S. A. Purviance, Carter, MacConnell, T. H. B. Patterson, Mott, W. H. Smith, Wright, Funck, Hunsicker, Rooke and H. W. Palmer rose to second the call for the previous question.

The PRESIDENT. The call for the previous question is sustained, and the question is: "Will the Convention order the main question to be now put?" and the Chair intends to hold in such case that the main question is the only question pending because the call for the yeas and nays was made by the delegate from Allegheny before the call for the previous question was made. The Chair purposes holding that that will be the question before the Convention, "Shall the resolution pass?"

Mr. BARTHOLOMEW. If the main question should be lost, it would throw the resolution out of the House for to-day, I suppose.

The PRESIDENT. The Chair so understands. Shall the main question be now put? That is the question.

Mr. NEWLIN and Mr. TEMPLE called for the yeas and nays.

Mr. MACCONNELL. Let the resolution be read as it stands.

The PRESIDENT. The resolution will be read.

The Clerk read as follows:

Resolved, That from and after Monday next the Convention will meet at nine and a half o'clock A. M., adjourn at one P. M., and meet again at three P. M.

Mr. MANN. We adopted a motion this morning that we should meet at ten

o'clock on Monday. Is this intended to over-ride that?

Mr. ROWMAN. This is "from and after Monday."

The PRESIDENT. The Clerk will call the names of delegates on this question: "Shall the main question be now put?"

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

YEAS.

Messrs. Achenbach, Alricks, Barclay, Beebe, Bigler, Black, Charles A., Bowman, Carey, Carter, Cochran, Darlington, De France, Edwards, Elliott, Ewing, Fulton, Funck, Hall, Horton, Kaine, Lawrence, Lilly, MacConnell, MacVeagh, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Smith, H. G., Smith, Wm. H., Struthers, Turrell, Wetherill, John Price, White, David N., Woodward, Wright and Walker, *President*—47.

NAYS.

Messrs. Armstrong, Baker, Bartholomew, Broomall, Buckalow, Calvin, Campbell, Corbett, Curtin, Cuyler, Dallas, Dunning, Guthrie, Hemphill, Hunsicker, M'Camant, M'Michael, Mann, Newlin, Purman, Reynolds, Sharpe, Smith, Henry W., Stanton, Temple, Wetherill, J. M. and White, Harry—27.

So it was ordered that the main question be now put.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Brown, Bullitt, Cassidy, Church, Clark, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Ellis, Fell, Finney, Gibson, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Landis, Lear, Littleton, Long, M'Clellan, M'Culloch, M'Murray, Mantor, Metzger, Mitchell, Parsons, Porter, Read, John R., Ross, Runk, Simpson, Stewart, Van Reed Wherry, White, J. W. F. and Worrell—59.

The PRESIDENT. The question is now upon the resolution, which will be read.

The CLERK read the resolution, as follows:

Resolved, That from and after Monday next the Convention will meet at nine

and a half o'clock A. M., adjourn at one P. M., and meet again at three P. M.

MR. HENRY W. SMITH. Upon that question I call for the yeas and nays.

MR. BARTHOLOMEW. I second the call. The yeas and nays were taken, and were as follow, viz :

Y E A S .

Messrs. Achenbach, Alricks, Barclay, Beebe, Bigler, Black, Charles A., Bowman, Buckalew, Campbell, Carter, Cochran, DeFrance, Edwards, Fulton, Funck, Hall, Horton, Kaine, Lawrence, Lilly, MacConnell, Minor, Newlin, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Smith, Wm H., Turrell, Wetherill, Jno. Price, and White, David N.—39.

N A Y S .

Messrs. Armstrong, Baker, Bartholomew, Broomall, Calvin, Carey, Collins, Corbett, Cuyler, Dallas, Darlington, Dunning, Elliott, Ewing, Guthrie, Hemphill, Hunsicker, M'Camant, M'Michael, Mann, Mott, Niles, Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Struthers, Wetherill, J. M., White, Harry, Woodward and Walker, *President*—32.

So the resolution was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Brown, Bullitt, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Curry, Curtin, Davis, Dodd, Ellis, Fell, Finney, Gibson, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Landis, Lear, Littleton, Long, MacVeagh, M'Clellan, M'Culloch, M'Murray, Mantor, Metzger, Mitchell, Parsons, Porter, Read, John R., Ross, Runk, Simpson, Stewart, Temple, Van Reed, Wherry, White, J. W. F., Worrell and Wright—62.

MR. NEWLIN. I now move to reconsider the vote just taken.

THE PRESIDENT. How did the gentlemen vote?

MR. NEWLIN. I voted with the majority.

THE PRESIDENT. Who seconds the call.

MR. GUTHRIE. I second it.

MR. T. H. B. PATTERSON. My colleague from Allegheny did not vote with the majority.

MR. LAWRENCE. I move to lay the motion to reconsider on the table.

MR. H. W. SMITH. Upon that motion I call for the yeas and nays.

MR. LAWRENCE. I second the call. That nails it.

THE PRESIDENT. The yeas and nays have been ordered, and the Clerk will call the names of delegates.

MR. GUTHRIE. I desire to ask a question of the Chair. I am afraid that I made a mistake. What is the question before the Convention?

THE PRESIDENT. The question was put upon agreeing to the resolution of the gentleman from Allegheny, (Mr. S. A. Purviance,) and on a vote by yeas and nays that resolution was agreed to. The delegate from Philadelphia (Mr. Newlin) then moved the consideration of that vote, and the delegate from Allegheny (Mr. Guthrie) seconded the motion. A motion is now made to lay that motion on the table, and the motion to lay on the table is before the Convention.

MR. GUTHRIE. Then I fell unintentionally into error. I supposed that it was moved to reconsider the vote by which we agreed not to sit to-morrow. I voted in the affirmative on that resolution and was competent to second a motion to reconsider it. On the resolution of the gentleman from Allegheny I voted in the negative and could not second a reconsideration.

MR. NEWLIN. It is too late to raise that question now.

MR. T. H. B. PATTERSON. Certainly not. I raised the point of order at the time.

MR. NEWLIN. The yeas and nays have been ordered and we cannot now go back.

MR. T. H. B. PATTERSON. I stood up to raise the point of order at the time that my colleague rose to second the motion to reconsider, that he did not vote in the majority, but I could not secure the eye of the President.

MR. LAWRENCE. As the motion to reconsider was not seconded everything falls.

THE PRESIDENT. The motion to reconsider not being seconded, there is no motion before the House. Original resolutions are still in order.

ADJOURNMENT TO MONDAY.

MR. CALVIN. Since the Convention passed the resolution that when we adjourn to-day, it be to meet on Monday, we have received in print the report of

the Committee on Revision and Adjustment, on the article upon the Legislature. That printed report has been laid on our tables, and I therefore move to reconsider the vote by which the resolution was adopted.

Mr. BARTHOLOMEW. Did you vote in the affirmative?

Mr. CALVIN. I voted in the affirmative.

The PRESIDENT. Is the motion seconded?

Mr. NEWLIN. I second it.

The PRESIDENT. Did the gentleman vote with the majority?

Mr. NEWLIN. I did, and I second the motion to reconsider.

Mr. DUNNING. I move to lay that motion on the table.

Mr. BARTHOLOMEW. I second that motion.

Mr. CALVIN. On that motion I call for the yeas and nays.

Mr. NEWLIN. I second the call.

The PRESIDENT. The yeas and nays are called, and the Clerk will call the names of delegates.

Mr. LAWRENCE. I hope the Chair will state the condition of the question. I think possibly it is not generally understood. An affirmative vote, as I understand it, will carry this whole question with it, and not give us a session to-morrow. The printed legislative article is here now, I understand, and is ready for distribution.

The PRESIDENT. The Chair will state the question. It was moved and seconded to re-consider the vote by which this Convention resolved that when it adjourn to-day, it be to meet on Monday at ten o'clock A. M. A motion was then made to lay the motion on the table, and the question before the Convention is upon the latter motion.

Mr. LAWRENCE. I hope it will be voted down.

Mr. CALVIN. I desire to ask a question for information. I moved the reconsideration of the vote by which this Convention decided that when it adjourn it be until Monday. A motion is now made to lay my motion on the table. If the motion to lay on the table prevails, what will be its effect?

The PRESIDENT. It will remove the whole subject from the Convention.

The yeas and nays, which had been required by Mr. Calvin and Mr. Newlin, were taken, and were as follow, viz :

YEAS.

Messrs. Achenbach, Alricks, Baker, Barclay, Bartholomew, Beebe, Bigler, Bowman, Broomall, Buckalew, Cuyler, Dallas, Dunning, Elliott, Ewing, Fulton, Funck, Horton, Hunsicker, Kaine, Lilly, M'Michael, Minor, Niles, Patterson, D. W. Patton, Pughe, Purman, Rooke, Sharpe, Stanton, Turrell and Wetherill, J. M.—33.

NAYS.

Messrs. Armstrong, Black, Charles A., Calvin, Campbell, Carey, Carter, Cochran, Collins, Corbett, Darlington, De France, Edwards, Guthrie, Hall, Hemphill, Lawrence, MacConnell, Mann, Mott, Newlin, Palmer, G. W., Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Reynolds, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Struthers, Temple, Wetherill, Jno. Price, White, David N., White, Harry, Woodward and Walker, *President*—36.

So the motion to lay on the table was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd, Brodhead, Brown, Bullitt, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Curry, Curtin, Davis, Dodd, Ellis, Fell, Finney, Gibson, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Landis, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, M'Culloch, M'Murray, Mantor, Metzger, Mitchell, Palmer, H. W., Parsons, Porter, Reed, John R., Reed, Andrew, Ross, Runk, Simpson, Stewart, Van Reed, Wherry, White, J. W. F., Worrell and Wright—64.

The PRESIDENT. The question now is on the motion to reconsider.

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

Mr. BARTHOLOMEW. [Ateleven o'clock and forty-three minutes A. M.] Mr. President: I move that this Convention do now adjourn.

SEVERAL DELEGATES seconded the motion.

Mr. BARTHOLOMEW. On this question I call for the yeas and nays.

Mr. BUCKALEW. I hope the gentleman from Schuylkill will understand that I wish to make a report from the Committee on Revision and Adjustment, to be printed.

Mr. BARTHOLOMEW. I am willing to withdraw the motion for that purpose.

Mr. BUCKALEW. I cannot make the report now.

The PRESIDENT. The question is on the motion to reconsider.

Mr. BARTHOLOMEW. Is not the motion to adjourn in order?

The PRESIDENT. That was withdrawn.

Mr. BARTHOLOMEW. No, sir. I said I would withdraw it for a specific purpose; but the gentleman from Columbia said he could not make his report now, and therefore I did not withdraw it. My motion to adjourn is in order.

Mr. LAWRENCE and Others. Vote it down.

Mr. BARTHOLOMEW. Very well, if you want to waste time on this question, I shall have my hands clear of it.

The PRESIDENT. The motion to adjourn is in order. Who seconds that motion?

Mr. DUNNING. I will.

The PRESIDENT. Will the Convention now adjourn?

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

Mr. NEWLIN and Mr. Dunning seconded the call.

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

YEAS.

Messrs. Baker, Bartholomew, Broomall, Carey, Cuyler, Dunning, Hemphill, Horton, Kaine, Lilly, M'Camant, M'Michael, Mann, Newlin, Patton, Purviance, John N., Rooke, Russell, Stanton and Turrell—20.

NAYS.

Messrs. Achenbach, Barclay, Beebe, Bigler, Black, Charles A., Bowman, Buckalew, Calvin, Campbell, Carter, Cochran, Collins, Corbett, Dallas, Darlington, De France, Edwards, Elliott, Ewing, Fulton, Guthrie, Hall, Hunsicker, Lawrence, MacConnell, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Pughe, Purman, Purviance, Samuel A., Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Smith, William H., Struthers, Wetherill, J. M., Wetherill, John Price, White, David N., White, Harry and Walker, *President*—46.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Black, J. S., Boyd,

Brodhead, Brown, Bullitt, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Curry, Curtin, Davis, Dodd, Ellis, Fell, Finney, Funck, Gibson, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Landis, Lear, Littleton, Long, MacVeagh, M'Clean, M'Culloch, M'Murray, Mantor, Metzger, Mitchell, Parsons, Porter, Read, John R., Reed, Andrew, Ross, Runk, Simpson, Stewart, Temple, Van Reed, Wherry, White, J. W. F., Woodward, Worrell and Wright—67.

The PRESIDENT. There is not a quorum of delegates voting.

SEVERAL DELEGATES. Call the roll.

The PRESIDENT. There are sixty-six delegates voting. One or two present did not vote.

Mr. ARMSTRONG. I did not vote. I vote "no" now, if I am allowed to do so.

Mr. MACVEAGH. I did not vote. I am ready to vote.

Mr. LILLY. Several have gone out since. I move a call of the House.

The PRESIDENT. If the Convention will agree to receive the votes of gentlemen who are in there will be a quorum. ["Aye." "Aye." "No." "No."] The Chair cannot receive the votes if there is objection.

Mr. COCHRAN. The Convention has by a vote refused to adjourn ["Yes, it has."] Then we have nothing else to do but to go on with the business.

The PRESIDENT. Those who are present have refused to adjourn, but the Convention has not. A quorum consists of sixty-seven members.

Mr. LILLY. The only way to ascertain whether a majority is here is to have a call of the House.

The PRESIDENT. A call of the roll is asked. The Clerk will call the names of delegates.

Mr. T. H. B. PATTERSON. I would ask, as a question of order, if it is necessary, when it has appeared by the previous votes, and by call of the House, that there is a quorum present, that a quorum should all vote, it being well known to the Chair and to the House that there is more than a quorum present. I submit that a majority of a quorum can carry a motion, and that it is not necessary for all the members of the House to vote when it is well known that there is a quorum present.

Mr. LILLY. But it is known only by the votes whether they are present.

When they refuse to vote they are not present.

Mr. T. H. B. PATTERSON. It appears to the satisfaction of the Chair that there are two or three members who did not vote and that a quorum of the House is present. I submit a call of the House is not necessary.

The PRESIDENT. It is not a call of the House but merely a call of the roll. The Clerk will call the roll of delegates.

The CLERK called the roll and sixty-one delegates answered to their names.

The PRESIDENT. There are only sixty-one delegates answering to their names.

Mr. DARLINGTON. I move that the Sergeant-at-Arms be sent for the absent members.

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

The PRESIDENT. There are some gentlemen here who did not answer to their names.

Mr. DARLINGTON. Plenty of them are here.

The PRESIDENT. The Chair in his own mind is satisfied that there was a quorum present when the vote was taken on the motion to adjourn, and he will reverse his former decision and hold that the motion to adjourn has not been carried. If gentlemen will filibuster they will not do it with the approbation of the President. ["That is right."] The question now is on reconsidering the vote by which the Constitution agreed that when it adjourns to-day, it will adjourn to Monday next.

Mr. BUCKALEW. I move to postpone the business before the Convention for the purpose of enabling me to make a report.

The PRESIDENT. The question is on the motion of the delegate from Columbia.

The motion was agreed to.

EXECUTIVE DEPARTMENT.

Mr. BUCKALEW. From the Committee on Revision and Adjustment I report the article on the Executive Department as amended, and I move the usual order, that it be laid on the table and printed.

The motion was agreed to.

ADJOURNMENT TO MONDAY.

Mr. BUCKALEW. Now, Mr. President, the Convention has control of its own business. If it desires to go back to this question of adjournment I shall not make any objection. I should like to move that we resume the consideration of the Declaration of Rights and finish it.

The PRESIDENT. Let us finish the morning business if we can. The Clerk will read the motion we are now upon.

The CLERK. The pending question is a motion made by Mr. Calvin and Mr. Newlin to reconsider the vote dispensing with a session to-morrow.

Mr. MACVEAGH. That was postponed for the present.

Mr. HARRY WHITE. We can take it up again.

Mr. MACVEAGH. We can take it up after we get through this article of the Bill of Rights, but let us get through with the article first. ["No!" "No!"]

The PRESIDENT. The delegate can move to postpone the pending question for the purpose of taking up the article; but if that motion is not made we must proceed with it. The question is on the motion to reconsider.

Mr. CORBETT and Mr. HENRY W. SMITH called for the yeas and nays, and they were ordered, and being taken, resulted as follows:

YEAS.

Messrs. Achenbach, Armstrong, Beebe, Bowman, Calvin, Campbell, Carey, Cochran, Collins, Corbett, Darlington, De France, Edwards, Elliott, Fulton, Guthrie, Hall, Hemphill, Lawrence, MacConnell, M'Michael, Mann, Mott, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Reynolds, Russell, Smith, H. G., Smith, Wm. N., Struthers, Wetherill, John Price, White, David N. and White, Harry—37.

NAYS.

Messrs. Alricks, Baker, Bartholomew, Bigler, Black, Charles A., Black, J. S., Broomall, Buckalew, Curtin, Dunning, Ellis, Ewing, Funck, Horton, Hunsicker, Kaine, Lilly, MacVeagh, M'Camant, Minor, Newlin, Palmer, H. W., Patton, Purman, Rooke, Sharpe, Smith, Henry W., Stanton, Turrell, Wetherill, J. M. and Walker, President—31.

So the motion to reconsider was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Biddle, Boyd, Brodhead, Brown, Bullitt, Carter, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Curry, Cuyler, Dallas, Davis, Dodd, Fell, Finney, Gibson, Gilpin, Green, Hanna, Harvey, Hay

Hazzard, Heverin, Howard, Knight, Lamberton, Landis, Lear, Littleton, Long, M'CLean, M'Culloch, M'Murray, Mantor, Metzger, Mitchell, Parsons, Porter, Pughe, Read, John R., Reed, Andrew, Ross, Runk, Simpson, Stewart, Temple, Van Reed, Wherry, White, J. W. F., Woodward, Worrell and Wright—65.

The PRESIDENT. The question now recurs on the adoption of the resolution, which will be read.

The CLERK read as follows:

Resolved, That when this Convention adjourn, it will be until ten o'clock, A. M., on Monday next.

Mr. BUCKALEW. Since the Convention first met at Harrisburg there has been nothing done at a Saturday session with a single exception. A good deal of progress was made at one Saturday session by butchering two or three articles. There was no affirmative vote, or hardly an affirmative vote of a majority of a quorum in favor of anything, and the articles were reported in a mutilated condition. That is pretty much the whole that has ever been done at a Saturday session. Now, sir, we are at a stage of our business when that kind of voting in this Convention will not answer. I submit, therefore, that it is idle for gentlemen to attempt to force a session to-morrow. Either there will be no quorum here, or a bare quorum, and the work done will not be such as will reflect credit upon the Convention. I therefore move that this subject be postponed until the Convention has concluded the Declaration of Rights.

Mr. HUNSICKER. I second the motion.

The PRESIDENT. The question is on the motion of the delegate from Columbia.

The motion was agreed to.

BILL OF RIGHTS.

Mr. BUCKALEW. I now move that the Convention resume on third reading the consideration of the Declaration of Rights.

Mr. MACVEAGH. I second the motion.

The motion was agreed to.

Mr. HARRY WHITE. I move that the Convention resolve itself into committee of the whole on this article, for the purpose of inserting as an additional section the following:

"No law shall be made or enforced within this Commonwealth that makes discrimination in favor of any class of persons, male or female; and all public institutions, educational or otherwise, all public places of amusement and for the

accommodation of travelers, shall be open to and enjoyed by all persons on equal terms."

In connection with this subject, as my remarks, I desire to have read a letter which I have received.

The CLERK read as follows:

To the President and Members of the Constitutional Convention.

GENTLEMEN:—More than thirty years have rolled away since Pennsylvania changed her Constitution, remodeled her laws, and the improved condition of her people, their advanced sentiment, demand another change in conformity to the liberality which education and progress have developed.

In 1838 the "Reform Convention" contracted the liberties of the citizens, abridged their rights, and by inserting the word "white" disfranchised nearly forty thousand citizens. In 1873 the tide of patriotism and progression has swept away those barriers erected by short-sighted prejudice, deep-rooted hatred, and we now boast of being citizens of a State where freedom is triumphant.

It is not my intention gentlemen, to review the errors of the past, or hold up to the gaze of the present sentiment, vitalized as it is, in the interest of freedom, the failure of attempting to compromise the right, or consent to the great wrong of taking, by force, rights from the weak, which could neither add to or benefit the strong.

I wish to deal with the present; my appeal is to you, and I ask you to construct the law firmly in the interest of freedom on the broad basis of practical equality.

No class can feel an indignity like those trampled beneath the iron heel, or deprived of their rights by the strong and cruel hand of prejudice. You cannot feel it, gentlemen; to you it is unknown.

Those who do feel it, those who are stricken down by it, are the ones to cry aloud, to make their appeal known and heard, and constantly to assert and demand their claims to the untrammelled enjoyment of all that belongs to the citizen. I address you as one of these sufferers. I come before you as one of your constituents, whose vote has authorized the remodeling of the law, and I ask you to frame the Constitution of our State so that the strong may no longer persecute the weak, or deprive them of the civilities common to civilized communities.

In the name of sixty-five thousand citizens of Pennsylvania I ask this Convention for protection.

In the name of these citizens, who pay their taxes to support the law-makers, and who bear the burdens of the State government; who contribute to its wealth by their industry and add to its greatness by their devotion to its highest and best interests, I ask this Convention to incorporate in the "Bill of Rights" a clause which will prevent the insults, annoyance and outrage to which they are now exposed.

I ask no special legislation for a class; I only ask that all the people be equally protected from the tyranny of prejudice. It is submitted that, to the discredit of Pennsylvania, sixty-five thousand of her citizens who are law-abiding, are, to a great extent, debarred the exercise of their civil and "*public rights*." Hotels refuse them entertainment, colleges and schools close their doors in the face of their children; institutions, called benevolent, for the benefit of the deaf, the dumb, the blind, are entrenched behind stout walls that defy admission to the needy among them.

This is the attitude Pennsylvania assumes to her sixty-five thousand citizens once entirely disfranchised. This question of civil rights. I have but slightly and imperfectly considered, yet it is the great question of the day, and if the State does not perform its duty, the National Government most surely will. Justice had better come through *volition* than by *coercion*.

I have quietly waited, hoping that the wisdom of your Convention would find a remedy for these wrongs, but to this hour I find nothing in its proceedings which will compel the acknowledgment of complete civil rights. So much has this wrought upon me, that in the interests of this great essentiality inseparable from true citizenship, I venture this letter, in respectful solicitation, and at the same time enclose for your consideration this proposition as an amendment to the Bill of Rights of the Commonwealth.

"AMENDMENT.

"No law shall be made or enforced within this Commonwealth that makes discrimination in favor of any class of persons, male or female; and all public institutions, educational or otherwise, all public places of amusement, and for the accommodation of travelers, shall be open

to and enjoyed by all persons on equal terms."

In conclusion, gentlemen, permit me to say, thirty years may again roll away ere such an opportunity to perform exact justice may present itself. This, then, is the golden hour! As statesmen, patriots and impartial law-makers, perform your whole duty; perform it so effectively that all lovers of right and justice, in the present and in the future, will thank and bless you.

Respectfully yours,

WILLIAM D. FORTEN.

336 Lombard street, Sept. 25, 1873.

Mr. HARRY WHITE. I have nothing to add to what has been so well said in the memorial of the very respectable gentleman who handed me that amendment. I concur in all that he has said; I concur in the principles of the amendment itself; and if any changes are to be made in our Declaration of Rights, I submit that this is one which the practical necessities of the times demonstrate should be made. I have nothing more to add, but shall call for the yeas and nays upon its passage.

The PRESIDENT. There is a question in the mind of the Chair, and that is this: The article has gone through a second reading, had a second reading, and been referred to the Committee on Revision and Adjustment, and that committee has made its report, and we have acted upon it. Now, it is proposed that we shall treat the article as though it were on second reading. The Chair is of opinion that—

Mr. HARRY WHITE. One moment. Allow me to explain.

Mr. NEWLIN and OTHERS. Order! Let us have the opinion of the Chair first.

Mr. HARRY WHITE. I merely ask the privilege of making a statement..

The PRESIDENT. I will hear the opinion of delegates. I merely express the opinion that, in my judgment, under our rules, the amendment is not in order; but I may be wrong in that, and will hear and be controlled by the gentlemen of the Convention.

Mr. HARRY WHITE. I merely ask the privilege of explaining. Of course I offer this amendment in entire good faith. The manner of offering it is as follows: I move to go into committee of the whole on this article, which is now on third reading, for special amendment, and indicate my amendment. I submit that that is the only way in which we can properly

amend the article under consideration. I submit that it would be perfectly proper for me to move to go into committee of the whole for the purpose of striking out any clause, and I submit with equal propriety and equal logic, backed by the parliamentary experience of every gentleman of observation, it is equally proper to move to go into committee of the whole to add a clause to the article. I propose to do this, nothing more, nothing less.

I merely add this remark, if it is not received at this time I shall take pleasure in offering it again at any time that I can secure its consideration by this Convention.

Mr. CURTIN. I do not profess to know anything about parliamentary rules or laws; but from what I have learned in the proceedings of this Convention, I think the remedy of the gentleman is to appeal from the decision of the Chair.

Mr. BROOMALL. The Chair has not decided.

The PRESIDENT. The inclination of my mind is not to receive the amendment proposed. I doubt the propriety of it at this time and place.

Mr. BROOMALL. Has the decision been already made? If not, I desire to say a word.

The PRESIDENT. The Chair will hear the gentleman from Delaware.

Mr. BROOMALL. It may be so that it is impossible upon third reading to amend by the introduction of a section; but if it is so, it is equally impossible upon third reading to amend by the introduction of a clause or a word. There is no reason that can apply to the one case, that will not to the other. I have always understood, and if I am mistaken I desire to know it now, that there is no part of this instrument that is beyond our reach until the very time of our final adjournment; that until then we can move to go into committee of the whole to strike out every part of it or any part of it until we have finally given it to the people. If I am not right, then we are in a very unfortunate position.

There are several articles that require the introduction of sections before they can be perfected. The article on taxation requires in the judgment of many members of the Committee on Revenue, Taxation and Finance, and in the judgment of a good many members of the House, the introduction of a section. If it cannot be done, we ought to know it and we ought

in some way to get back to a period of the sessions when it can be done. I do not know why it is not in order at any time to move on third reading—for that is the object of a third reading—to go into committee of the whole for the purpose of making a new article altogether. The prudence of doing such a thing is quite another question; but I hold that it is in order to do it. I myself can have no doubt upon that subject; and if I am wrong, then, as I said, we are in a very unfortunate position with respect to several of our articles.

Mr. T. H. B. PATTERSON. I wish to ask a question of the Chair. It certainly is in order to go into committee of the whole for the purpose of amending propositions or sections that have been considered in this body. I ask the Chair whether it would be in order to move, on third reading, to go into committee of the whole for the purpose of suggesting an entirely new article that has never been suggested or considered in this Convention? After ten months of consideration, and debate, and suggestion here, can we go back now into committee of the whole to consider new matter that has never been moved or suggested in this Convention?

Mr. COLLINS. Why not?

Mr. W. H. SMITH. Is it possible that we can go into committee of the whole for the purpose of considering matter that has not even been introduced by any member of the Convention, not prepared by any member of the Convention, or considered by any committee, or reported from any committee, but prepared entirely outside and sent here by an outside party to a member who rises in his place and says, "here is a new article, and I offer it as such, and move to put it in the Constitution?"

Mr. D. N. WHITE. It is a matter of grave importance that we do not make a mistake at this time. If it is decided that we cannot introduce new sections into any article then we are stopped at once. I hope the Chair will look at this subject very carefully. Even in the article on the Legislature as reported by the Committee on Revision there are sections stricken out and others put in, and that article is before us for our consideration. There undoubtedly will be in some places sections which we shall all feel ought to go in, and if we cannot introduce these hereafter we shall have effectually stopped all efforts to improve or amend what we have already done.

Mr. LILLY. I think, with the gentleman who has just spoken, that if it is competent for the Convention to resolve itself into committee of the whole to put anything into an article, it is competent to put in an entire new article if it is so disposed or believes it necessary; consequently I have no doubt that the motion of the delegate from Indiana is entirely in order.

Mr. ARMSTRONG. I take it to be a well settled parliamentary rule that a bill is always in the control of the House in some mode until it is finally disposed of. If this were strictly a bill on third reading, it would require that the House should resolve itself into committee of the whole before we could vote upon the proposed amendment; but I think the real question that is before the House goes further than that. When these several articles were passed through second reading, they were referred to a committee—one of the standing committees appointed by this House—and that committee has made a report, which report is under consideration.

Mr. HARRY WHITE. Oh, no!

Mr. PURMAN. It is on third reading.

Mr. ARMSTRONG. I was not aware of that; and if then it stands before the Convention at the present time as on third reading, I take it that the proper method is to move to go into committee of the whole for the purpose of amendment. It may be a specific amendment; and if so, when that amendment is voted upon the committee of the whole should rise and report upon it. But I take it that it is competent for the Convention to resolve itself into committee of the whole for the purpose of general amendments, and then if such be the sense of the House it will be open for all such amendments.

The PRESIDENT. The Chair will state that he will receive the motion of the gentleman from Indiana.

Mr. BUCKALEW. I suppose the gentleman from Indiana proposed this amendment to the Declaration of Rights on account of his absence from the Convention. It would be more pertinent when the article on legislation shall be under consideration. This amendment provides what laws shall or shall not be passed, and it would be perfectly pertinent to the article on legislation; but I do not think it is a proper subject for consideration in the Bill of Rights. Of course, the Convention will observe that this a section of some length, and somewhat intricate, and be-

fore we adopt any proposition of the sort we would of course require that it should be carefully considered by some committee and printed, in order that the Convention should know what we are voting upon. I understand the view of the Chair to be that it would be hardly proper at this stage in our progress upon this article for an individual member to ask an immediate vote to adopt some proposition sent here by some outside person with a request that it shall be presented.

The PRESIDENT. The Chair would have no doubt upon the subject if this was an amendment pertinent to any article or any section of an article. But this is an entirely distinct matter, and to be introduced in this manner certainly struck the Chair at first as being out of order. However, the Chair has agreed that it shall go before the Convention, and that the Convention may dispose of it as it thinks proper.

Mr. BUCKALEW. Then I suggest that gentlemen will be justified, from the peculiar character of this amendment, in voting against putting it in the Declaration of Rights, simply on the ground that it has never been considered in a proper manner, and that it is now impossible to so consider it. Therefore it ought not to be adopted in this summary manner.

Mr. STANTON. Do I understand the Chair to decide that we can go into committee of the whole for the purpose of considering this as a new section, and then if it is adopted that it is to be referred to the Committee on Revision and Adjustment?

The PRESIDENT. It is only to be considered as an amendment.

Mr. BROOMALL. We do not need to send it to the Committee on Revision and Adjustment; we can do what we please with it.

The PRESIDENT. The question is upon going into committee of the whole for the purpose of making the amendment suggested.

Mr. HARRY WHITE. On that question I call for the yeas and nays.

Mr. BROOMALL. I second the call.

Mr. LAWRENCE. I hope the gentleman from Indiana will not persist in calling for the yeas and nays on this section.

Mr. STANTON. It has already been done.

Mr. REYNOLDS. The yeas and nays are ordered.

Mr. LAWRENCE. I agree with the Chair on this question; but I should like to vote for the proposition. If I vote against the motion to go into committee of the whole, I should be put down at once as being opposed to the sentiment contained in the proposed amendment. I believe that the Chair was right in deciding that we cannot amend in this way. We could amend any article that was before us, but we cannot put in a new article without having it referred to a committee of the Convention. Therefore, favorable as I am to the amendment itself, if the delegate from Indiana persists in calling for the yeas and nays, I must vote against going into committee of the whole to consider it. If it can be got in legitimately, I shall favor it, but I am compelled to vote against its present consideration.

Mr. BROOMALL. I desire only to say a few words upon this subject. If there is any business that this Convention has, it is to prevent discriminations in the State, by law or otherwise, against the weak, the poor and the few. There is no other object of a Constitution except to protect these against the strong, the rich and the many. If any gentleman present can give me a sound reason why any law should be passed that discriminates against anybody on account of sex, or color or race, or can give me any reason why a public institution—a public institution, not a private one—shall not be open to every citizen of the Commonwealth, I will vote with him against the measure. Until then, I shall vote in favor of it, because I believe that the less fortunate of the human family should be protected by constitutional provisions against the aggressions of the more fortunate. I have no patience with legal distinctions. I say nothing about social distinctions; but I have no patience with legal distinctions between man and man. A human being who ought by law to be put below me ought never to be left out of jail, and the human being who ought by law to be placed above me ought to be translated to Heaven without tasting death.

Mr. MACCONNELL. I want to ask the gentleman a question before he sits down. I was going to ask it of the Chair, but I will address my inquiry to the gentleman from Delaware. My question is whether, if that clause be adopted, it will not allow females to vote, as the gentleman from Delaware has advocated all along.

The PRESIDENT. The Chair will state that he intends to vote against this proposition, simply because in his judgment it is not properly introduced. Such a proposition should be presented and referred to a committee, and deliberately considered, and reported on. Now, it is proposed to be introduced at a time and in a place where its merits cannot be properly examined, and therefore the Chair votes against it.

Mr. MACCONNELL. I wish to say that I will vote for it on the ground I have stated, and no other. [Laughter.]

The PRESIDENT. The question is upon going into committee of the whole to consider the amendment offered by the gentleman from Indiana. Upon that motion the yeas and nays have been ordered and the Clerk will proceed with the roll.

The yeas and nays, which had been required by Mr. Harry White and Mr. Broomall, were taken and were as follow, viz:

Y E A S .

Messrs. Beebe, Bowman, Broomall, Calvin, Campbell, Cochran, Darlington, Edwards, Elliott, Ewing, Fulton, Horton, Lilly, Littleton, M'Michael, Mann, Newlin, Niles, Palmer, H. W., Patterson, D. W., Pughe, Purviance, John N., Purviance, Samuel A., Russell, Stanton, Wetherill, J. M., White, David N. and White, Harry—28.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Baker, Bigler, Black, Charles A., Black, J. S., Buckalew, Carey, Collins, Curtin, Dallas, De France, Dunning, Green, Guthrie, Hall, Hemphill, Hunsicker, Kaine, Lawrence, Long, MacConnell, Minor, Mott, Palmer, G. W., Patterson, T. H. B., Patton, Purman, Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Struthers and Walker, President—36.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Biddle, Boyd, Brodhead, Brown, Bullitt, Carter, Cassidy, Church, Clark, Corbett, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Ellis, Fell, Finney, Funck, Gibson, Gilpin, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Knight, Lamberton, Landis, Lear, MacVeagh, M'Camant, M'Clean, M'Culloch, M'Murray, Mantor,

Metzger, Mitchell, Parsons, Perter, Read, John R., Reed, Andrew, Rooke, Ross, Runk, Simpson, Stewart, Temple, Turrell, Van Reed, Wetherill, John Price, Wherry, White, J. W. F., Woodward, Worrell and Wright—69.

to struggle for the transaction of business to-day. I suppose if we adjourn without any further action there will be a session ordered to-morrow.

SEVERAL MEMBERS moved an adjournment for want of a quorum.

The PRESIDENT. There is not a quorum present. Sixty-four delegates have answered to their names.

The motion was agreed to, and (at twelve o'clock and forty-six minutes P. M.) the Convention adjourned until to-morrow morning at half-past nine o'clock.

Mr. BUCKALEW. I suppose it is vain

ONE HUNDRED AND FIFTY-SECOND DAY.

SATURDAY, *September 27, 1873.*

The PRESIDENT (at half-past nine o'clock A. M.) called the Convention to order and announced the absence of a quorum.

SEVERAL DELEGATES. Call the roll.

The PRESIDENT. The roll will be called.

The CLERK called the roll and forty-two delegates answered to their names.

Mr. KAINE. Mr. President: I do not suppose it is necessary for the Convention to remain here in a vain attempt to obtain a quorum this morning. After the adjournment yesterday there seemed to be an entire misunderstanding of the effect of the reconsideration of the resolution passed yesterday morning to provide for an adjournment from yesterday until Monday. Even the mover of that reconsideration insisted that the order for adjourning over until Monday was not altered. He insisted that the order remained the same, and that there would be no session to-day. Such was the very decided opinion of Judge Black, and he argued most stoutly that such had been the decision made by your predecessor, Mr. Meredith, on a similar occasion. I do not know whether Mr. Murphy, to whom he appealed, satisfied him to the contrary or not; nor do I know that Mr. Calvin was satisfied. I had to take Mr. Calvin to Mr. Murphy to decide the question between him and myself. Whether Mr. Calvin went off satisfied or not I do not know; but both Judge Black and Mr. Calvin were decidedly of the impression, and I think a great many others were, that under that resolution there would be no session until Monday.

Mr. MANN. Let the Sergeant-at-Arms be sent for absent members.

Mr. DE FRANCE. I would like to inquire if the city members, with the exception of Mr. Dallas, added to the number here, would make a quorum. If so, I should like to have the Sergeant-at-Arms sent for them.

The PRESIDENT. There are now forty-three members present.

Mr. D. W. PATTERSON. I believe I should be willing to send the Sergeant-at-Arms after the city members if they would make a quorum. I have several reasons for that. In the first place, we do not at any time see them all here at once, probably not more than about one-fifth of them; and in the second place, I want them here so that I may make a couple of reports from the Committee on Revision and Adjustment, so that they may be printed and be ready for us on Monday; and I presume we cannot do that without a quorum. It is very important that these reports should be submitted to-day, so that the articles may be printed in order that we may go to work upon them on Monday.

Mr. HARRY WHITE. As Mr. Calvin has been alluded to, I desire to state that he is in the city. I took breakfast with the honorable gentleman this morning, and I am satisfied he will be here. He understands the situation.

Mr. DARLINGTON. Mr. President: I move that the Sergeant-at-Arms be directed to bring in the absent members.

Mr. D. W. PATTERSON. I second the motion.

Mr. COCHRAN. I think it would be desirable to add to that: "*Provided*, he can find them." [Laughter.]

Mr. DARLINGTON. He must find them.

Mr. HARRY WHITE. I move to amend the motion by directing the Sergeant-at-Arms to notify those members absent without leave, whom he cannot find, to appear here on Monday.

Mr. DARLINGTON. I accept that.

The PRESIDENT. The amendment is accepted by the gentleman from Chester. The question is on his motion as modified.

Mr. PATTON and Mr. DALLAS called for the yeas and nays.

Mr. JOSEPH BAILY. I ask the Chair to state the question. I believe this comprehends the motion of the gentleman from Indiana, and I should like to have it stated.

The PRESIDENT. The motion is that the Sergeant-at-Arms be directed to bring

in the absent members, and at the same time to notify those whom he cannot find and who are absent without leave to be here on Monday. That is the substance of the motion, and the Clerk will call the names of the delegates on that motion.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Achenbach, Bailly, (Perry,) Bailey, (Huntingdon,) Barclay, Beebe, Bowman, Collins, Corbett, Curtin, Darlington, De France, Edwards, Guthrie, Hazzard, Howard, Kaine, Lamberton, Lawrence, MacConnell, Mantor, Minor, Niles, Palmer, G. W., Patterson, D. W., Porter, Purviance, Samuel A., Russell, Simpson, Struthers, White, David N., White, Harry and Walker, *President*—32.

NAYS.

Messrs. Bigler, Black, Charles A., Cochran, Dallas, Gibson, Gilpin, Hemphill, M'Clean, M'Michael, M'Murray, Mann, Mott, Newlin, Patton, Pughe, Purman, Read, John R. and White, J. W. F.—18.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Armstrong, Baer, Baker, Bannan, Bardsley, Bartholomew, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cassidy, Church, Clark, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Ewing, Fell, Finney, Fulton, Funk, Green, Hall, Hanna, Harvey, Hay, Heverin, Horton, Hunsicker, Knight, Landis, Lear, Lilly, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Metzger, Mitchell, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Reynolds, Rooke, Ross, Runk, Sharpe, Smith, H. G., Smith, Henry W., Smith, William H., Stanton, Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry, Woodward, Worrell and Wright—83.

Mr. LAWRENCE. In making out this list I hope the Clerk will not include the name of the delegate from Butler, (Mr. J. N. Purviance,) who has gone home on account of sickness in his family.

Mr. HARRY WHITE. Let the doors be closed, the roll called, and the list of absentees made out.

The PRESIDENT. It is moved—

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Mr. HARRY WHITE. I apprehend it is not necessary to make a motion. I merely suggested it to the Chair.

The PRESIDENT. The Sergeant-at-Arms will close the doors, and see that they are kept closed.

Mr. BOWMAN. I move that the name of the Sergeant-at-Arms be included among the absentees. [Laughter.] He has gone home without leave of absence.

Mr. NILES. I am just informed that the Sergeant-at-Arms has gone home.

Mr. D. W. PATTERSON. His assistants are here.

The PRESIDENT. The doors will be closed.

Mr. HAZZARD. If this is a farce we might as well adjourn; if it is in earnest then the doors leading into the ante-rooms and into the post-office ought also to be closed.

The PRESIDENT. The doors leading into the ante-rooms will be closed.

Mr. HAZZARD. I think it is time we were getting in earnest about this thing.

The PRESIDENT. The Sergeant-at-Arms is directed positively that the doors be closed and kept closed.

Mr. JOSEPH BAILY. There has been no order adopted for a call of the House, and under a mere order to the Sergeant-at-Arms to go for absent members we cannot close the doors. It is a call of the House that requires that.

Mr. HARRY WHITE. I move that the doors be closed and the House be called. We have adopted a rule in reference to this matter. I ask for the reading of the rule. I cannot find it in the Journal, although I have been looking for it.

The PRESIDENT. The recollection of the Chair is, that there was some rule upon this subject adopted, but the Chair does not have it before him. Rule forty-first of our printed rules is the only authority the Chair has upon the subject at present before his notice.

Mr. HARRY WHITE. Then, if the Chair will allow me, I will state the other rule. I cannot lay my hand upon it in its exact language; but as I had the honor of drafting it, and have before me the copy from which it was prepared, I can cite it almost literally.

The rule is, that when upon a call of the roll it is found that there is less than a quorum of members present, it shall be the duty of the President to order the doors of the Convention closed, and to direct the Clerk to call the roll of members and note the absentees; after which

the names of absentees shall be again called, and those for whose absence no sufficient excuse or an insufficient excuse is made, may be, by a vote of the members present, sent for by the Sergeant-at-Arms or his assistants, taken into custody, and brought before the bar of the Convention, where, unless excused by a majority of the members present, they shall be reprovcd.

Mr. KAINE. Is the word "Convention" in the rule?

Mr. HARRY WHITE. Yes, sir, it is in the rule as I drew it in this body.

Mr. KAINE. No, sir. This Convention did not adopt any such rule as that.

The PRESIDENT. Unless the delegate from Indiana can show the Chair that such is the rule upon this subject, the Chair will abide by his recollection that we have not adopted any such rule. If it can be shown that such is the rule as adopted by this body, it shall be carried out.

Mr. HARRY WHITE. I have cited from the rules of the Senate of Pennsylvania the rule of that body upon this subject. The rule, as I have stated it, is almost an exact transcript of the rule which I had the honor to draft in this body. I drew the rule which was adopted in the Senate, and I drew the rule which was adopted in this body, and the two rules are almost exact transcripts of each other. The rule adopted in this Convention ought to be found in the Journal. I have not been able to find it; but I maintain that, when found, it will be seen that it is almost a literal copy of the rule of the Senate with the word "Convention" substituted for the word "Senate."

The PRESIDENT. The only rule upon the subject that the Chair at present has before him is the printed forty-first rule, which says that "A majority of the Convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day, and be authorized to compel the attendance of members."

If there has been an additional rule passed upon this subject, I do not know it.

Mr. HARRY WHITE. I know that the rule is just as I have stated it, and it ought to be found in the Journal.

Mr. BEEBE. Mr. President: Allow me to state that the same objection which you have raised to-day was raised on a former occasion by our late honored President, Mr. Meredith; and my recollection is clear and distinct that the delegate

from Indiana then drew up a rule similar to the one he has read this morning, and it was adopted by this body.

The CLERK. The rule to which the gentleman from Indiana refers was adopted, and will be found on page 593 of the Journal, as follows:

"Resolved, That when upon a call of the House it is found that less than a quorum is present, it shall be the duty of the President to order the doors of the Hall to be closed, and direct the clerk to note the absentees, after which the names of the absentees shall be again called, and those for whose absence no excuse or an insufficient one is made, may, by order of a majority of the members present, be sent for and taken in custody by the Sergeant-at-Arms, or his assistant appointed for the purpose, and brought to the Convention."

The PRESIDENT. The Clerk will call the names of the absentees.

The CLERK proceeded to call the list of absent members, and when the name of Mr. Andrews was called—

Mr. M'MURRAY. Would it be proper for me to make an explanation now.

The PRESIDENT. After the roll is called.

Mr. COCHRAN [when the name of Mr. H. W. Smith was called.] On behalf of Mr. Smith, of Berks, I volunteer to state that he has leave of absence for to-day.

Mr. HEMPHILL. So has Mr. Alricks.

The PRESIDENT. Those who have leave of absence will not be put on the list of the Sergeant-at-Arms. The roll of absentees will now again be called, and when any gentleman is absent, if a friend of his knows he is absent with leave or can make any statement in regard to him, it will be made and acted on by the Convention.

Mr. BIGLER. Is there a quorum present?

The PRESIDENT. No, sir, we are trying to get a quorum.

Mr. BIGLER. I suggest that if there is no quorum present, it will not be competent to deal with those who may come in who were absentees, unless there is some special rule.

The PRESIDENT. We are now, under the rule, ascertaining who is absent without leave.

Mr. BEEBE. Inasmuch as there seems to be a misunderstanding on the part of members of the House, and it is denied that such a rule was passed, I wish to call the attention of the Convention to page 548 of the Journal, where the rule as stated by General White and drawn by him,

was called up and passed on second and third reading.

The PRESIDENT. We have such a rule. The Clerk will call the names of absent members.

Mr. WOODWARD. I do not know much about rules, but when I was in Congress the defaulting members were never called up to answer until after a quorum had been obtained. The process of a call of the House consisted of closing the doors and issuing the warrant of the Speaker directing the Sergeant-at-Arms to bring in the absentees. When they are brought in upon the warrant of the Speaker, then their excuses are rendered, and they are either fined or excused, according to the disposition of the House. That is the practice of Congress.

The PRESIDENT. The practice of Congress may be one way, and in the State Senate another; but we have our rule here which is the rule we are now acting upon, and the absent members are to be brought into the Convention when I shall have, what will be to me a very great pleasure, under the circumstances, of reprimanding them. [Laughter.]

Mr. SIMPSON. I ask that my colleague (Mr. Baker) be excused. The train which brought him to the city this morning was delayed by a breakage of the locomotive, and he did not get here in time. I move that he be excused.

Mr. KATNE. Mr. President: What would be the ruling in regard to gentlemen who have not made their appearance at all at the meetings of the Convention since the recess. The adjournment in July was to September. There are some members who have not been here at all since we re-assembled.

The CLERK proceeded to call the names of absent members as follows:

Mr. Addicks.

Mr. Ainey.

Mr. Alricks.

Mr. HEMPHILL. Mr. Alricks has leave of absence for to-day.

The CLERK continued the call:

Mr. Andrews.

Mr. M'MURRAY. Mr. Andrews had no leave of absence. He went away yesterday and requested me to ask leave of absence for him this morning. He went away because he was very unwell. There are those here who know the fact.

The PRESIDENT. Does the delegate know that he was unwell?

Mr. M'MURRAY. I do know he was so unwell that for very many days he was

unable to remain here more than half the time. I ask that Mr. Andrews be excused.

The PRESIDENT. I cannot do it; it is for the House.

Mr. COCHRAN. I move that he be excused.

Mr. DE FRANCE. There is no quorum to excuse him.

Mr. HARRY WHITE. Do I understand that a majority of the members present cannot excuse an absentee?

The PRESIDENT. I have made no ruling on the subject.

Mr. HARRY WHITE. I beg the Chair's pardon. I understood the gentleman from Jefferson (Mr. M'Murray) to ask that Mr. Andrews be excused.

Mr. KATNE. The Chair replied that he could not excuse him, but the House could.

Mr. HARRY WHITE. I understood him to make a motion to that effect. I should like to have a vote on that motion.

Mr. M'MURRAY. I understood the Chair to refuse to entertain the motion.

The PRESIDENT. The Chair did not exactly do so. The Chair understood the gentleman to ask leave of absence for him, and the Chair replied to that, that could not be done without the order of the House.

Mr. M'MURRAY. I said Mr. Andrews requested me to ask leave of absence for him this morning. Of course I cannot do that now, as there is no quorum present. I mentioned the reason of his absence, and named the excuse for his absence, and I wish to have him excused. ["Move that he be excused."] I make that motion, that Mr. Andrews be excused.

The motion was put and agreed to.

Mr. DARLINGTON. I was about to submit that no motion of that kind can be put when there is less than a quorum. We cannot act upon it.

The PRESIDENT. The Chair does not think so.

The name of Mr. Biddle was called.

Mr. COLLINS. Mr. Biddle has leave of absence.

Mr. J. S. BLACK was called.

The PRESIDENT. He never has leave of absence. [Laughter.]

Mr. BOYD was called.

Mr. DARLINGTON. Mr. Boyd is absent on leave.

The PRESIDENT. I think he has leave.

Mr. BROOMALL was called.

The PRESIDENT. He has no leave of

absence, except that he is a Quaker, and does not wish to sit on the Sabbath. [Laughter.]

The name of Mr. Brown was called.

The PRESIDENT. He has leave of absence.

Mr. BUCKALEW was next called.

Mr. PURMAN. Mr. Buckalew obtained leave of absence.

Mr. BULLITT, Mr. Carter, Mr. Cassidy, Mr. Church, Mr. Clark and Mr. Corson were next called, and there was no response or excuse.

Mr. CRAIG was called.

SEVERAL DELEGATES. He has leave of absence.

Mr. CRONMILLER was called. No excuse given.

Mr. CURRY was called.

Mr. GUTHRIE. The Rev. Mr. Curry left last evening for home. He requested me before leaving to ask leave of absence for him this morning. I cannot say that any of his family are very sick, but he was under the impression when he left that the Convention had adjourned until Monday. I therefore ask leave of absence for him.

The PRESIDENT. Leave cannot be asked now.

Mr. GUTHRIE. Then I trust he will be excused on giving his explanation for his absence.

Mr. BEEBE. In regard to Mr. Craig, I think leave of absence was asked at an early period of the session on account of sickness, and he is still sick.

Mr. DALLAS. Leave was granted to Mr. Craig.

Mr. HARRY WHITE. I rise to make a suggestion to the Convention and to the Chair. It occurs to me on listening here that this business would be expedited if the roll were called first, and then if any gentleman has any excuse to make for any one, let him get up and make it.

The PRESIDENT. I think that would be better. The Clerk will call the roll of absentees.

The CLERK then called the roll of the remainder of the absentees as follows:

Messrs. Cuyler, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Finney, Fulton, Funk, Green, Hall, Harvey, Hay, Heverin, Horton, Hunsicker, Knight, Landis, Lear, Lilly, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Metzger, Mitchell, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Rooke, Ross, Runk, Smith, Henry W., Smith, W. H., Stanton,

Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, Worrell and Wright.

Mr. PORTER. Mr. Fulton was compelled to leave this morning on account of business, and I intended to make application for leave of absence for him. I now move that he be released from the call.

Mr. S. A. PURVIANCE. I made application for Mr. Fulton.

The PRESIDENT. He has leave of absence.

Mr. DALLAS. I am under the decided impression that Mr. Hay, whose name has been called among the absentees, is upon leave. I ask the Clerk whether I am not right in that.

The PRESIDENT. I do not remember that he has leave.

Mr. DALLAS. That is my impression, but I would not speak with absolute certainty as to the fact.

The CLERK. Mr. Hay asked leave for Mr. J. R. Read, but not for himself.

Mr. DALLAS. Mr. Bartholomew, whose name is called among the absentees, I happen to know has sickness in his family, and in conversation with me he referred to that as a reason for desiring to go home.

The PRESIDENT. What is the character of the sickness, the Convention would like to know?

Mr. DALLAS. That, sir, I am not in a position to answer. I move that Mr. Bartholomew be excused.

Mr. DARLINGTON. I beg leave to call the attention of the Convention to the forty-first rule, which prescribes in very distinct form what a smaller number than a quorum can do. They can adjourn from day to day, and they are authorized to compel the attendance of members—nothing else.

Mr. COLLINS. That has all been altered.

Mr. DALLAS. I ask that the question be put on my motion.

The PRESIDENT. The rule referred to by the delegate from Chester has been changed by a rule subsequently passed and which has been read.

Mr. DALLAS. I move that Mr. Bartholomew be excused on account of sickness in his family.

Mr. DARLINGTON. One moment, until I finish. Less than a quorum cannot do that. We are no Convention until we secure the attendance of a quorum except for the single purpose of compelling attendance.

The PRESIDENT. The question is on the motion of the delegate from the city (Mr. Dallas.)

The motion was agreed to.

Mr. SHARPE. My colleague (Mr. Stewart) has been called among the absentees. He has leave of absence until Tuesday morning.

Mr. PUGHE. Had not Mr. Davis leave of absence?

The PRESIDENT. No, sir.

Mr. PUGHE. He left a few days ago, and I know he was very unwell at the time. He is liable to severe attacks of the brain. I therefore move that Mr. Davis, of Monroe, be excused.

The motion was agreed to.

Mr. BARCLAY. The name of my colleague (Mr. Henry W. Smith) has been called as an absentee. He has leave of absence, having obtained leave yesterday on his own motion.

Mr. LAWRENCE. I move that Mr. John N. Purviance be excused on account of severe illness in his family. He has been called home suddenly.

The motion was agreed to.

Mr. J. M. BAILEY. My colleague (Dr. McCulloch) is absent this morning. I know him to be sick. He has been sick all the week and taking medicine. I suppose that is the reason he is not here this morning. I therefore move that he be excused.

The motion was agreed to.

Mr. COLLINS. I may state that I saw Mr. Dodd last evening, and he asked me to request leave of absence for him, as he was called away from the city and had to leave last evening. I ask that he be excused.

The PRESIDENT. Had he leave of absence?

Mr. COLLINS. No, sir.

Mr. EDWARDS. Then, what did he leave for?

Mr. COLLINS. He told me that he was compelled to leave the city, and asked me to obtain leave of absence.

The PRESIDENT. Those in favor of excusing Mr. Dodd, on the ground that he was compelled to leave the city, will say aye.

Mr. DODD was excused.

Mr. DARLINGTON. If I understand it to be in order to give excuses for absent members in this way, then I beg leave to state in behalf of my friend from Lancaster (Mr. Carter) that he left the city yesterday to visit his brother, who lives a little below West Chester, and he could

not be here in time this morning without getting up before day to catch the train. I ask that he be excused upon the ground I have stated, that he had gone on a visit and could not get back.

The PRESIDENT. Shall Mr. Carter be excused on the ground that he had to rise very early to secure an early train to return to the city?

Mr. CARTER was excused.

Mr. DE FRANCE. I now ask leave of absence for Mr. Onslow, Sergeant-at-Arms. I am informed that he was ordered home on short notice to collect funds to carry on the Republican canvass this fall, that the Treasurer had not cheek enough to do it. I move that he be excused.

Mr. HARRY WHITE. I submit that, in my opinion, as one delegate, that would be a good excuse, but I do not think that less than a quorum of this Convention has the power to excuse for even so good a reason as that.

Mr. HEMPHILL. I move that this Convention do now adjourn for want of a quorum.

Mr. Mann. On that motion I call for the yeas and nays.

Mr. NEWLIN. I second the call.

Mr. HARRY WHITE. I rise to a point of order.

Mr. HEMPHILL and others called for the yeas and nays, and they were taken as follows:

YEAS.

Messrs. Addicks, Armstrong, Bailey, (Huntingdon,) Baker, Bigler, Bowman, Calvin, Carey, Curtin, Dallas, Elliott, Gibson, Guthrie, Hanna, Hemphill, Kaine, Lamberton, M'CLean, M'Michael, M'Murray, Mann, Minor, Mott, Newlin, Niles, Patton, Porter, Purman, Read, John R., Sharpe, Smith, H. G., White, J. W. F. and Walker, *President*—33.

NAYS.

Messrs. Achenbach, Bailly, (Perry,) Barclay, Beebe, Black, Charles A., Campbell, Cochran, Collins, Corbett, Darlington, De France, Edwards, Gilpin, Hazzard, Howard, Lawrence, MacConnell, Mantor, Palmer, G. W., Patterson, D. W., Pughe, Purviance, Samuel A., Russell, Simpson, Struthers, White, David N., White, Harry and Woodward—28.

ABSENT.—Messrs. Ainey, Alricks, Andrews, Baer, Bannan, Bardsley, Bartholomew, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bulitt, Carter, Cassidy, Church, Clark, Cor-

son, Craig, Cronmiller, Curry, Cuyler, Ross, Runk, Smith, Henry W., Smith, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Wm. H., Stanton, Stewart, Temple, Tur- Finney, Fulton, Funck, Green, Hall, Har- rell, Van Reed, Wetherill, J. M., Weth- vey, Hay, Heverin, Horton, Hunsicker, erill, John Price, Wherry, Worrell and Knight, Landis, Lear, Lilly, Littleton, Wright—72. Long, MacVeagh, M'Camant, M'Culloch, So the motion was agreed to, and at ten Metzger, Mitchell, Palmer, H. W., Par- o'clock and forty minutes A. M. the Con- sons, Patterson, T. H. B., Purviance, John vention adjourned till Monday at half- N., Reed, Andrew, Reynolds, Rooke, past nine o'clock A. M.

ONE HUNDRED AND FIFTY-THIRD DAY.

MONDAY, September 29, 1873.

The Convention met at half-past nine o'clock, A. M., Hon. John H. Walker, President, in the chair.

The Journal of the proceedings of Friday and Saturday last was read and approved.

LEAVES OF ABSENCE.

Mr. HAY asked and obtained leave of absence for Mr. W. H. Smith for a few days from to-day.

Mr. PATTON asked and obtained leave of absence for Mr. Horton for a few days from to-day.

Mr. GUTHRIE asked and obtained leave of absence for Mr. Curry for Saturday last and to-day.

CAPITOL BUILDING.

Mr. BRODHEAD offered the following resolution, which at his request was laid on the table.

Resolved, That the Committee on State Institutions and Buildings be and they are hereby instructed to report an article to prevent the erection of any new buildings for the holding of the sessions of the Legislature of this State until the project shall be approved by two successive Legislatures.

REPORTS OF REVISION COMMITTEE.

Mr. D. W. PATTERSON. I am directed by the Committee on Revision and Adjustment to report the article on the Judiciary and also the article on Impeachment and Removal from Office. Under a general order heretofore passed, the reports of the committee are directed to be printed. I will state that we have had these reports printed, and I suppose they will be ready sometime to-day for the use of the Convention, if it should get through with other business.

The reports were laid on the table.

BILL OF RIGHTS.

The PRESIDENT. The next business in order is the further consideration on third reading of the article on the Declaration of Rights. When it was last under consideration, the question was on the motion of the delegate from Indiana (Mr. Harry White) that the Convention resolve

itself into committee of the whole for the purpose of special amendment, and he indicated his amendment, which will now be read.

The CLERK read as follows:

"No law shall be made or enforced within this Commonwealth that discriminates in favor of any class of persons, male or female; and all public institutions, educational or otherwise, all public places of amusement and for the accommodation of travelers, shall be open to and enjoyed by all persons on equal terms."

The PRESIDENT. The yeas and nays were called on this question on Friday last, but there was no quorum voting, and thereupon the Convention adjourned. The question therefore recurs on the motion to go into committee of the whole on the amendment just read.

Mr. LAWRENCE. For general amendment, is it not?

Mr. BROOMALL. No, sir; for specific amendment.

Mr. D. W. PATTERSON. The question is simply whether we will go into committee of the whole or not.

Mr. BROOMALL. The yeas and nays have to be taken over again, do they not?

The PRESIDENT. Certainly they do.

Mr. LAWRENCE. Before the vote is taken, I would like to make an inquiry. I think there is a majority of this Convention who would be willing to put something like this proposition into the Bill of Rights, although they do not desire to do so in the exact language in which it is framed.

MANY DELEGATES. "Question." "Question."

Mr. LAWRENCE. I merely want to make an inquiry, and suggest that if we now go into committee of the whole, we shall have to adopt the proposition as it is introduced or else to vote it down.

Mr. SHARPE. We are not going to put it in.

The PRESIDENT. The yeas and nays will be again taken and the Clerk will proceed with the roll.

The CLERK proceeded to call the roll.

Mr. LILLY. [When his name was called.] Listening to what what read, I desire to state that I do not know how to vote. If this means female suffrage, I do not want to vote for it. If it does not, I do. Does it mean female suffrage?

MANY DELEGATES. Yes.

Mr. BROOMALL. It does not mean female suffrage.

Mr. LILLY. If it means female suffrage, I want to know it.

The PRESIDENT. How does the gentleman vote?

Mr. LILLY. I do not know how to vote.

The PRESIDENT. The Clerk will call the name of the gentleman from Carbon.

The CLERK. "Mr. Lilly."

Mr. LILLY. Does this mean female suffrage?

Mr. BROOMALL. It does not.

MANY DELEGATES. Yes, it does.

Mr. LILLY. I vote "aye."

The CLERK proceeded with the call of the roll, which was completed with the following result:

YEAS.

Messrs. Armstrong, Baker, Beebe, Bowman, Broomall, Calvin, Campbell, Darlington, Edwards, Ewing, Hanna, Hazard, Howard, Lawrence, Lear, Lilly, Littleton, M'Michael, M'Murray, Mann, Mantor, Newlin, Patterson, D. W., Porter, Purviance, Samuel A., Russell, Wetherill, John Price, White, David N. and White, J. W. F.—29.

NAYS.

Messrs. Achenbach, Baily, (Perry,) Barclay, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Carey, Carter, Corbett, Curtin, Dallas, De France, Gilpin, Guthrie, Hay, Hunsicker, Kaine, MacConnell, M'Clean, Minor, Mitchell, Mott, Palmer, G. W., Patton, Pughe, Purman, Read, John R., Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Struthers, Temple, Woodward and Walker, *President*—38.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Black, J. S., Brown, Buckalew, Bullitt, Cassidy, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gibson, Green, Hall, Harvey, Hemphill, Heverin, Horton, Knight, Lamberton, Landis, Long,

MacVeagh, M'Camant, M'Culloch, Metzger, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Rooke, Runk, Simpson, Smith, William H., Stanton Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—66.

The PRESIDENT. The question recurs on the final passage of the article.

Mr. DE FRANCE. I move that we go into committee of the whole, for the purpose of making section six read as follows:

"Trial by jury shall remain inviolate."

Mr. President, if I can get the attention of the House, I will state the reason why I propose that we shall go into committee of the whole for this amendment.

The Supreme Court has decided that the word "heretofore" amounts to the same thing as "before," so that in regard to all crimes which have been created since 1776, all statutory crimes, it is not necessary (provided the Legislature do not so direct) that they shall be tried by jury. I want the Convention to understand just how this is precisely. If we strike out the word "heretofore," it will not change the trial by jury. The Supreme Court have decided this:

"It is scarcely necessary to remark that a trial by jury means a jury of twelve men, who must unanimously concur in the guilt of the accused before a legal conviction can be had. No less number can satisfy the requirement in the Bill of Rights."

It is necessary to have a jury of twelve men. That is a jury; the only legal jury; there must be twelve men. Now, is it necessary to preserve trial by jury for all offences (except summary convictions) that are made by statute? That is the only question now before us. I will read what the Supreme Court has decided:

"The Legislature may create new offences and prescribe what mode it pleases of ascertaining the guilt of those charged with them."

The Legislature may prescribe a new mode of trial for all offences not triable by jury by Constitution of 1776. They may prescribe a new mode, a different mode from jury trial.

In the Mercer district we have a case in point under what they call the iron-clad law, and Judge Trunkay, in delivering the opinion of the court, said:

"Below the grade of murder in the first degree, it is difficult to find any other

crime named in our statutes, where the maximum of fine or imprisonment is not fixed by law."

In this case the maximum is not fixed at all by law.

"Mercer county is favored with a singular exception. So highly penal a misdemeanor is no petty offence. As we have seen, it is not one created since the adoption of the Constitution," &c.

Let me read what the minimum punishment is:

"By this local act the minimum for the first offence is a fine of one hundred dollars, and for the second a fine of two hundred dollars and imprisonment for ninety days. The maximum is in the discretion of the court or a justice of the peace."

Now, Mr. President, I merely mention this because it is a local law which is made very penal and the offence not triable by jury. Do we think that trial by jury is of enough account so that penal offences, except summary cases, shall be triable thereby, or do we think it safe to leave for futurity that question for thirty or forty years? Might it not be that the Legislature would make mistakes in this case? Might it not be in times of political excitement that there would be mistakes made?

I have not the strength to argue this question fully, but I merely want to call for the yeas and nays on my motion, so that my protest may stand, for the question was argued very fully by the distinguished legal gentleman from Allegheny county (Mr. J. W. F. White.) He argued very fully the deficiencies of our jury system and showed them very clearly; but when little attention was paid to his very able and eloquent argument in this Convention on that subject, certainly I could hope to receive very little consideration.

Mr. WOODWARD. What is your amendment?

Mr. DE FRANCE. I will ask that it be read.

The PRESIDENT. The amendment will be read.

The CLERK. In the sixth section it is proposed to strike out the words "be as heretofore and the right thereof shall," so that the section will read:

"Trial by jury shall remain inviolate."

Mr. KAINE. I hope the motion of the gentleman from Mercer will not prevail. This section has passed through one of the standing committees of this Conven-

tion; it has passed through committee of the whole; it has passed through second reading; it has passed through the Committee on Revision and Adjustment, and I hope there will be an end to this kind of amendment. If the Convention are not satisfied with matter that has gone through five several revisions by competent bodies of this Convention, we shall never get through. Let there be an end of litigation, and let there be an end of strife and discussion on questions of this kind. I suppose the gentleman desires to get in an amendment of this kind to suit Mercer county and nothing else.

Mr. DE FRANCE. No, sir.

Mr. KAINE. I hope we shall stand by the old landmarks as near as we can.

Mr. WOODWARD. I think I understand the object of the gentleman from Mercer, and if he would bring forward an amendment that would really cover the ground, I do not know that I would object to it; but I do not like this present proposition. The word "heretofore" in this clause is a word of limitation. It limits the universal right of trial by jury; that it shall not be unlimited, but shall be "as heretofore." "Heretofore" to have a jury has never extended to chancery cases, and it has never extended to those summary convictions which the peace and welfare of society have often found to be necessary. We have a whole class of cases, such as violations of the Sabbath day, profane swearing, vagrancy, and divers offences that are disposed of by being brought before an alderman or justice of the peace upon view without a jury at all. Men are sent to the lock-up and punished more or less, fined or imprisoned without a jury at all. This has always been the practice of Pennsylvania.

Mr. DE FRANCE. I should like to ask the gentleman, supposing this amendment should be adopted, will not trial by jury remain precisely as it is except as to the limitation?

Mr. WOODWARD. But I understand the gentleman proposes to strike out the word "heretofore."

Mr. DE FRANCE. I think the gentleman does not understand me yet. The Supreme Court has decided that the word "heretofore" means before the Constitution was made, and that is all it means. It does not mean anything about the mode of trial.

Mr. WOODWARD. It means, as I understand it, that everything that was triable

by jury when our Constitution was first adopted, shall remain triable by jury, but those offences that were triable by other means than juries before our Constitution are still capable of being disposed of in that way. I understand that to be about the force and meaning of that word. In that respect, it is a very essential word. It is one that we cannot afford to part with unless, indeed, we mean to say that all criminal proceedings, big and little, shall be before juries. If the gentleman means that and brings forward an amendment of that sort, that will be worthy of consideration; but unless we mean just that, unless we mean to take away from magistrates this power of summary convictions, the amendment ought not to prevail.

MR. DARLINGTON. It struck me when the gentleman from Mercer proposed his amendment that if we were to adopt it, we might hereafter find ourselves with a jury of three or five or seven or less than twelve as a constitutional jury, not such as we have heretofore had, but still a legal jury. I am opposed to that. I want it "as heretofore," a jury of twelve.

THE PRESIDENT. The Clerk will call the names of the delegates on the motion of the gentleman from Mercer (Mr. De France.)

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. De France, Guthrie, Lilly, Read, John R., Reynolds and White, J. W. F.—6.

NAYS.

Messrs. Achenbach, Addicks, Armstrong, Baily, (Perry,) Baker, Barclay, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Campbell, Carey, Carter, Corbett, Curtin, Cuyler, Dallas, Darlington, Edwards, Elliott, Ewing, Hanna, Hay, Hazzard, Howard, Hunsicker, Kaine, Lawrence, Lear, Littleton, MacConnell, M'Clean, M'Michael, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Niles, Palmer, G. W., Patterson, D. W., Patton, Pughe, Purman, Purviance, Samuel A., Ross, Runk, Russell, Sharpe, Smith, H. G., Smith, Henry W., Struthers, Temple, Wetherill, John Price, White, David N., Woodward and Walker, *President*—63.

So the motion was not agreed to.

ABSENT—Messrs. Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Ban-

nan, Bardsley, Bartholomew, Black, J. S., Brown, Buckalew, Bullitt, Calvin, Cassidy, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hemphill, Heverin, Horton, Knight, Lamberton, Landis, Long, MacVeagh, M'Camant, M'Culloch, Metzger, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purviance, John N., Reed, Andrew, Rooke, Simpson, Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—64.

MR. DALLAS. I move to go into committee of the whole for the purpose of offering to section ten an amendment, which I will indicate. It is to add after the word "property," in the eighth line, the words, "be injured or."

MR. NEWLIN. How will the section read as amended?

THE CLERK read as follows:

"Nor shall private property be injured, or be taken or applied to public use without authority of law, and without just compensation being first made or secured."

MR. DALLAS. I am aware that the Convention is not unreasonably averse to going now into committee of the whole upon any amendment; but if there is anything upon which a large number of the members of this Convention can be induced to unite, it is in the opinion that wherever it is possible to attain a desired purpose and still to reduce the extreme length of our article, such reduction should be made. Now, in the article on railroads and canals, at page fifty-four of the printed pamphlet containing the articles upon second reading, we have section twelve in these words:

"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."

I believe that that entire section can be rendered unnecessary by the insertion of the three short words that I have proposed as an amendment to section ten of the Bill of Rights. The people of Pennsylvania have always looked to that section for the protection of their right of property against unjust exercise of the

power of eminent domain; and there can be no reason because that section is found to need amendment for its extension, that we should pass an entire new section on the same subject in another article. The necessity for any amendment in this place arises from the ruling of the Supreme Court, with which the Convention is familiar, that property must be actually "taken" or "applied" to public use, in order to entitle the citizen to compensation; so that if your house, sir, were injured to the extent, perhaps, of three-fourths of its value by the digging of a railway embankment twenty feet deep in front of it, you would be entitled to no compensation for the injury done if that embankment happened not to involve the actual taking of your soil. It was to secure that which is, therefore, not covered by the present language of section ten of the Bill of Rights, that section twelve in the article on railroads and canals was adopted. I submit that although the evil intended to be remedied clearly does exist, it can be best remedied in the Bill of Rights, and with this view I have made the pending motion.

Mr. CUYLER. Instead of amending the existing section in the way proposed, I trust the Convention will now refuse to go into committee of the whole for that purpose; and then when the Convention comes to consider the other section contained in the article on railroads and canals, I hope the twelfth section will be stricken out. I do not think we are advancing at all upon the wisdom of our fathers in the system they devised in regard to this matter, and which alone has made possible the construction of the great works of public improvement which have been carried out in this Commonwealth. Let gentlemen pause and consider just where the thing leads. The Commonwealth owns the highways of the State, and if it be deemed advisable for public convenience to raise or lower the grades of these highways, everybody who owns a piece of property that borders upon such a highway will have a claim for damages, under such a section as that, which must be secured or paid in advance before the public convenience can be consulted by a change of the grade. Suppose it may be deemed advisable to alter the grade of Chestnut street in the city of Philadelphia. Wherever you raise or lower a grade the access of property owners along that street would be rendered more difficult than it is now, and under

this arrangement now proposed every property owner would be entitled to compensation, which would have to be either paid or secured before the change in grade could be effected.

To put such a provision in our Constitution is to put in a provision against progress. To incorporate such a section would be to say that the proprietors of the old Conestoga wagons who formerly carried goods east and west through this Commonwealth would have the right to be compensated for all their mechanism and business before we could build a railroad. Under such a clause as that, before you could build a passenger railroad in the streets of this city, every omnibus line would have to be taken up and paid for. There could be no progress, no advancement except by compensating those who were using the old objectionable ways of doing business. That is the natural consequence of it. There has never been any reason to complain of the old decision upon this subject, for while there have been isolated instances in which individuals have suffered, the general benefits to the community at large have infinitely overshadowed these exceptional cases, and the incidental advantages to these very individuals have oftentimes infinitely overshadowed any injuries that may have resulted to them from not compensating them for the damages they may have sustained. I ask gentlemen to see how broad this proposed amendment is and how broad must be the mischiefs that will result from such a provision if it is now incorporated into our Constitution.

Mr. BEEBE. I deny that construction, but I would like to ask the gentleman from Philadelphia a question.

Mr. CUYLER. Certainly.

Mr. BEEBE. Were not the omnibus lines and appurtenant property required to be paid for, by the Legislature, by the city passenger railway companies that receive charters to build roads upon the streets occupied by these omnibus lines?

Mr. CUYLER. In one or two instances out of the thirty they were, but I think every right minded man felt the absurdity of the thing at the time, and I doubt now whether any advocate could be found to sustain such a proposition if it were proposed to-day.

Mr. LILLY. This question is very fully argued in committee of the whole, and on second reading, and the section of the article on railroads and canals was passed

by a very large vote of this Convention. Therefore I do not think it is necessary to go into a general argument on the merits of the case at all. Believing it to be the opinion of the members of this Convention that it is only right and just to have such a section introduced into the Constitution, and believing that the people of the Commonwealth desire it there, I am very anxious to see it retained. But I believe it is better to insert the proposition here in the concise amendment of the gentleman from Philadelphia, and therefore I hope we will go into committee of the whole for the purpose of making the amendment indicated.

The PRESIDENT. The question is on going into committee of the whole.

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

Mr. J. W. F. WHITE. I second the call.

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

Y E A S .

Messrs. Bailly, (Perry,) Baker, Beebe, Biddle, Bigler, Black, Charles A., Broomall, Calvin, Carey, Carter, Dallas, De France, Guthrie, Hanna, Hay, Hazzard, Heverin, Kaine, Lawrence, Lilly, M'Clean, Mott, Newlin, Palmer, G. W., Patton, Read, John R., Reynolds, Ross, Russell, Sharpe, Smith, H. G., Smith, Henry W., White, J. W. F., Woodward, and Walker, *President*—35.

N A Y S .

Messrs. Achenbach, Addicks, Armstrong, Barclay, Bowman, Boyd, Brodhead, Campbell, Corbett, Curtin, Cuyler, Darlington, Edwards, Elliott, Ewing, Howard, Hunsicker, Lear, Littleton, MacConnell, M'Michael, M'Murray, Mann, Minor, Mitchell, Niles, Patterson, D. W., Porter, Pughe, Purman, Purviance, Sam'l A., Runk, Temple, Wetherill, John Price and White, David N.—35.

So the motion was rejected.

ABSENT.—Messrs. Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Black, J. S., Brown, Buckalew, Bullitt, Cassidy, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hemphill, Horton, Knight, Lamberton, Landis, Long, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Pal-

mer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Rooke, Simpson, Smith, Wm. H., Stanton, Stewart, Struthers, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—63.

The PRESIDENT. The question is on the final passage of the article.

The question was put and determined in the affirmative.

THE LEGISLATURE.

The PRESIDENT. The next article on third reading is No. 2. Is it the pleasure of the Convention to proceed to the consideration of article No. 2? ["Aye."] The amendments of the committee on Revision and Adjustment will be read.

The CLERK read the amendments reported by the Committee on Revision and Adjustment, the result of which is to make the article read as follows:

ARTICLE II.

THE LEGISLATURE.

SECTION 1. The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

SECTION 2. Members of the General Assembly shall be chosen at the general election every second year. And their terms of service shall begin on the first day of December next after their election; whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term.

SECTION 3. Senators shall be elected for the term of four years and Representatives for the term of two years.

SECTION 4. The General Assembly shall meet at twelve o'clock noon on the first Tuesday of January every second year, and at other times when convened by the Governor, but shall hold no adjourned annual session after the year 1878. In case of a vacancy in the office of United States Senator from this Commonwealth, in a recess between sessions, he shall convene the two Houses by proclamation on notice not exceeding sixty days to fill the same.

SECTION 5. *Senators shall be at least twenty-five years of age and Representatives twenty-one years of age. They shall have been citizens and inhabitants of the State four years and inhabitants of their respective districts one year next before their election (unless absent on the public*

business of the United States or of this State) and shall reside in their respective districts during their term of service.

SECTION 6. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth; and no member of Congress or other person holding any office (except of attorney-at-law or in the militia) under the United States or this Commonwealth, shall be a member of either House during his continuance in Congress or in office.

SECTION 7. No person hereafter convicted of embezzlement of public moneys, bribery, perjury or other infamous crime, shall be eligible for election to the General Assembly, or for election or appointment to any office of trust or profit in this Commonwealth.

SECTION 8. The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee, or otherwise; and no member of either House shall, during the term for which he may have been elected, receive any increase of salary or mileage, under any law passed during such term.

SECTION 9. *The Senate shall, at the beginning and close of each regular session and at such other times as may be necessary, elect one of its members President pro tempore, who shall perform the duties of the Lieutenant Governor; in any case of absence or disability of that officer, and whenever the said office of Lieutenant Governor shall be vacant, the House of Representatives shall elect one of its members as Speaker. Each House shall choose its other officers, and shall judge of the election and qualifications of its members.*

SECTION 10. A majority of each House shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SECTION 11. *Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitations, and with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a*

free State. A member expelled for corruption shall not thereafter be eligible for election to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offence.

SECTION 12. *Each House shall keep a Journal of its proceedings and from time to time publish the same, except such parts as may require secrecy, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the Journal.*

SECTION 13. The sessions of each House, and of committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

SECTION 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 15. The members of the General Assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

SECTION 16. The State shall be divided into fifty senatorial districts of compact and contiguous territory; as equal in population as possible, and each district shall be entitled to elect one Senator; no county shall be divided in the formation of a district, unless such county is entitled to two or more members, by possessing a population exceeding one senatorial ratio and three-fifths of a second ratio; and no county or city shall be entitled to more than one-sixth of the whole number of members.

SECTION 17. The members of the House of Representatives shall be apportioned among the several counties according to population, on a ratio to be obtained by dividing the whole population of the State as ascertained by the most recent United States census by two hundred. Any county, including Philadelphia, having more than one ratio shall be entitled to a member for each full ratio; but each county shall be given at least one member, and counties shall not be joined to form a district. Any county having less than five ratios, shall have an additional member for a surplus exceeding one-half a ratio over one or more full ratios. Any county, including Philadel-

phia, having over one hundred thousand inhabitants, shall be divided into districts; every city shall be entitled to separate representation when its population equals the ratio, but no district shall elect more than four members.

SECTION 18. The Legislature at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into senatorial and representative districts agreeably to the provisions of the two next preceding sections.

Mr. WOODWARD. I wish to inquire whether the ninth and tenth sections, as printed in pamphlet form, were stricken out of this article because they are provided for elsewhere, or whether they were stricken out because they are not fit to be anywhere.

The PRESIDING OFFICER. [Mr. Dallas in the chair.] I am unable to answer the question. Some member of the committee will answer it.

Mr. D. W. PATTERSON. The majority of the committee passed them over in this report, with the understanding that the article on oaths of office covered the point. Some of the committee and some of this House prefer the ninth and tenth sections in as applied to the Legislature, and that motion probably will be made; but the committee omitted the subject altogether in this article.

Mr. WOODWARD. Then they do not propose to put it out of the Constitution entirely?

Mr. D. W. PATTERSON. No, sir.

Mr. KAINE. I can inform the gentleman that is provided for in the article on oaths of office, and we do not want it in two places.

The PRESIDING OFFICER. The article is now before the House.

Mr. HAY. I notice that the committee have in almost every case stricken out the word "State," and inserted the word "Commonwealth" in place of it. In the fifth section, however, and in the seventeenth section the word "State" occurs four times. I wish to inquire whether it was the intention of the committee to make that change in all cases.

The PRESIDENT. The committee must answer for that.

Mr. HAY. I will make a motion to strike out the word "State," and insert the word "Commonwealth."

The PRESIDENT. It is moved to go into committee of the whole for the purpose of amending in the fifth section, fourth

line, by striking out the word "State," and inserting "Commonwealth."

Mr. BEEBE. I would like to inquire of the gentleman from Allegheny if the word "State" has not a particular application in that place.

Mr. HAY. It seemed to be the intention of the committee to change the word "State" to the word "Commonwealth" in all cases, but in this they have not done it, and I inquired whether it was an oversight, or whether the change was intentional.

Mr. D. W. PATTERSON. It was not an oversight on the part of the committee, but the committee retained the word "State" in several places where it had a territorial signification, and did not apply to the organization or government of the State, and that is the distinction. Hence in this place the committee, with that idea, that the word here had a territorial signification, and that such was the proper term, retain the word "State;" but whenever it is applied to the organization or government they use the term "Commonwealth," and I hope the Convention will adopt the same course.

Mr. BIGLER. Mr. President: There is an evident desire on the part of members to amend the article. It will be difficult to do that until we proceed to third reading.

The PRESIDENT. The article is not yet on third reading.

Mr. BIGLER. That is my understanding. Now, sir, I move—

The PRESIDENT. Does the delegate from Allegheny withdraw his motion?

Mr. HAY. Certainly. I only made it as a suggestion to obtain information.

Mr. BIGLER. I move then that the Convention proceed to the third reading of the article.

The motion was agreed to.

The PRESIDENT. The article is now before the Convention on third reading.

The article was read the third time, as given above.

Mr. WOODWARD. I am very sorry to appear hypercritical; but this very competent Committee of Revision seem to be unfortunate in their language sometimes. In the seventh section as amended we have this committee recommending to insert the words "for election" after the word "eligible," so as to read: "No person hereafter convicted of embezzlement," &c., "shall be eligible for election." Now, if they had used the word "electable," which is exactly equivalent

to "eligible," the ridiculousness of this thing would have appeared. It would have read, "no person shall be electable to election." We ought not to send out such English. I submit that it is all wrong. It is a small matter, but it is wrong. The word "eligible" implies all that the words "for election" can imply. Then in the latter clause of it you ought to say either "be eligible" or "appointable to office," to make good English. I move to go into committee of the whole for the purpose of striking out the words "for election," in the second line of the seventh section.

Mr. BROOMALL. I merely desire to remind the gentleman from Philadelphia that there are several cases where that same tautology occurs. It is in very bad taste. I notice in the eleventh section in the same way, "shall not thereafter be eligible for election to either House;" *i. e.*, "shall not thereafter be electable for election to either House;" *i. e.*, "shall not thereafter be capable of an election for election to either House." I hope none of these tautological expressions will be neglected.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia, (Mr. Woodward,) to go into committee of the whole for the purpose of making the specific amendment indicated by him.

The motion was agreed to, ayes forty-one, noes not counted. The Convention accordingly resolved itself into committee of the whole, Mr. Lawrence in the chair.

The CHAIRMAN. The committee of the whole have had referred to them for special amendment article number two, on the Legislature. The question is on amending the seventh section in the manner proposed, which will be read.

The CLERK. The amendment is to strike out the words "for election," in the second line.

Mr. MACCONNELL. That appears—

The CHAIRMAN. The Chair will suggest to the gentleman that no discussion is in order on a special amendment. The Chair must put the question.

Mr. MANN. I rise to a question of order—

Mr. D. N. WHITE. There is no question to be put to the committee of the whole.

The CHAIRMAN. The amendment is made and the committee will rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Lawrence) reported that the committee of the whole had had referred to them the article on the Legislature, section seven, for special amendment, and had directed the Chairman to report the same with the words "for election" stricken out.

The PRESIDENT. The committee of the whole have reported. Will the Convention agree to the report?

Mr. KAINÉ. Mr. President: I hope the Convention will not agree to this report. I hope the Convention now will stand by the report of the Committee on Revision and Adjustment. I know very well—

Mr. D. N. WHITE. I rise to a question of order.

Mr. KAINÉ. I know very well—

The PRESIDENT. The question of order will be stated.

Mr. KAINÉ. What is the point of order?

Mr. D. N. WHITE. The point of order is that when we decide to go into committee of the whole and the article is amended, there is no vote taken on it afterwards.

Mr. KAINÉ. The gentleman is mistaken.

The PRESIDENT. The point of order is sustained.

Mr. KAINÉ. Is there to be no vote on it now?

The PRESIDENT. No, sir.

Mr. DARLINGTON. I move then that the Convention resolve itself into committee of the whole for the purpose of amendment by striking out the words "for election or appointment," in the third line of the seventh section.

This is precisely akin to the amendment we have already made. They are superfluous words, not necessary to the sense, not necessary to grammar, not necessary to good taste. The section will then read:

"No person hereafter convicted of embezzlement of 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 Commonwealth."

The PRESIDENT. The question is on the motion of the delegate from Chester.

Mr. KAINÉ. I call for the yeas and nays on this question.

Mr. HANNA and Mr. WORRELL seconded the call.

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

Y E A S .

Messrs. Armstrong, Baker, Beebe, Bid-
dle, Bigler, Black, Charles A., Bow-
man, Boyd, Broomall, Calvin, Cassidy,
Corbett, Dallas, Darlington, De France,
Elliott, Ewing, Guthrie, Hay, Heverin,
Howard, Lawrence, Lear, Lilly, Mac-
Connell, Minor, Mitchell, Mott, Newlin,
Niles, Patton, Pughe, Purman, Read,
John R., Ross, Runk, Russell, Sharpe,
Smith, Henry W., Struthers, Temple,
White, David N., White, J. W. F.,
Woodward, Worrell and Walker, *Presi-
dent*—46.

N A Y S .

Messrs. Achenbach, Baily, (Perry,)
Brodhead, Campbell, Carey, Carter, Cur-
tin, Cuyler, Edwards, Hanna, Hunsicker,
Kaine, M'Cleau, M'Michael, M'Murray,
Mann, Palmer, G. W., Patterson, D. W.,
Porter, Purviance, Samuel A. and Smith,
H. G.—21.

ABSENT.—Messrs. Addicks, Ainey, Al-
ricks, Andrews, Baer, Bailey, (Hunting-
don,) Bannan, Barclay, Bardsley, Bar-
tholomew, Black, J. S., Brown, Bucka-
lew, Bullitt, Church, Clark, Cochran,
Collins, Corson, Craig, Cronmiller, Curry,
Davis, Dodd, Dunning, Ellis, Fell, Fin-
ney, Fulton, Funck, Gibson, Gilpin,
Green, Hall, Harvey, Hazzard, Hemp-
hill, Horton, Knight, Lamberton, Landis,
Littleton, Long, MacVeagh, M'Camant,
M'Culloch, Mantor, Metzger, Palmer, H.
W., Parsons, Patterson, T. H. B., Purvi-
ance, John N., Reed, Andrew, Reynolds,
Rooke, Simpson, Smith, Wm. H., Stan-
ton, Stewart, Turrell, Van Reed, Weth-
erill, J. M., Wetherill, Jno. Price, Wherry,
White, Harry and Wright—66.

So the motion was agreed to ; and the
Convention accordingly resolved itself
into committee of the whole, Mr. Broom-
all in the chair.

The CHAIRMAN. The committee of the
whole have had referred to them the article
on the Legislature, with instructions
to strike out the words, "for election or
appointment," in the third line of the
seventh section. It will be so done and
the committee will rise.

The committee rose, and the President
having resumed the chair, the Chairman
(Mr. Broomall) reported that the com-
mittee of the whole had had referred to
them the article on the Legislature with
instructions to make a particular amend-

ment to the seventh section, and that that
amendment had been made.

The PRESIDENT. The article is now
again before the Convention.

Mr. DARLINGTON. I find that this is
not it quite as gentlemen would desire to
have it, and I move that we again go into
committee of the whole for the purpose of
striking out the word "to," immediately
after the word "appointment," and in-
serting in place of it, "capable of hold-
ing." The section will then read : "No
person hereafter convicted of embezzle-
ment of public moneys, bribery, perjury,
or other infamous crime, shall be eligible
to the General Assembly, or capable of
holding any office of trust or profit in this
Commonwealth."

The PRESIDENT. It is moved that the
Convention resolve itself into committee
of the whole for the purpose of making
the special amendment indicated by the
gentleman from Chester.

The motion was agreed to, and the Con-
vention resolved itself into committee of
the whole, Mr. Pughe in the chair.

The CHAIRMAN. The committee of the
whole have had referred to them an
amendment to section seven, of the arti-
cle on the Legislature, to strike out of the
third line the word "to," and inserting
the words "capable of holding." This
is done, and the committee will now rise.

The committee accordingly rose, and
the President having resumed the chair,
the Chairman (Mr. Pughe) reported that
the committee of the whole had had un-
der consideration section seven of the
article on the Legislature, and had
amended the same accordingly.

The PRESIDENT. The article is again
before the Convention.

Mr. DARLINGTON. I suggest that we
proceed by sections, taking them up *seria-*
tim in order. ["No." "No."]

Mr. KAINE. I submit that that is not
in order.

The PRESIDENT. The question is on
the final passage of the article.

Mr. KAINE. I move that the Con-
vention go into committee of the whole, for
the purpose of special amendment in the
seventeenth section, in the fourth line,
and I indicate the following amendment:
Strike out the word "two," and in-
sert "one," and insert after the word
"hundred," the words "and fifty," the
effect of which is to make one hundred
and fifty the divisor for the ratio of the
House of Representatives instead of two
hundred. If this amendment should pre-

vail, the clause of the section would read:

"The members of the House of Representatives shall be apportioned among the several counties according to population, on a ratio to be obtained by dividing the whole population of the State as ascertained by the most recent United States census by one hundred and fifty."

I offer the amendment for the purpose of bringing back the section to what it was as it came from the special committee that made the report. I think it will be much more desirable to have the number of members of the House of Representatives fixed at one hundred and fifty than at two hundred. With a single exception, which is not material, the section is precisely the same as it was reported from the special committee, with the exception of increasing the number from one hundred and fifty to two hundred. I propose to restore it as it was reported by the committee, fixing the membership of the House at one hundred and fifty. This question was fully discussed by the Convention; every gentleman I suppose has made up his mind upon it, and I shall not attempt to discuss it further, and merely content myself with calling for the yeas and nays on the question.

The PRESIDENT. Who seconds the call for yeas and nays?

Mr. HUNSICKER seconded the call.

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

YEAS.

Messrs. Armstrong, Black, Charles A., Broomall, Calvin, Cuyler, Ewing, Hay, Howard, Kaine, MacVeagh, M'Murray, Minor, Porter, Purman, Purviance, Samuel A., Russell, Smith, Henry W., Struthers, White, David N., Woodward and Walker, *President*—21.

NAYS.

Messrs. Achenbach, Baily, (Perry,) Baker, Beebe, Biddle, Bigler, Brodhead, Campbell, Carey, Carter, Cassidy, Corbett, Curtin, Dallas, Darlington, De France, Edwards, Elliott, Guthrie, Hanna, Hazzard, Heverin, Hunsicker, Lambertson, Lawrence, Lear, Lilly, MacConnell, M'CLean, M'Michael, Mann, Mantor, Mitchell, Mott, Newlin, Palmer, G. W., Patterson, D. W., Patton, Pughe, Read, John R., Reynolds, Ross, Runk, Sharpe, Smith, H. G., Temple, Wetherill, John Price, White, J. W. F. and Worrell—49.

So the motion was not agreed to.

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ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Boyd, Brown, Buckalew, Bullitt, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hemphill, Horton Knight, Landis, Littleton, Long, M'Camant, M'Culloch, Metzger, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Rooke, Simpson, Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry and Wright—63.

Mr. BEEBE. I move that the Convention resolve itself into committee of the whole for the purpose of striking out sections nine and ten as printed in pamphlet relating to the oath, as they are supplied by another article.

SEVERAL DELEGATES. They have been stricken out.

Mr. BEEBE. Then I desire that fact to be distinctly understood.

The PRESIDENT. Those sections have been stricken out.

Mr. BROOMALL. I desire to call the attention of the Committee on Revision to the phraseology of the sixteenth section. It looks to me as if that section would have to be re-drafted. I read from the third line and on: "No county shall be divided in the formation of a district, unless such county is entitled to two or more members, by possessing a population exceeding one senatorial ratio and three-fifths of a second ratio." It is nowhere said affirmatively that three-fifths of a second ratio shall give a Senator, and if it were, one ratio and three-fifths of a second will hardly give more than two members, as is stated in the first branch of the sentence. I desire to call the attention of the committee to that. I have no amendment of my own ready, but the phraseology is bad, and it looks to me as if the section would have to be re-drafted.

Mr. D. W. PATTERSON. This is one of the sections which caused so much discussion, and we did not feel at liberty to alter the phraseology lest we might interfere with the substance.

Mr. D. N. WHITE. The phraseology in the section referred to was an amendment offered by Mr. Buckalew. It was not in the original section as drawn. It was offered by Mr. Buckalew and voted in by the Convention.

Mr. WOODWARD. When this section was adopted the three-fifths of a second ratio was what the Convention had settled upon; but when the special committee was appointed instead of three-fifths they settled upon one-half.

Mr. BROOMALL. That is for the House.

Mr. WOODWARD. That committee did not have before them this sixteenth section. The seventeenth section was the one reported upon by the committee. The probability is that we shall make the Constitution more harmonious with itself by substituting "one-half" for "three-fifths of a second ratio in this sixteenth section.

Mr. EWING. This is put in at the suggestion of the delegate from Columbia, (Mr. Buckalew,) was discussed, and I think very fully understood, and is certainly proper. It does not fix absolutely that three-fifths of a ratio over one or two or three or four ratios shall entitle a county to another member of the Senate; but it does say that the Legislature in districting the State for Senators shall not give an additional member to a county over one unless it has three-fifths of a second ratio. One-half a ratio would be too small a fraction to give a Senator upon. I think three-fifths is as small a ratio as ought to be permitted there. This is simply a restriction on the legislative power when it comes to district the State for Senator.

The PRESIDENT. There is no amendment proposed.

Mr. MACVEAGH. I was going to say to the Convention that this language down to and including the word "members," in the fourth line, according to my recollection of it, was imposed upon words having a different aim and contemplating a different result. I have never seen the necessity for the words after the word "members," in the fourth line of this section. I do not understand how you are to fix fractions for a ratio when you fix a definite number to constitute your Senate, and when you direct that they shall be divided into districts as nearly equal in population as possible. If, then, you make it incumbent on the Legislature to award a member of the Senate for a fraction, it seems to me you cannot make it at the same time incumbent upon them to retain the number at fifty. In other words, the section of the gentleman from Columbia is complete when read as follows: "The State shall be divided into fifty senatorial districts of compact and

contiguous territory, as equal in population as possible, and each district shall be entitled to elect one Senator; no county shall be divided in the formation of a district, unless such county is entitled to two or more members." Stopping there, you bind the Legislature to the fullest extent that is compatible with the fixed number of your Senate.

Mr. DARLINGTON. The last line of the the section must also be retained.

Mr. MACVEAGH. Yes; "and no county or city shall be entitled to more than one-sixth of the whole number of members."

Mr. DARLINGTON. That makes it right.

Mr. MACVEAGH. But the moment you say that a fraction shall be represented by a member, and at the same time that county lines shall not be invaded, you make a considerable difficulty.

Mr. S. A. PURVIANCE. Will that fraction be lost entirely?

Mr. MACVEAGH. It will not be lost entirely, because it will be utilized under the first proposition, that the districts shall be as nearly equal in population as possible; but there must be a varying discretion left in that if the number is to remain fixed.

Mr. HAY. Allow me to say that I do not understand that the Legislature, under this section, will be required to give a county having one ratio and three-fifths of a ratio an additional member, but they are restricted from giving two Senators to a county which has less than that. I understand it simply as a restriction upon their power.

Mr. D. N. WHITE. If the gentleman from Dauphin will give way I will offer an amendment. I move to go into committee of the whole for the purpose of striking out in the fourth and fifth lines of this section the words "by possessing a population exceeding one senatorial ratio and three-fifths of a second ratio." That will leave the section just as it came before the Convention originally.

The PRESIDENT. The question is on the motion of the delegate from Allegheny, (Mr. D. N. White,) which he has just stated.

Mr. J. PRICE WETHERILL. I hope the amendment proposed by the gentleman from Dauphin will prevail, and not that proposed by the gentleman from Allegheny.

The PRESIDENT. The gentleman from Dauphin has not proposed an amendment.

Mr. J. PRICE WETHERILL. If it is in order to further amend, I should like to do so.

Mr. D. N. WHITE. It cannot be amended now. We must vote on this single proposition, and I call for the yeas and nays upon it.

Mr. CURTIN. Let us understand distinctly what the question is.

The PRESIDENT. It is proposed to go into committee of the whole to amend the sixteenth section in the fourth and fifth lines by striking out these words: "By possessing a population exceeding one senatorial ratio and three-fifths of a second ratio."

Mr. LAWRENCE. I am sorry the gentleman from Columbia is not here to explain this matter. I think his construction of this section, from what I have heard him say, is this: Suppose you have a county with a senatorial ratio and three-fifths of a second ratio; you want to divide it, probably to attach it to some smaller county with less than three-fifths, to make a second district, or you want to attach some other county to it to make another district. If you adopt this clause you cannot do that. Take Washington county, for instance. It may have the ratio for a Senator and three-fifths of a second ratio. It would not be fair to say that that county shall have but one Senator, and you cannot divide the county, if this clause is passed. I think that is the idea of the gentleman from Columbia.

Mr. BIDDLE. If the gentleman will refer to the language immediately preceding the words to be stricken out, he will see that the county can be divided.

Mr. LAWRENCE. Yes, but it cannot be divided unless it reaches one senatorial ratio and three-fifths of a second ratio.

Mr. BIDDLE. The words proposed to be stricken out are merely an attempt to define a case; but the language that remains comprehends all cases.

Mr. MACVEAGH. It can be comprehended perfectly, with one ratio and three-fifths of a ratio, without that language.

Mr. PURMAN. As I understand the section, it imposes a limitation upon the Legislature in creating senatorial districts. In the first place, senatorial districts are to be as nearly equal in population as possible. To prevent the Legislature from disregarding this admonition in the Constitution, it is further stated that in ascertaining equality as nearly as possible they shall

never go below a three-fifths ratio of the whole population of the State for fifty Senators. It is an additional security against favoritism in the construction of these senatorial districts, that they shall not affect the whole popular voice of the Commonwealth by making districts for that purpose, but that the Senate as well as the lower House shall represent as near as possible the popular voice of the people. It is an additional limitation against unfair districts and in favor of fair districts.

Mr. MACVEAGH. Allow me to ask the gentleman a question. Suppose the largest unrepresented fraction is a vote below three-fifths of a senatorial ratio, and they have but forty-nine members, why should you not give that, which is the largest fraction, another member and divide that county. You compel them to do it as nearly equally as possible.

Mr. PURMAN. Certainly that would be well enough in a case of that kind.

Mr. MACVEAGH. That is all that is done.

Mr. PURMAN. That may be one supposable case; but I can suppose a great many other cases which this language is intended to prevent, that are more valuable to the public interests than to serve the interests suggested by the gentleman from Dauphin.

Mr. MACVEAGH. Must you not either strike out those words or strike out the word "fifty"? Is it not perfectly clear that you must strike out one or the other?

Mr. PURMAN. I think not. There are three or four limitations in this section. First, that no city or county shall have more than one-sixth of the whole representation; next, that there shall be fifty Senators; again, that they shall be apportioned as near equal as possible to population; and then that you shall not, in the formation of districts, give an additional member for a fraction below three-fifths. It is a provision against gerrymandering.

Mr. BROOMALL. The motion of the gentleman from Allegheny answers the purpose I had in view when I called attention to the phraseology of this section, and really it leaves the section in the shape in which it seems to me it should be. When we say that the State shall be divided into fifty senatorial districts as nearly equal in population as possible, and that no county shall be divided unless it is entitled to more than two members, we embrace the idea that it will be

entitled to two or more members whenever it contains the largest unrepresented ratio, whether that ratio is one-half, two-thirds or three-fifths. I think it would be unwise to say that a ratio must equal three-fifths, because it might happen that one-half of a ratio in such a case is the largest unrepresented one. In the equality of distribution we must have regard to all that, and without this language that can be done; with it, in certain cases, it cannot.

MR. D. N. WHITE. I would merely add to what has been said by the gentleman who has just taken his seat, that it might be impossible to make an apportionment at all with this restriction. I think that is a sufficient reason for voting it down.

THE PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment indicated by the gentleman from Allegheny (Mr. D. N. White.)

MR. D. N. WHITE. On that I call for the yeas and nays.

MR. DARLINGTON. I second the call.

The yeas and nays were taken and resulted as follow:

Y E A S .

Messrs. Armstrong, Baily, (Perry,) Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Calvin, Carter, Cassidy, Curtin, Cuyler, Dallas, Darlington, De France, Edwards, Elliott, Heverin, Hunsicker, Lamberton, MacVeagh, M'CLean, M'Michael, Read, John R., Runk, Smith, Henry W., Wetherill, Jno. Price, White, David N., White, J. W. F., Worrell and Walker, *President*—33.

N A Y S .

Messrs. Achenbach, Baker, Campbell, Corbett, Ewing, Guthrie, Hanna, Hay, Hazzard, Howard, Kaine, Lawrence, Lilly, MacConnell, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Patterson, D. W., Patton, Porter, Pughe, Purman, Purviance, Sam'l A., Reynolds, Ross, Russell, Smith, H. G., Struthers, Temple and Woodward—35.

So the motion was rejected.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Buckalew, Bullitt, Carey, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dun-

ning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hemphill, Horton, Knight, Landis, Lear, Littleton, Long, M'Camant, M'Culloch, Metzger, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Rooke, Sharpe, Simpson, Smith, William H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry and Wright—65.

MR. CUYLER. I now move to go into committee of the whole, for the purpose of amending the sixteenth section, by striking out the closing clause:

"And no county or city shall be entitled to more than one-sixth of the whole number of members."

I do not do this for the purpose of entering into any discussion of the question, but desiring to appear on the record as I wish to vote, I call for the yeas and nays.

MR. DALLAS. I second the call.

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

Y E A S .

Messrs. Baker, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Campbell, Carey, Cassidy, Curtin, Cuyler, Dallas, Edwards, Guthrie, Hanna, Lear, Lilly, M'Michael, Mann, Newlin, Read, John R., Runk, Stanton, Temple, Wetherill, John Price and Worrell—27.

N A Y S .

Messrs. Achenbach, Armstrong, Baily, (Perry,) Beebe, Calvin, Carter, Corbett, Darlington, De France, Elliott, Ewing, Hay, Hazzard, Howard, Hunsicker, Kaine, Lamberton, Lawrence, MacConnell, MacVeagh, M'CLean, M'Murray, Mantor, Minor, Mitchell, Mott, Niles, Palmer, G. W., Patterson, D. W., Patton, Porter, Pughe, Purman, Purviance, Samuel A., Reynolds, Ross, Russell, Smith, H. G., Smith, Henry W., Struthers, White, David N., White, J. W. F., Woodward and Walker, *President*—41.

So the motion was rejected.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Buckalew, Bullitt, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hemphill, Heverin, Horton, Knight, Landis, Littleton, Long, M'Camant, M'Culloch, Metz-

ger, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Rooke, Sharpe, Simpson, Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry and Wright—62.

Mr. ARMSTRONG. I move to go into committee of the whole to amend the seventeenth section, by striking out, in the ninth and tenth lines, the following words:

"Every city shall be entitled to separate representation when its population equals the ratio."

I do this because there may be cities in the State which have a population sufficient for a member, when the county outside of the city would not have population enough for a member. The consequence of that would be that the city would get a distinctive representation while the rest of the county would necessarily have to be attached to some other county. Distinctive interests should follow the lines of county divisions. I cannot see any advantage to be derived from dividing the county itself, when in all other respects its interests are identical.

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

Mr. ARMSTRONG. Certainly.

Mr. EWING. I would ask that, for information, the gentleman would tell us what county has in it a city that has a ratio to entitle it to representation, so as at the same time to leave the rest of the county without representation?

Mr. ARMSTRONG. I do not know that I can answer the gentleman in figures. I know that the town of Lock Haven has not sufficient for a ratio, having a population of only five thousand or six thousand.

Mr. S. A. PURVIANCE. Have we not in this same section provided for each county having a separate representative as a county?

Mr. ARMSTRONG. Yes, sir.

Mr. S. A. PURVIANCE. That covers it.

Mr. ARMSTRONG. Then a county that, entitled to representation as a county, contains also a city large enough to secure representation would be entitled to a very undue representation in the Senate.

Mr. D. W. PATTERSON. That is so.

Mr. ARMSTRONG. I do not propose to enter largely into the discussion. I think the amendment I have proposed is judicious. Is it better not to divide a city and a county, giving them hostile and rival interests, producing bad feeling between

the city and the county, inviting applications to the Legislature to constitute cities for the very purpose of giving them representation, and as a mode of getting an undue proportion of representation in the counties, first by a provision which will give the city its representation and next by the other provision that the county shall have distinct representation in itself? I do not think the provision as it stands is a wise provision.

Mr. H. G. SMITH. I cannot call to mind, at the present time, any city in this Commonwealth which has seventeen thousand six hundred and eight population, located in a county which has not equally as much. I do not know what cities the gentleman from Lycoming can allude to. I really cannot call to mind a single one of them.

Mr. ARMSTRONG. Lock Haven.

Mr. H. G. SMITH. Lock Haven has not seventeen thousand six hundred and eight population.

Mr. ARMSTRONG. She has only six thousand.

Mr. H. G. SMITH. But there are certain cities in this Commonwealth of growing importance, which ought, on all grounds by which counties themselves can claim separate representation, to be entitled to separate representation. They have their distinct and separate interests to be attended to in the Legislature; and there is more reason, in my judgment much more reason, why these important sub-divisions of the Commonwealth should be separately represented in such manner that they will be able to make their wants known to the Legislature themselves, than there is that the smaller counties should have representation. I hope the clause may stand as it is, and that members of the Convention will vote against going into committee of the whole.

Mr. D. W. PATTERSON. I can tell my colleague a city of which he is well aware, and one in which there will be a large surplus over a ratio, which will not be able to be utilized for representation at all. I mean the city of Lancaster, my own city, and the city of my friend who has just spoken—a city with a population of some twenty-four thousand, nearly twenty-five thousand, which would have an unrepresented surplus over a ratio of seventeen thousand six hundred and eight, of between seven thousand and eight thousand. If the section now proposed to be amended is adopted unchanged, we should never be able to secure rep-

representation for this large surplus until we at least get three-fifths of a ratio. The present language of the section would prevent a division of this and other cities similarly situated, until at least three-fifths of a ratio be obtained for a surplus. Hence there will not be a fair representation of these growing cities. If left as it is, the section operates unfairly. We cannot utilize that element which in cities of these dimensions is always a growing and progressive element, and which ought to be represented to some extent.

For that reason, if my friend would consider the advantages and interests of his own city, he certainly would be in favor of striking out this portion which is under consideration now. I have talked with several other gentlemen who occupy the same situation with reference to this clause that we in Lancaster do. It precludes cutting up such cities into representative districts until we get to a certain large surplus over and above the ratio, and thereby we may be unrepresented for a large over and non-used surplus for the next fifteen or twenty years.

MR. J. W. F. WHITE. The section, as it now stands, upon the population of the State under the census of the United States in 1870, would give a separate representative to Reading, Scranton, Harrisburg, Lancaster and Erie, and to no other city in the State excepting, of course, Pittsburg, Allegheny and Philadelphia, which are not affected by the clause. Williamsport, having a population less than the ratio, would not be entitled to a separate representative, the population of that city according to the census of 1870 being sixteen thousand and twenty-three, while the ratio is seventeen thousand six hundred and eight, so that the gentleman from Lycoming's own city would not be entitled to a member. The section as it stands only applies to these five cities of the State.

MR. ARMSTRONG. But it soon will.

MR. J. W. F. WHITE. It may or may not, owing to the growth of the cities and the State, and if it should be ultimately, it ought to have it. I myself have been in favor of giving to the large cities of the State such a representation as will enable them to properly attend to their varied interests. Take Erie county. In a House of two hundred members, Erie county would be entitled to four members and the city of Erie to one. Luzerne would have, I believe, nine members, and Scranton would be entitled to one. Berks

would be entitled to six members, and Reading to one member. Lancaster county would be entitled to six members and the city of Lancaster to one member.

Now, it seems to me that that is a fairer distribution of the members in these various counties. These cities I think would be better represented if they have a direct representative in the Legislature. I shall vote against going into committee of the whole to amend this section, as I think it should not be amended.

MR. STRUTHERS. Mr. President: I am very glad the gentleman from Lycoming has made this motion. I was seeking the ear of the Chair for the purpose of moving the same amendment. It appears to me a very judicious and proper amendment to be made; and that the section as it stands would be very injudicious, very inconvenient and harrassing even to the people of counties where a small city has sprung up that has a ratio to have it separated from the rest of the county in the election of members of the Legislature. They are not separated for other purposes, for the election of their county commissioners, their sheriffs, their auditors and other officers; and they will have to have a separate organization entirely for this particular election. It would work great inconvenience, it appears to me, and I cannot for my life see what advantage there would be in having such separate representation. I hope the motion will be agreed to and that the amendment will carry.

MR. LAWRENCE. I did not examine this question at all until it was brought up by the gentleman from Lycoming, but I think a cursory examination will show the members here that there may be some injustice which probably ought to be provided for. I think I voted myself for this city representation; but suppose a city, as my friend from Lancaster has said, is entitled to one representative, having a ratio sufficient and almost enough for another member; suppose she has eight thousand more than would entitle her to one member; they would not be counted with the population of the county; they would be entirely excluded; they would not be counted with any of the ratios of that county, and could not be counted with the ratio of the city, because they would not be enough for another member. It seems to me that would be unfair. You have eight thousand in a town who would not be counted in the ratio of the county at all. You might

put in a proviso that where there was a surplus in a city not entitling it to a representative, it might be counted in the aggregate of the county. That might remedy the difficulty; and this is the only point I see in it which would have any effect on my mind.

Mr. HAY. The difficulty which has been suggested by the gentleman from Washington could be obviated by inserting the words "city or" before county in this line, so as to extend the provision for the election of representatives where a county has a ratio beyond one or more full ratios to cities, so as to provide that a city as well as a county which had one-half a ratio exceeding a ratio should be entitled to an additional member.

Mr. J. PRICE WETHERILL. I desire to call the attention of the members of the Convention to some figures in reference to this matter. This amendment will only apply to Erie, Scranton, Harrisburg, Lancaster and Reading. The united population of these five cities amounts to 130,000, and they would only be entitled, according to the provision now in the section, to five members. Now, as the ratio is 18,000 or thereabouts, if the cities contained 90,000 they would be entitled to five members, and they contain 130,000 and are only entitled to five members. Therefore they lose 40,000 in the apportionment; and under this clause they will lose perhaps a member to some of the counties within which they are located. As it would be clearly unjust to the counties outside of these cities, when they have a surplus of 40,000, that thereby they should lose to a county one member, I do hope the amendment of the gentleman from Lycoming will prevail.

Mr. DARLINGTON. The injustice that I have seen likely to occur from this is where a city within a county shall have population enough for a representative, and the rest of the county not have enough. Then, if you adopt this as it is, every city entitled by its numbers to a separate representation will have the member, and all the rest of the county that has not enough cannot vote for him at all, but must go unrepresented.

Mr. D. W. PATTERSON. You cannot utilize the surplus.

Mr. DARLINGTON. How are you to meet that? Every city shall be entitled to a separate representation when its population equals the ratio, says the section. If Lycoming county is entitled to but one member now, and if within a

few years the city of Williamsport shall be entitled to a member of itself and the county not entitled to two, what becomes of the county districts? So with Altoona in Blair county, and so with many other cities. It is not very likely to affect my county, but it would certainly operate great injustice in such cases by giving a separate representation for the city and none for the county outside of the city.

Mr. EWING. Allow me to ask the gentleman a question. Can he find a county, with a city, in the State, where there is a possibility of such a thing or any probability of it?

Mr. DARLINGTON. I do not see why it might not occur. Take the oil region, where a town of ten or fifteen thousand springs up in a year or two. In half a dozen years more you will have it entitled to a member, and all the rest of the county entitled to none. I do not know whether it will be so, but it is a thing that may be well calculated upon; that may be the effect.

Mr. HAY. Mr. President: I am opposed to the adoption of the amendment of the gentleman from Lycoming, for the reason that I am very desirous of seeing the cities receive the right of separate representation. The Convention having already agreed to give to every city having one ratio a separate representative, I am opposed to taking away the right now; but I do think that the difficulty—if it is a real one—suggested by the delegate from Lancaster, should be provided for, and that a city which has one and a half ratios, should be entitled to elect two members, as well as a county standing in the same position. Therefore, if this motion of the delegate from Lycoming is not agreed to, I will then move that the Convention resolve itself into committee of the whole for the purpose of amending the section in the sixth line, by the insertion of the words "city or" before "county" in that line so as to provide for that case. It will then stand: "Any city or county having less than five ratios, shall have an additional member for a surplus exceeding one-half a ratio over one or more full ratios." This will be right.

Mr. ARMSTRONG. Mr. President: There are now in Pennsylvania some ten cities with a population of less than ten thousand. There are three cities with a population of less than twelve thousand; and there are other cities, six or eight of them

with a population of less than twenty thousand. Williamsport, I suppose, according to its present population, would be entitled to a member, and therefore I am not here upon any merely temporary view of this question as it might affect the cities with their present population, but I do regard it as unwise that we should establish in the Constitution a provision the effect of which we cannot now distinctly measure. The cities which are growing up by increase in population and very rapidly throughout the State are in counties, some of which do not increase with anything like the proportions in which the cities increase. I see in it a possible difficulty which we ought to avoid. I can see no distinctive advantages to be derived from it.

I cannot understand why a city should have distinct interests apart from the county in which it is situated. They are so closely allied, not only by location, but by their peculiar interests in the great majority of cases, that there is no basis upon which they can be divided; nor do I think that it promotes the harmony of the State or its best interests to divide the State into hostile and conflicting interests where the parties are necessarily so closely related by not only their interests, but by their location.

The difficulty that suggests itself in regard to the apportionment of fractions shows conclusively that the clause as it stands now is imperfect. What it may be when other gentlemen have added amendments, is a question we need not now determine, for if amendments are adopted which will better and improve it and obviate the difficulty suggested they might be worthy of adoption, but it seems to be conceded by some who have spoken on the question here that as it stands now there are very great difficulties. I think as it stands, and with these difficulties apparent and not removed, it is a dangerous provision to put in the Constitution.

THE PRESIDENT. The question is on the motion of the delegate from Lycoming.

MR. ARMSTRONG. I call for the yeas and nays.

MR. BRODHEAD. I second the call.

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

YEAS.

Messrs. Armstrong, Beebe, Boyd, Carter, Darlington, Edwards, Guthrie, Law-

rence, Lilly, MacConnell, MacVeagh, Mann, Mantor, Minor, Newlin, Patterson, D. W., Porter, Russell, Smith, Henry W., Struthers, Wetherill, John Price, White, David N., Woodward, Worrell and Walker, *President*—25.

NAYS.

Messrs. Achenbach, Bailly, (Perry,) Baker, Biddle, Bigler, Black, Charles A., Brodhead, Broomall, Calvin, Campbell, Carey, Cassidy, Corbett, Curtin, Dallas, De France, Elliott, Ewing, Hanna, Hay, Howard, Hunsicker, Kaine, Lambertson, Lear, M'CLean, M'Michael, M'Murray, Mitchell, Mott, Niles, Palmer, G. W., Patton, Pughe, Purman, Purviance, Samuel A., Read, John R., Reynolds, Ross, Runk, Smith, H. G., Stanton and White, J. W. F.—43.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Buckalew, Bullitt, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hazzard, Hemphill, Heverin, Horton, Knight, Landis, Littleton, Long, M'Camant, M'Chulloch, Metzger, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Rooke, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, and Wright—65.

MR. BRODHEAD. I move that we go into committee of the whole for the purpose of striking out the word "and," in the second line of the second section. It is evidently a grammatical error or a misprint.

THE PRESIDENT stated the question.

MR. BRODHEAD. I change my motion and ask unanimous consent to have the word "and" stricken out.

THE PRESIDENT. Will the Convention unanimously agree to strike out the word "and," at the beginning of the sentence reading: "And their terms of service shall begin on the first day of December," &c.? ["Aye." "Aye."] Unanimous consent is granted, and the amendment is made.

MR. DARLINGTON. I ask unanimous consent of the Convention to strike out the words "for election," in the sixth line of the eleventh section, for the same rea-

son that we struck out the words in the other section, where they corresponded. It will then read, "shall not thereafter be eligible to either House."

The PRESIDENT. Will the Convention give unanimous consent? ["Aye."] It is agreed to.

Mr. DARLINGTON. I move that we go into committee of the whole, or by unanimous consent change one word in the fifth line of the seventeenth section. It now reads: "And each county shall be given at least one member." I wish it to read: "Each county shall have at least one member."

The PRESIDENT. Is unanimous consent given to make that amendment? ["Aye."] Unanimous consent is given.

Mr. DARLINGTON. I move now that the Convention resolve itself into committee of the whole for the purpose of striking out the words "salary and mileage," in the first line of the eighth section, and inserting in lieu thereof "compensation," which is the word of the old Constitution and is better.

Mr. MACVEAGH. And also on the last line of that section.

Mr. DARLINGTON. My motion is to strike out the words "salary and mileage," in the first line of the eighth section, and insert "compensation," so as to read:

"The members of the General Assembly shall receive such compensation for regular and special sessions," &c.

Mr. WOODWARD. I hope that will not be done.

Mr. DARLINGTON. And also in the fifth line of the same section strike out "salary or mileage," and insert "compensation." I make this motion because I think that the term "compensation," is far more appropriate than "salary and mileage." Salary is a recent thing altogether. The compensation provided in the Constitution was always a daily compensation until quite a recent period.

Mr. KAINE. What do you do with "compensation" at the end of the second line?

Mr. DARLINGTON. It will then read: "The members of the General Assembly shall receive such compensation for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise; and no member of either House shall, during the term for which he may have been elected, receive any increase of compensation, under any law passed during such term."

In other words, I propose to make the term "compensation" instead of "salary and mileage," and make it harmonious. It is better language; it is every way more tasteful; and I hope it will be agreed to without objection.

The PRESIDENT. It is moved to go into committee of the whole for the purpose of making the amendment indicated by the gentleman from Chester.

Mr. EWING. I trust this motion will not prevail. The words as left in here by the Committee on Revision, leaving the section read: "Shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever," in the first place, are much better language than the clause would be if amended as now proposed. To my ear it would sound very awkwardly to be read as the delegate from Chester wishes it to be read. In the next place, these words were put in here with a meaning and on full consideration, after the question was discussed for two or three days. The same attempt was made then. It was intended by the term "salary" to require that a fixed annual compensation should be provided for the members of the Legislature and that no other compensation for an extra session should be allowed. These words have a meaning and a significance that are of importance, and I hope the Convention will not undo what they did after such a long discussion and full consideration.

Mr. MINOR. The language of this section is, "salary and mileage for regular and special sessions." It is very difficult, it strikes me, to fix a salary for a special session." A regular session may last from three to six months, and you may fix a salary for that. A special session may last half a day, or it may last fifteen days, or two or three months. Now, then, suppose the Legislature is brought together for a matter that is but formal, a single act, and the whole business is done in a day or at all events in three days; how are you going in advance to fix a salary for that? If you do, you fix the salary alike for a short session and a long one if it is a special session. It seems to me therefore that there should be "compensation," and then you can adapt it by a *per diem* or by salary as you please. "Compensation" does not exclude the word "salary" with that idea, but it does admit of a *per diem* and the adjusting of the pay to the actual circumstances.

The PRESIDENT. The question is on the motion to go into committee of the whole to make the proposed amendment.

The motion was not agreed to.

Mr. BRODHEAD. I ask the unanimous consent of the House to insert the words "the Governor" in the fourth line of the fourth section. The section now reads in this way: "In case of a vacancy in the office of United States Senator from this Commonwealth, in a recess between sessions, he shall convene the two Houses by proclamation on notice not exceeding sixty days, to fill the same." Of course the word "he" refers to the word Governor" in the preceding sentence.

Mr. MACVEAGH. That is right. I trust that the change will be made.

The PRESIDENT. The Chair is informed by the Clerk that that change was made by the Committee on Revision and Adjustment, and it is so marked in his copy.

Mr. MACVEAGH. For the purpose of calling the attention of the House for a moment to the subject, I move a formal amendment in the third line of the sixteenth section, which we recently had under consideration, to strike out the words: "No county shall be divided in the formation of a district." I wish simply to call the attention of the members to the danger of voting down proposed amendments without very full consideration. There is a possibility of sections of this character being a great block when they come to be worked out. I desire at this time merely to call the attention of delegates to one practical result under this section as we seem disposed to adhere to it. It is that the county of Delaware, with thirty-nine thousand inhabitants, gets one Senator inevitably, which is not a bad thing, considering the character of that county, [laughter,] and the county of Berks, with one hundred and six thousand inhabitants, gets one Senator, while the county of Allegheny, with but little more than double the population of Berks, gets four Senators.

These are inevitable results that you put in the Constitution just as plainly as if you had them written there. Under your section Delaware county must have one Senator. Under that section Berks county can only have one Senator. Under that section Allegheny county, with 260,000 inhabitants, must have four Senators, though having a population only a little over double that of Berks, and though Berks has a population three times that of Delaware. Luzerne, under

that section, with 160,000 inhabitants, only gets two Senators. Now, if any Legislature ever did worse than that, I should like to know when and where. They may have done as badly; but if they ever did worse I should like to know it; and this House deliberately declines to amend that section. I do not know that I ought specially to complain of it except that it is flagrantly unjust, as it seems to me.

Mr. D. W. PATTERSON. I rise to a question of order. Is any motion made by the gentleman?

Mr. MACVEAGH. Yes, sir, and if the gentleman had listened, instead of making a point of order, he would have known that.

Mr. D. W. PATTERSON. I did not hear it. What is the motion?

Mr. MACVEAGH. I moved, as I said distinctly and in a loud voice, as a formal motion to get at this system and to be in order, to strike out, in the sixteenth section, the words: "No county shall be divided in the formation of a district." Certainly the House will remember that I made that motion when I first rose, and I have been speaking upon it. I simply want to warn the House that it is not safe to vote down everything that is proposed.

The PRESIDENT. It is moved to go into committee of the whole, for the purpose of striking out, in the sixteenth section, the words: "No county shall be divided in the formation of a district."

Mr. HUNSICKER. I call for the yeas and nays on that motion.

Mr. BOYD. I second the call.

Mr. MACVEAGH. That amendment will not really reach the merits of the case. I think Judge Woodward's motion is the proper one. I therefore withdraw my motion. I made it for the purpose of presenting the views that I did, and to be in order.

The PRESIDENT. The motion is withdrawn.

Mr. WOODWARD. I move to reconsider the vote that was had on the motion to strike out of this section the words, "by possessing a population exceeding one senatorial ratio and three-fifths of a second ratio." That motion was defeated. I voted against it myself, and I now rise to move a reconsideration.

Mr. HUNSICKER. I second the motion. I voted against it before.

The PRESIDENT. It is moved to reconsider the vote on the motion submitted by the delegate from Allegheny (Mr. D.

N. White) to go into committee of the whole for the purpose of striking out the words, "by possessing a population exceeding one senatorial ratio and three-fifths of a ratio."

The question being put, there were, on a division, ayes thirty-one.

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

Mr. BEEBE. I second the call.

The question being taken by yeas and nays resulted as follows:

Y E A S .

Messrs. Achenbach, Armstrong, Baker, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Calvin, Campbell, Carter, Corbett, Dallas, Darlington, De France, Edwards, Elliott, Ewing, Guthrie, Hanna, Hay, Hazzard, Hunsicker, Kaine, Lamberton, Lawrence, Lear, Lilly, MacVeagh, M'Michael, Mantor, Minor, Mitchell, Newlin, Niles, Palmer, G. W., Purviance, S. A., Read, John R., Ross, Sharpe, Smith, H. G., Smith, Henry W., Struthers, Wetherill, John Price, White, David N., White, J. W. F., Woodward and Walker, *President*—50.

N A Y S .

Messrs. Bally, (Perry,) Howard, MacConnell, M'Clean, Mann, Mott, Patton, Porter, Pughe, Reynolds, Runk, Russell and Stanton—13.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Buckalew, Bullitt, Carey, Cassidy, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Curtin, Cuyler, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck Gibson, Gilpin, Green, Hall, Harvey, Hemphill, Heverin, Horton, Knight, Landis, Littleton, Long, M'Camant, M'Culloch, M'Murray, Metzger, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Reed, Andrew, Rooke, Simpson, Smith, Wm. H., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—70.

The PRESIDENT. There is not a quorum present.

Mr. DALLAS. It is within five minutes of the adjourning time, and I move that we adjourn.

Mr. D. W. PATTERSON. I did not vote on the last call. If it is permitted I will vote.

The PRESIDENT. It requires four to make a quorum.

Mr. MACVEAGH. Will the Chair decide whether the rule that we adopted as to two daily sessions takes effect to-day or to-morrow?

The PRESIDENT. To-day.

Mr. MACVEAGH. Then we have a session from three o'clock?

The PRESIDENT. We have a session from three o'clock.

Mr. DALLAS. I move that we take a recess until three o'clock.

The motion was agreed to, and the Convention accordingly took a recess until three o'clock P. M.

AFTERNOON SESSION.

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

The PRESIDENT. There is not a quorum present.

SEVERAL DELEGATES. Call the roll.

The PRESIDENT. The Clerk will call the roll.

The roll being called, fifty-one delegates answered to their names.

CALL OF THE HOUSE.

Mr. CARTER. Mr. President: I move that the Sergeant-at-Arms be sent for the absentees, and further that the Chair instruct him that this thing is not a farce and that the order is to be carried out literally. This remissness on the part of our members is becoming serious, and to the great injury of those who are attending. I think now some such measure should be taken, and that the Sergeant-at-Arms should be instructed to bring in the absent members according to the rules observed in such cases.

The PRESIDENT. Does the delegate move a call of the House?

Mr. CARTER. Yes, sir.

The PRESIDENT. Who seconds it?

Mr. S. A. PURVIANCE. I second the motion.

The question was put and the motion agreed to.

Mr. BROOMALL. Before the order is given for a call of the House I desire to know whether that involves the closing of the doors?

The PRESIDENT. It does.

Mr. BROOMALL. I must then ask leave of absence, for I am not well enough to stay here. I have been here with considerable suffering all day.

Mr. CURTIN. We will excuse you.

Mr. MACVEAGH. Let the gentleman be excused, but have the doors closed.

The PRESIDENT. The Sergeant-at-Arms will close the doors and keep them closed.

Mr. KAINE. I desire to have my colleague from Fayette (Mr. Collins) excused, because he is very sick.

The PRESIDENT. There is not a quorum present, and as an act of the House Mr. Collins cannot be excused. As an act of courtesy it may be done.

Mr. KAINE. Then how can the gentleman from Delaware (Mr. Broomall) be excused?

The PRESIDENT. The Clerk will call the names of delegates for the purpose of getting the absentees.

The roll was called, and the following delegates answered to their names:

Messrs. Achenbach, Baily, (Perry,) Baker, Beebe, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Carter, Corbett, Curtin, Darlington, De France, Edwards, Elliott, Ewing, Gibson, Guthrie, Hanna, Hay Hazzard, Howard, Hunsicker, Kaine, Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'Clean, Mann, Mantor, Mitchell, Mott, Niles, Palmer, G. W., Patterson, D. W., Porter, Pughe, Purviance, Samuel A., Reynolds, Ross, Runk, Russell, Sharpe, Smith, H. G., Smith, Henry W., Struthers, White, David N., White, J. W. F. and Walker, *President*—52.

The PRESIDENT. The absentees will be again called, and if any delegate has an excuse for a delegate absent he will state it when his name is called.

The CLERK proceeded to call the names of absentees, as follows:

"Mr. Addicks." No excuse offered.

"Mr. Ainey."

Mr. RUNK. I wish to say in behalf of Mr. Ainey that I know him to be necessarily absent to-day.

SEVERAL DELEGATES. What is the matter with him?

Mr. MACVEAGH. I suppose, like all the rest of us, he has very urgent business which he has to attend to at home. That is my case, I know.

Mr. CURTIN. Then we had better adjourn the Convention. I have important business at home, too.

The PRESIDENT. Is there any excuse for Mr. Ainey?

Mr. RUNK. I know he is necessarily absent to-day, in connection with the bank of which he is president.

The PRESIDENT. Then he should have asked leave of absence.

The CLERK continued the call of the absentees, as follows:

"Mr. Alricks."

The PRESIDENT. The Chair is informed by the Clerk that Mr. Alricks has leave of absence for to-day.

"Mr. Andrews."

The PRESIDENT. The Chair is informed that Mr. Andrews has leave of absence.

"Mr. Armstrong."

The PRESIDENT. Mr. Armstrong sends a note that he is at the door and desires to be admitted.

SEVERAL DELEGATES. Admit him.

The PRESIDENT. Mr. Armstrong, Mr. Biddle, Mr. Calvin, Mr. Minor, Mr. J. Price Wetherill and Mr. Woodward send word that they are at the door and desire to be admitted.

Mr. MANN. I move that the Sergeant-at-Arms have instructions to admit all delegates, but not to let any retire.

The PRESIDENT. The gentlemen named are at the door, and it is moved that they be permitted to come in. The question is on that motion.

Mr. HAZZARD. Have they a sufficient excuse?

SEVERAL MEMBERS. Bring them in to the bar.

The motion was agreed to, and the doors were opened, and Messrs. Armstrong, Biddle, Calvin, Lamberton and Minor were admitted.

The PRESIDENT. Mr. Armstrong, what excuse have you for your non-attendance?

Mr. ARMSTRONG. I have no excuse, sir. I was in the city attending to some business of the House, and I had barely time to get lunch instead of dinner, and I tried to be here before my name was called, but was not able to get in.

The PRESIDENT. The House will say whether they will excuse Mr. Armstrong or not.

Mr. LAWRENCE. If the gentleman from Lycoming will agree to attend hereafter every day, we will excuse him. [Laughter.]

The question being put, Mr. Armstrong was excused.

The CLERK resumed the call of the absentees, as follows:

"Mr. Baer."

The PRESIDENT. The Chair is informed that Mr. Baer has leave of absence.

"Mr. John M. Bailey." No excuse offered.

"Mr. Bannan."

Mr. LILLY. He has not been here for a week.

The PRESIDENT. No excuse is offered for Mr. Bannan.

"Mr. Barclay." No excuse offered.

"Mr. Bardsley."

Mr. NILES. He has not been here at all. [Laughter.]

Mr. BOYD. There is no excuse whatever for Mr. Bardsley.

Mr. MACVEAGH. Why, he lives in Philadelphia!

"Mr. Bartholomew."

The PRESIDENT. The Secretary states that Mr. Bartholomew is absent on leave.

"Mr. Biddle."

The PRESIDENT. What is the cause of absence?

Mr. BIDDLE. Well, sir, in the first place, I am not absent. I got here at five minutes past three o'clock and found the door closed and myself excluded. I sent in my name and was admitted. I heard my name called while outside, and could have answered to it if I had been inside. I will take occasion to say, however, that my attendance has been as punctual as that of any man on this floor. I have never been away except on excuse.

The PRESIDENT. Will the Convention excuse Mr. Biddle?

The question being put Mr. Biddle was excused.

"Mr. J. S. Black."

The PRESIDENT. Is there any excuse for Mr. Black?

Mr. BOYD. None whatever.

"Mr. Brown."

"Mr. Buckalew."

The PRESIDENT. These two gentlemen have leave of absence.

"Mr. Bullitt."

The PRESIDENT. Is there any excuse for Mr. Bullitt?

The CLERK. Mr. Bullitt had leave of absence.

Mr. EWING. But it has expired.

The CLERK. Leave of absence was asked for Mr. Bullitt by Mr. William H. Smith on the twenty-second of this month "for a few days from to day."

Mr. EWING. Then it has expired.

"Mr. Calvin."

The PRESIDENT. What is your excuse, sir?

Mr. CALVIN. Well, sir, I was here a moment or so after the door was closed and found myself in the condition of the Irishman and the blue bird. I was deceived by my watch a little; I was here within four or five minutes of the time. [Laughter.]

The question being put, Mr. Calvin was excused.

"Mr. Campbell."

The PRESIDENT. Is there any excuse for Mr. Campbell other than that he lives in this city?

"Mr. Carey."

Mr. JOSEPH BAILY. I move that Mr. Carey be excused. He is never here in the afternoon.

Mr. NILES. Yes, that is so.

The PRESIDENT. There is no excuse for Mr. Carey.

"Mr. Cassidy."

Mr. BEEBE. There is not the slightest excuse for Mr. Cassidy.

The PRESIDENT. Mark him down.

"Mr. Church." No excuse offered.

"Mr. Clark." No excuse offered.

"Mr. Cochran."

The PRESIDENT. The gentleman from York has leave of absence.

"Mr. Collins."

Mr. KAINE. Mr. President: Mr. Collins is sick at his hotel. He is confined to his room and is unable to be here, from a severe attack of indisposition last night.

The question being put, Mr. Collins was excused.

"Mr. Corson."

The PRESIDENT. Is there any excuse for Mr. Corson?

Mr. BOYD. No, sir, none whatever.

Mr. MANN. He is writing a history of the members. [Laughter.]

The PRESIDENT. There is no excuse for Mr. Corson.

"Mr. Craig."

The PRESIDENT. The Clerk informs the Chair that Mr. Craig has leave of absence.

"Mr. Cronmiller." No excuse offered.

"Mr. Curry."

The PRESIDENT. Mr. Curry has leave of absence.

"Mr. Cuyler." No excuse offered.

"Mr. Dallas." No excuse offered.

"Mr. Davis."

The PRESIDENT. The gentleman from Monroe (Mr. Davis) has leave of absence.

"Mr. Dodd."

The PRESIDENT. The gentleman from Venango (Mr. Dodd) was excused on last Saturday.

"Mr. Dunning."

Mr. FUGHE. All the excuse that I have to offer for Mr. Dunning is that he knew there was a bank in which he was interested, up in the country, and he was afraid it would burst. [Laughter.] He

wanted to go and see if his deposits were all right. [Laughter.]

The PRESIDENT. Mark him down.

"Mr. Ellis." No excuse offered.

"Mr. Fell." No excuse offered.

"Mr. Finney."

The CLERK. Mr. Finney had leave of absence on the 22d inst., on motion of Mr. Brown, of Warren.

The PRESIDENT. For what length of time?

The CLERK. "A few days" from that day.

Mr. HUNSICKER. That must have expired.

"Mr. Fulton."

The PRESIDENT. The Chair is informed that Mr. Fulton has leave of absence.

"Mr. Funck."

The PRESIDENT. The gentleman from Lebanon obtained leave of absence for to-day.

"Mr. Gilpin."

Mr. LAWRENCE. He was here this morning and has gone off on the Delaware.

"Mr. Green."

The PRESIDENT. Is there any excuse for Mr. Green.

Mr. BOYD. None whatever, I know.

Mr. BRODHEAD. I object to the gentleman answering for my county. The only excuse that I know for Mr. Green is, that he has a very important position of trust confided to him. He is vice president of an institution.

Mr. EWING. Why does he not bring his institution with him?

Mr. HUNSICKER. That is no excuse for him.

The PRESIDENT. That is no excuse.

"Mr. Hall."

The CLERK. I think he has leave of absence.

Mr. MACVEAGH. If he has let it be found out.

"Mr. Harvey." No excuse offered.

"Mr. Hemphill." No excuse offered.

"Mr. Heverin." No excuse offered.

"Mr. Horton."

The PRESIDENT. The delegate from Bradford has leave of absence.

"Mr. Knight."

Mr. M'MICHAEL. I understand that Mr. Knight is quite sick.

Mr. BIDDLE. Yes, I heard so to-day.

"Mr. Lamberton."

The PRESIDENT. What excuse has the gentleman from Dauphin to offer?

Mr. LAMBERTON. I was here sir, immediately after the doors were closed and could not enter. My excuse is that I was up at half-past four o'clock this morning, in order to be here at our morning session. After dinner I went to my room for a little rest, and three o'clock came a little too soon.

The question being put, Mr. Lamberton was excused.

"Mr. Landis."

Mr. CALVIN. Mr. Landis had leave of absence for to-day.

"Mr. Littleton." No excuse offered.

"Mr. Long." No excuse offered.

"Mr. M'Camant." No excuse offered.

"Mr. M'Culloch."

The PRESIDENT. Leave of absence was granted to the delegate from Huntingdon.

"Mr. M'Michael."

Mr. M'MICHAEL. I have only to say—

Mr. MACVEAGH. I trust no excuse will be asked for Mr. M'Michael. He has been as punctual even as Mr. Carter since he has been a member of the Convention.

Mr. M'MICHAEL. I want to say that since I left here at the close of the morning session, within the few minutes I occupied in coming from my office to this place, I have been incessantly engaged in my own business, and I have attended the sessions of this Convention since I have been a member of it at great sacrifice.

The PRESIDENT. Will the Convention excuse the gentleman?

The question being put, Mr. M'Michael was excused.

"Mr. M'Murray." No excuse was offered.

"Mr. Metzger."

Mr. DARLINGTON. I have understood from Mr. Armstrong that Mr. Metzger was unwell.

"Mr. Minor."

Mr. MINOR. I will say, sir, that I have not been absent from the sessions of the Convention since last April, excepting one day, and that under leave of absence on account of sickness. To-day dinner was served late, which made me a little late here. I heard my name called and desired to answer, but was not permitted so to do.

The PRESIDENT. Will the Convention excuse the gentleman?

The question being put, Mr. Minor was excused.

"Mr. Newlin." No excuse offered.

"Mr. H. W. Palmer."

Mr. MOTT. Mr. Palmer left on Saturday, having received information of illness in his family. He made arrangements with his colleagues here to ask leave of absence this morning, supposing he would be here by noon. They neglected it, and I hope he will be excused.

The PRESIDENT. Will the Convention excuse Mr. H. W. Palmer. ["No." "No."]

Mr. H. W. Palmer was not excused.

"Mr. Parsons." No excuse offered.

"Mr. T. H. B. Patterson." No excuse offered.

"Mr. Patton."

Mr. LAWRENCE. Mr. Patton was here to-day, but got hurt accidentally. The lid of his desk fell down and struck his nose and bruised it very much: I presume that is the reason he is not in his seat. I move that he be excused.

The question being put, Mr. Patton was not excused.

"Mr. Purman."

The PRESIDENT. What excuse has Mr. Purman for not being here punctually.

Mr. PURMAN. At three o'clock?

The PRESIDENT. At three o'clock.

Mr. PURMAN. I had some friends from my county that I had to discharge a small errand for, and I came at lightning speed down Chestnut street and around Sixth street to get here.

The PRESIDENT. Were they ladies or gentlemen? [Laughter.]

Mr. PURMAN. Both.

The question being put, Mr. Purman was not excused.

"Mr. J. N. Purviance."

Mr. LAWRENCE. I think he had leave of absence on account of sickness in his family.

The PRESIDENT. Very well.

"Mr. J. R. Read." No excuse offered.

"Mr. Andrew Reed."

The CLERK. Mr. Andrew Reed has leave of absence.

"Mr. Rooke." No excuse offered.

"Mr. W. H. Smith."

Mr. HAY. Leave of absence was granted to Mr. Smith.

"Mr. Stanton."

Mr. STANTON. [From the gallery.] Here. [Laughter.] It is no fault of mine; the door is locked and I cannot get in. Mr. Purman has come since I came and he has been admitted, and I do not like to see partiality.

The PRESIDENT. Mr. Stanton has sent in a card and is entitled to come in.

Mr. BOWMAN. Let him be brought before the bar.

Mr. BRODHEAD. I move that he have leave to keep his present seat for the rest of the day. [Laughter.]

The PRESIDENT. The question is on the motion to admit Mr. Stanton.

The motion was agreed to.

The PRESIDENT. Mr. Stanton will come in, then.

Mr. Stanton having entered the Hall—

The PRESIDENT. Mr. Stanton, what excuse have you for your absence.

Mr. STANTON. Mr. President: When I left to-day I fully thought that the time of the recess was from one to half-past three. I was here five minutes before that time. I know that question was under discussion, and I thought the hour was half-past three. I could have been here at three, if I supposed that was the hour of meeting.

Mr. EWING. I move that he be excused.

The motion was agreed to.

The CLERK continued the call as follows:

"Mr. Stewart."

Mr. SHARPE. Mr. Stewart has leave of absence.

The PRESIDENT. He has.

"Mr. Temple." No excuse offered.

"Mr. Turrell."

Mr. EWING. Mr. Turrell was called home on pressing business on Friday and hoped to be back this morning, and requested me to ask leave of absence for him if he could not get back. I ask leave of absence for him now.

The PRESIDENT. The question is on excusing Mr. Turrell.

The motion was agreed to.

"Mr. Van Reed." No excuse offered.

"Mr. J. M. Wetherill." No excuse offered.

"Mr. Wherry."

Mr. NILES. He is in Europe. ["No." "No."] He said he was going there.

Mr. BEEBE. I saw a gentleman from his neighborhood who said he was there doing business as usual.

Mr. BIGLER. Mr. President: I can account for Mr. Wherry. A short time since I received a letter from him in which he said that he was detained by severe illness in his family.

The PRESIDENT. That is no excuse. When had you the letter?

Mr. BIGLER. About a week ago. I know he is at home.

The PRESIDENT. No sufficient excuse is offered.

"Mr. Harry White."

The CLERK. Mr. White has leave of absence for himself for Monday and Tuesday. He obtained it on the 26th inst.

"Mr. Woodward."

The PRESIDENT. Judge Woodward, what excuse have you to offer?

Mr. WOODWARD. Well, sir, when you adjourned this morning, I went home to dinner. When I came back, I came in the cars with Mr. Armstrong, whom you have already excused, and I was at the door before Mr. Biddle, who says he was there at five minutes before three. I was there ten minutes before Mr. Biddle was, and I found the door bolted against me. [Laughter.] Now, if Mr. Armstrong and Mr. Biddle are worthy of excuse, I take it I am.

The PRESIDENT. Will the Convention excuse Mr. Woodward?

The question being put, Mr. Woodward was excused.

"Mr. Worrell." No excuse offered.

"Mr. Wright."

The PRESIDENT. Mr. Wright has leave of absence. The Clerk will now read the names of those who are absent without excuse.

The CLERK read the names as follows: Messrs. Addicks, Ainey, J. M. Bailey, Bannan, Barclay, Bardsley, J. S. Black, Campbell, Carey, Cassidy, Church, Clark, Cronmiller, Cuyler, Dallas, Dunning, Corson, Ellis, Fell, Gilpin, Green, Hall, Hemphill, Heverin, Landis, Littleton, Long, M'Camant, M'Murray, Metzger, H. W. Palmer, Parsons, T. H. B. Patterson, John R. Reed, Rooke, Temple, Van Reed, J. M. Wetherill and Worrell.

Mr. BIGLER. It seems to me there is one name there that ought to be stricken off, the name of J. S. Black. You will remember that Judge Black held that the rule which required a session at night was against the teachings of the New Testament, and I have reason to suppose his absence is because of that belief. [Laughter.] We may not expect him on this occasion or any other, so long as that rule exists.

Mr. DARLINGTON. I move that the Sergeant-at-Arms be directed to arrest and bring in the absent members within reach, and notify all the others to be here to-morrow morning.

Mr. Woodward. I rise to suggest an amendment to that motion, which I hope the gentleman from Chester will accept. I think—

The PRESIDENT. The rule is that in the present condition of the House a majority of those present may direct that the absentees be sent for and brought before the bar of the House by the Sergeant-at-Arms.

Mr. WOODWARD. I was about to propose that a fine of ten dollars be imposed on the absentees for every day they shall remain absent, subject to being removed upon their rendering a satisfactory excuse for their absence.

SEVERAL DELEGATES. No; no; let us have them in.

The PRESIDENT. In this stage of the proceedings the Chair cannot entertain the amendment. The question now is, whether the majority of the Convention will order the absentees to be brought in.

The motion was agreed to.

Mr. PURMAN. I move that the name of the Sergeant-at-Arms be included among the absentees.

The CLERK. The Sergeant-at-Arms has leave of absence.

Mr. MACVEAGH. I do not know how it may strike the Convention, but we have one of the oldest members here, and he has certainly been as punctual as his advanced years would lead us to suppose him capable of being, and his physical necessities and the long habit of his life require a rest in the afternoon. He has exceeded eighty years of age, and yet in the morning he is here and sits through your sessions. He needs the rest in the afternoon. I refer to Mr. Henry C. Carey, of this city.

Mr. CURTIN. He was excused.

Mr. MACVEAGH. No; he was not; and the question is whether or not, as he is our oldest member, as he is over eighty years of age, it would not be wise to excuse him in view of his known physical condition.

The PRESIDENT. Will the House excuse Mr. Carey?

The question being put, Mr. Carey was unanimously excused.

Mr. WOODWARD. Mr. President: Unless you impose a pecuniary liability, to be released on the rendering of a satisfactory excuse, you never will succeed in securing a permanent quorum of this body.

Mr. LAWRENCE. I suggest to the gentleman that we can do that after this proceeding is gone through with.

The PRESIDENT. The House has now ordered the Sergeant-at-Arms to bring in the absent members. The list of the absentees will be made out and given to the Sergeant-at-Arms with directions to bring them here.

Mr. MACVEAGH. Will it be understood that those living out of the city will be invited by telegraph and an answer required from them when they can appear at the bar of the Convention.

The PRESIDENT. The Sergeant-at-Arms dispatched a telegram before, under the order of the Convention, and he was compelled to pay for it. They will not send a message without being paid in advance.

Mr. MACVEAGH. I should suppose that to be a part of the contingent expenses of the Convention, but the gentlemen themselves certainly ought to pay the expenses of telegraphing. I would authorize the Sergeant-at-Arms to send a telegram to the absentees and require an answer from them when they will attend in the Convention.

The PRESIDENT. If there is such an order of the House, the Chair will see that it is carried out, but on his own responsibility he will not do so.

Mr. HUNSICKER. The defaulting members should pay the expenses themselves, and they should be expelled unless they do pay it.

Mr. LILLY. Mr. President: I desire to state that Mr. Fell is absent under peculiar circumstances. I did not know that this proceeding was going so far, or perhaps I should have spoken of it when his name was called. In the first place, it is well known by all who know him that he is not in very good health. In the next place, I know that he has such large pecuniary interests at stake at this time during this panic that it is impossible for him to leave them and attend this Convention.

Mr. BEEBE. He could have asked permission.

Mr. LILLY. The gentleman suggests that he could ask permission. I presume he is so overwhelmed with business that he has not thought enough of the matter to ask it, and I hope he will be excused. ["No!" "No!"]

Mr. HOWARD. It seems to me that this Convention ought to do something to protect itself. It is utterly impossible to get along in this way. If we are to have a call of the roll and send out the Sergeant-at-Arms to bring in absent members and they are to come in and take

their seats as usual, we have done nothing at all to protect ourselves. This is mere child's play. Now, there ought to be some way to remedy this difficulty. I am satisfied that perhaps the best way is to fix the hours of attendance and let it be understood that the Convention will meet at ten o'clock in the morning and adjourn at three o'clock in the afternoon. Then let us adjourn over on Saturdays. I have voted steadily in favor of Saturday sessions, but I will waive them. I am in favor of only one session a day, and I am satisfied that we shall do one-fourth more business in a week if we meet at ten o'clock in the morning and then adjourn over on Saturdays. As it has been Fridays have been principally devoted to a wrangle about an adjournment over on Saturday.

But, at any rate, the only way for this Convention to act under such a proposition as this, is to impose a penalty upon the absentees when they are brought in. There should be something more done than to send out the Sergeant-at-Arms. The idea of arresting the business of such a body as this, without any excuse beyond the private business of the members, is something that ought not to be considered for a moment. If a member is absent from sickness, either of himself or his family, or a near relative or friend, he should be excused; but mere personal business should not be allowed as an excuse. Let us have some understanding about it.

Mr. KAINE. Is it understood that there is a quorum of members present or not?

Mr. MACVEAGH. We are disposing of this business.

Mr. KAINE. I rose to make the inquiry because I desire to offer a resolution to dispose of the difficulty spoken of by the gentleman from Allegheny. I cannot offer that resolution now, because there is not a quorum of members present; but if there were a quorum of members present I would offer my resolution, and it would read something like this: That if a member absents himself from this Convention without leave of absence for two days, except on account of sickness, his seat shall be declared vacant, and shall be filled according to the act of Assembly by the Convention.

Mr. BIGLER. In that connection I desire to make a statement.

Mr. WOODWARD. I desire to offer a resolution which is properly part of the

proceedings relative to a call of the House.

Mr. BOYD. I rise to a point of order that unless there is a quorum present the gentleman cannot offer a resolution.

Mr. BEEBE. That is the rule.

Mr. WOODWARD. My resolution is a part of the proceedings upon a call of the House. The resolution can be read for information.

The PRESIDENT. It will be read for information.

The CLERK read as follows:

"Resolved, That a fine of ten dollars be and the same is hereby imposed upon each of the absentees, to be released upon rendering a satisfactory excuse."

The PRESIDENT. The Chair must rule that at present we have not a quorum, and the resolution is therefore not in order.

Mr. HOWARD. I ask for a call of the House.

The roll was called and the following members answered to their names:

Messrs. Achenbach, Armstrong, Baily, (Perry,) Baker, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Calvin, Carter, Corbett, Curtin, Darlington, De France, Edwards, Elliott, Ewing, Gibson, Guthrie, Hanna, Hay, Hazzard, Howard, Hunsicker, Kaine, Lambertson, Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'Clellan, M'Michael, Mann, Mantor, Minor, Mitchell, Mott, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, Sam'l A., Reynolds, Ross, Runk, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Struthers, Wetherill, Jno. Price, White, David N., White, J. W. F., Woodward and Walker, *President*—62.

After the roll was concluded Mr. Cuyler entered the Hall.

The PRESIDENT. There is still no quorum present.

Mr. BIGLER. I am aware that we have no quorum and cannot do any business.

Mr. CUYLER. I ask leave to respond to my name.

Mr. BIGLER. I desire simply by the courtesy of the Convention to read a suggestion as to a remedy for this evil, which I think will be found to answer better than that proposed by my friend from the city (Mr. Woodward.)

Mr. CUYLER. I think my request comes more naturally in advance of the suggestion of the gentleman.

The PRESIDENT. The gentleman from Philadelphia asks leave to respond to his name. Shall he have leave?

Mr. HUNSICKER. I would like to understand this. As I understood, the Sergeant-at-Arms was dispatched for the absentees and the doors were directed to be closed and no person allowed to come in except in the custody of the Sergeant-at-Arms. If the rule is relaxed in the case of the gentlemen from Philadelphia—and I would as lief see it relaxed in his case as in anybody else's—the order of the House amounts to nothing at all.

The PRESIDENT. The Chair understands the subject to be always in the disposition of the House.

Mr. STANTON. If you dispatch the Sergeant-at-Arms for absent members and he finds one and sends him here, and the member finds the door closed against him, how can he get in?

The PRESIDENT. He must be brought in and be excused by the House.

Mr. CUYLER. I desire to state that I came here voluntarily and knew of no call of the House until I entered the building. I came here as soon after dinner as I could consistent with important business engagements.

Mr. MACVEAGH. It is apparent that the gentleman from Philadelphia does not understand the situation. He was allowed to enter the Convention through a mistake which the door-keeper made in interpreting the order of the Chair. I will state for the information of the delegate from Philadelphia that the order of the House was that the doors should be closed and no delegate allowed to enter except with the permission of the House. That was a distinct order, distinctly made, and it was through a misunderstanding of the order that Mr. Cuyler came in. Neither the doorkeeper nor Mr. Cuyler was to blame; the whole matter occurred from a misunderstanding by the doorkeeper of the President.

The PRESIDENT. The doorkeeper came to the Chair and told me that Mr. Cuyler was without. I replied to the remark that it was a matter beyond my control, that the Sergeant-at-Arms was directed by the House to close the doors and I had nothing further to say in the matter. The doorkeeper understood me to say that I had nothing more to say about the doors being closed. I meant only that the doors should be shut.

Mr. STANTON. Are there any other members standing outside?

The PRESIDENT. Mr. Cassidy is outside, as the Chair is informed.

Mr. STANTON. I move that Mr. Cassidy be admitted. Let us have a quorum for business, or else adjourn.

Mr. PURMAN. I should like to know by what authority this Convention excludes from this floor any member of the Convention.

Mr. DARLINGTON. By the rules.

Mr. STANTON. I move that Mr. Cassidy be admitted.

Mr. PURMAN. Members hold their authority on this floor not by the mere *ipse dixit* of this Convention. If you recognize the authority of this Convention to close the doors of the Convention in the face of members, it means the removal of the member and the vacation of his seat.

The PRESIDENT. The gentleman is mistaken. A rule was formerly adopted by this House, in the earliest portion of the session, putting us precisely in the condition we are; and we have the right—the House has the right, not the President—to shut the doors and leave the members out until they are brought in in conformity with that rule.

SEVERAL DELEGATES. Let the rule be read.

Mr. STANTON. My motion was that Mr. Cassidy be admitted.

The PRESIDENT. No such motion is now in order. The rule will be read.

The CLERK. The rule adopted on the sixteenth of May and to be found in the Journal upon the desk of each member, is as follows:

Resolved, That when upon a call of the House it is found that less than a quorum is present, it shall be the duty of the President to order the doors of the Hall to be closed, and direct the Clerk to note the absentees, after which the names of the absentees shall be again called and those for whose absence no excuse, or an insufficient one is made, may by order of a majority of the members present be sent for and taken into custody by the Sergeant-at-Arms or his assistant appointed for the purpose, and brought to the Convention."

Mr. HAZZARD. I second Mr. Stanton's motion, that Mr. Cassidy be admitted.

Mr. DARLINGTON. We have an unfinished case before the House. Mr. Cuyler has come in, has offered his excuse, and there has been no vote taken on it.

The PRESIDENT put the question, and Mr. Cuyler was excused.

The PRESIDENT. It is moved that Mr. Cassidy be admitted to the bar of the House.

Mr. HOWARD. Mr. Cassidy is, I believe, a member from the city of Philadelphia. I think, perhaps, we have had his attention for two or three hours since the recess for the last two or three weeks. There are other members here who are entitled to some protection against this. There is a good remedy I have no doubt. If one-half the members from the city of Philadelphia would attend we should have a quorum to-day. They are in the city of Philadelphia. Some of us are here three or four hundred miles from our homes, and the Sergeant-at-Arms is drumming us up and bringing them in here every day almost. Now, Mr. President, I am very sorry to be compelled to make remarks of this kind, but they are true. I do not believe to-day that the city delegation —

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

Mr. HOWARD. The gentleman is in perfect order.

Mr. STANTON. If the gentleman has anything to say against a member, let him say it to his face, not stand here and ask the doors to be shut against him to prevent him being heard.

The PRESIDENT. What is the motion?

Mr. STANTON. The motion is to admit Mr. Cassidy, and the gentleman from Allegheny says he will not admit him upon the floor until he spits his spite out against him.

Mr. HOWARD. No; I have no spite against anybody. The delegate from Philadelphia is entirely out of order himself in making allegations of that description.

The PRESIDENT. The delegate will confine himself to the question.

Mr. HOWARD. Certainly. I was discussing the question on the motion of the delegate from Philadelphia, and I was stating my reasons why I regretted that we were placed in this position. I have noticed from day to day since we met in Philadelphia the last time, that we have not had hardly a fourth of the members from Philadelphia. Some of them have been very punctual, it is true, but others have not been. I do not know what particular remedy we should adopt. Of course, there are others away too; but the largest defection seems to be in that dele-

gation. We must protect ourselves in some way. I think that those who do attend here have some rights, and they should be protected. Every day almost this scene occurs that we witness here today, and because I choose to object to it it must not be understood that it is personal to anybody.

I make these remarks as a member of this body. I have a right to make them. I do it for the protection of this body. I do it under the rules of this body. If they mean anything at all, let us put a sting into them. After all this thunder, let us have a little lightning, and let men understand and let them feel that some penalty is to be attached to this absence here, taking away the time of the whole body of this Convention, while men are running about the streets to gather up three or four or a dozen and bring them in to make up a quorum.

Mr. LAWRENCE. I move to amend the motion of the gentleman from Philadelphia. He moves, as I understand, to permit Mr. Cassidy to enter the Hall. Mr. Dallas and Mr. Temple are also there. I move that all the members now at the door be brought to the bar in the custody of the Sergeant-at-Arms, to answer for their absence.

The PRESIDENT. It is the business of the Sergeant-at-Arms to bring them in.

Mr. LAWRENCE. But the Sergeant-at-Arms is not here.

The PRESIDENT. But the doorkeeper is his deputy.

Mr. D. W. PATTERSON. On that motion I want to say a word. I desire to repeat what the delegate from Allegheny (Mr. Howard) has said, without any feeling towards any delegate from the city, because I love them all. Since we last met there has only been an average attendance of one-fifth of the members of the Philadelphia delegation, and I say they ought to attend better, or else we shall not get away from here for the next three months.

Mr. BRODHEAD. I rise to a point of order. I listened to the reading of that rule, and I do not think there is anything in it which will prevent a member from being admitted to this House. I think the true construction of the rule is, that when any man presents himself, the Sergeant-at-Arms shall bring him in. The doors are to be closed for the purpose of keeping members from going out, not to keep them from coming in.

Mr. Dallas, Mr. Cassidy and Mr. Temple entered the Hall.

The PRESIDENT. The Sergeant-at-Arms has brought into the Convention Mr. Temple, Mr. Cassidy and Mr. Dallas. What order will the Convention take?

Mr. STANTON. I move that they be admitted to their seats.

Mr. LAWRENCE. I hope the President will state to them how we have been detained here, and ask them for an excuse at least.

The PRESIDENT. The gentlemen certainly understand that we have been detained by reason of their absence and been compelled to resort to a call of the House, and send the Sergeant-at-Arms to bring in the absentees. The Chair, without intending to offend any one, will state that when we commenced the call there were but three delegates out of the twenty-four from the city in the Hall. The rule says that the absent delegates are to be brought in by the Sergeant-at-Arms, and they are then in the hands of the Convention to do as it thinks proper in the premises. It is not proper for the Chair to arrogate to himself any particular course. He regrets as much as any, perhaps more than any gentleman here, the delay that has been occasioned by the absence of members both from the city and the country. What excuse have you to offer Mr. Dallas?

Mr. DALLAS. In response to the interrogatory addressed to me, I wish first to address a counter interrogatory. With all respect to the Chair, I ask by what authority the question is put, that I may understand my position before this body.

The PRESIDENT. By virtue of one of the rules of this House, which directs that in the absence of a quorum the House shall order the Sergeant-at-Arms to bring in the absentees, and in pursuance of that the Sergeant-at-Arms has brought the gentleman here.

Mr. DALLAS. In compliance with the rule of the House, I respond, first, that I have been present upon several occasions when the roll has been called in default of a quorum, and I do not now remember a single occasion of the kind on which I have been found derelict. This afternoon, within an hour after the Convention had met, I came to the door, and, though one of the delegates of the people to this body, was refused admittance. My absence during that hour was occasioned by a fact with which this Convention has no concern and one which I think, if properly understood by it, would be properly appreciated. On Sun-

day afternoon there died in the city of Philadelphia, Colonel Charles J. Biddle, a member of this bar. I was deputed to see certain gentlemen to arrange properly for a bar meeting upon the subject of his death. That has been the cause of my absence for the last hour. As this Convention supposes it has a right to this explanation, I make it in reply to the President.

Mr. SHARPE. I move that the gentleman be excused.

The motion was agreed to.

The PRESIDENT. Mr. Temple, what excuse have you to offer?

Mr. TEMPLE. I have only to say, Mr. President, that I have returned and ask to be excused from any order heretofore made by the House. I have no other excuse for being absent this afternoon up to this time than that I was engaged professionally in my office in answering several letters which I was obliged to answer this afternoon. I was here all the morning, and I think the other members of this Convention will say that I have been generally present in the Convention except when excused by reason of sickness. I will also state, with Mr. Dallas, that I made several ineffectual efforts to obtain admittance to this Hall and could not do it. I went on both sides of the building and endeavored to get in.

Mr. H. W. SMITH. I move that the gentleman be excused.

The motion was agreed to.

The PRESIDENT. Mr. Cassidy, what excuse have you to offer?

Mr. CASSIDY. I have to say that I was in attendance this morning, and in consequence of an engagement, the result of the present fearful financial troubles in the city of Philadelphia, I was compelled to absent myself until a few minutes before four o'clock, when I came here and found under the order—a very proper one; I am making no complaint about it at all—the Convention was in such a condition that I could not enter until I appeared before the bar of the House. I wish to say in behalf of other Philadelphians who are absent and who are members of the bar, that in consequence of the condition of affairs in this city they are called upon every five minutes almost, and it is utterly impossible for them to be continuously in the Convention. I trust that in considering this question the Convention will deal with the absent members with some leniency in regard to that matter, which we all

trust will be over in a day or two; but many of the Philadelphia members are actively engaged in matters which you all know are not only vital to the interests of Philadelphia, but to the Commonwealth in its present condition, and I was so engaged during the time I was absent.

Mr. CUYLER. I move that the gentleman be excused.

The motion was agreed to.

Mr. HAZZARD. I believe there is now a quorum present.

Mr. BARCLAY entered the Hall.

The PRESIDENT. Mr. Barclay what excuse have you to offer for your absence?

Mr. BARCLAY. I can only say to this body, Mr. President, that the business which has detained me has been of a very serious character. I do not know what in the world I have been eating or drinking, but in consequence of that I have been doing what you could not do for me nor anybody else. [Laughter.] I am afraid, therefore, if I should be placed under arrest, that the Sergeant-at-Arms might get very tired of holding me any length of time. That is all, sir, I do not think it necessary to go into details. [Laughter.]

Mr. H. W. SMITH. I move that Mr. Barclay be excused.

The motion was agreed to.

Mr. DARLINGTON. Have we a quorum now?

The PRESIDENT. The roll will be called to see whether there is a quorum present or not.

Mr. DARLINGTON. The Clerk says there is a quorum.

Mr. ARMSTRONG. Cannot the fact of a quorum being present be ascertained by a count? It is in the power of the Chair to direct any mode of ascertaining the fact.

The PRESIDENT. I could determine that there was a quorum present, but under present circumstances I think we had better carry our proceedings through with some formality, in order that the Journal may be kept right. The Clerk will call the names of delegates.

The roll being called, the following delegates answered to their names:

Messrs. Achenbach, Armstrong, Baily, (Perry,) Baker, Barclay, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Calvin, Carter, Cassidy, Corbett, Curtin, Cuyler, Dallas, Darlington, De France, Edwards, Elliott, Ewing, Gibson, Guthrie, Hanna, Hay, Hazzard, Howard, Hunsicker, Kaine, Lambertson,

Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'CLean, M'Michael, Mann, Mantor, Minor, Mitchell, Mott, Niles, Palmer, G. W., Patterson, D. W., Porter, Pughe, Purman, Purviance, Sam'l A., Reynolds, Ross, Runk, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Struthers, Temple Wetherill, Jno. Price, White, David N., White, J. W. F., Woodward and Walker, *President*—67.

The PRESIDENT. There is a quorum present.

Mr. D. W. PATTERSON. Then I call for the orders of the day, being the further consideration of the article on the Legislature.

THE LEGISLATURE.

The PRESIDENT. When the Convention took its recess at one o'clock there was a vote taken, which showed the want of a quorum. The question was on reconsidering the vote by which the Convention had refused to go into committee of the whole on the amendment to the sixteenth section of the article on the Legislature, striking out the words "having a population exceeding one senatorial ratio and three-fifths of a second ratio." The question is on the reconsideration.

Mr. LILLY. The yeas and nays were called for.

The PRESIDENT. The yeas and nays were called and taken and showed the want of a quorum. The Chair will order the yeas and nays to be taken again, if the House so desire.

Mr. MACVEAGH. Let the question be distinctly stated.

The CLERK. The motion is to reconsider the vote by which the Convention refused to go into committee of the whole for the purpose of amending the sixteenth section, by striking out the words: "by possessing a population exceeding one senatorial ratio and three-fifths of a second ratio."

The question was taken by yeas and nays, as follows:

Y E A S .

Messrs. Armstrong, Baily, (Perry,) Baker, Beebe, Biddle, Bigler, Black, Chas. A., Boyd, Brodhead, Calvin, Campbell, Carter, Cassidy, Corbett, Curtin, Cuyler, Dallas, Darlington, De France, Edwards, Elliott, Ewing, Gibson, Guthrie, Hanna, Hay, Hazzard, Hunsicker, Kaine, Lamberton, Lawrence, Lear, Lilly, MacVeagh, M'CLean, M'Michael, Mantor, Minor, Mitchell, Mott, Niles, Palmer, G. W., Pat-

terson, D. W., Pughe, Purviance, S. A., Sharpe, Smith, H. G., Smith, Henry W., Struthers, Temple, Wetherill, John Price, White, David N., White, J. W. F., Woodward and Walker, *President*—55.

N A Y S .

Messrs. Achenbach, Barclay, Bowman, Howard, MacConnell, Mann, Purman, Reynolds, Ross, Runk, Russell and Stanton—12.

So the motion to reconsider was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Black, J. S., Broomall, Brown, Buckalew, Bullitt, Carey, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck Gilpin, Green, Hall, Harvey, Hemphill, Heverin, Horton, Knight, Landis, Littleton, Long, M'Camant, M'Culloch, M'Murray, Metzger, Newlin, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Simpson, Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—66.

The PRESIDENT. The question recurs on the motion that the Convention resolve itself into committee of the whole to strike out the words.

Mr. EWING. I trust that my colleague will now offer his amendment so as to cover more ground than the present offer does. He will find on examination that instead of relieving the difficulty which has been suggested by the delegate from Dauphin, striking out these words will simply increase it, and then we shall have an absolute provision against dividing any county whatever unless it is entitled to two Senators. The adoption of this amendment will not relieve the difficulty at all. I can see where there is a considerable difficulty.

Mr. MACVEAGH. I rise to a question of order. When a member of the Convention is brought in in the custody of the Sergeant-at-Arms it is the practice of all deliberative bodies that he is not allowed to vote until he is excused. I trust that matter will be so ordered now.

Mr. CAMPBELL. I presume that I am the gentleman referred to.

Mr. MANN. Other members were sent for by the Sergeant-at-Arms, and were brought in.

The PRESIDENT. Mr. Campbell will please come before the bar of the House and state what excuse he has for being absent.

Mr. CAMPBELL appeared at the bar of the House and said :

I was not aware that we were going to change the hours of session in this body which required us to sit from nine and a half to three o'clock, and on Thursday last I made an engagement to have a meeting before an auditor at three o'clock this afternoon. I could not break my engagement this morning, and I expected to get here within a few minutes after we resumed our session. I came as soon as I could get here.

Mr. D. W. PATTERSON. I move that the gentleman be excused.

Mr. HUNSICKER. I want to be heard on that question. If this House means that what it has just ordered is to be a farce, then of course this motion ought to prevail; but if this House means business then there should be some sort of penalty inflicted upon the gentlemen who have just offered their excuses. It is the duty of every member of this Convention to be here to be informed of the doings of the House, and to be acquainted with the rules governing its hours of session. It was well known on Saturday that the rule in regard to the hours of meeting of this body had been changed from one session to two, one from nine and a half A. M. to one, and the other from three o'clock in the afternoon until the adjournment. The gentleman says that he was not aware of the existence of that rule, and that he went to attend to his ordinary business. I therefore hope—not that I have any personal objection to the gentleman nor because I want him to be made a vicarious sacrifice to bear the sins of others, but because if the House means anything by its orders beyond a mere farce, it should do something to assert its authority over the members of this body—that it will impose some penalty, some proper punishment upon members who absent themselves from its sessions.

Mr. MACVEAGH. I differ with the gentleman from Montgomery in this matter in this respect: I do not think it has been understood by members heretofore that the rule would be strictly enforced as to their attendance. I voted, therefore, to excuse the gentleman from Philadelphia, (Mr. Cassidy,) on the ground of the excuse that he offered, and I think

that the Convention may well excuse everybody to-day. Let us excuse everybody, and then pass one of the resolutions, of which several have been presented by members of this body, for the future government of our attendance. There are some gentlemen in this Convention, among whom are notably my friend from Lancaster (Mr. Carter) and my friend from Philadelphia, (Mr. J. Price Wetherill,) and many others, who have been almost without blame in this matter of absence from our sessions. The rest of us have been here about half and half.

Mr. CUYLER. I think Mr. Campbell has been very faithful and attentive to his duties.

Mr. MACVEAGH. Yes, I think Mr. Campbell has been very punctual, and a great many of us have not been uniformly so. Now, hereafter, as this thing has reached a crisis, let us do something. Let us adopt a rigid rule that will apply to each and every one of us. What Mr. Cassidy says as to the lawyers of this body from Philadelphia, is literally true of nine-tenths of the lawyers throughout the country. Our business is suffering to-day to an extent of which gentlemen have no appreciation whatever. There is no member of the bar, I suppose, upon this floor, who could not and would not cheerfully pay five times over the fine that Judge Woodward proposes to impose. In the past we have all been off occasionally and taken all sorts of indulgences as to absence. Now, speaking for myself as one of those who have done this, I am perfectly willing to submit to the most rigid rule passed for everybody, for lawyers in Philadelphia and for lawyers from the country. I am not disposed to blame anybody else more than I blame myself. Every now and then a man must attend to his business; but this Convention has reached a point when, if we desire finally to adjourn, we must attend to our business here and complete it. It is truly impossible that the interests that are dependent upon some of us should be neglected longer by wasting the time of this Convention in delay and idle debate, and I am weary of finding my house besieged by clients when I go home to spend the Sabbath and have protests made that I have no right to leave in the morning. To waste two hours of this day in trying to get a quorum is more than the Convention ought to be expected to bear; and yet I am not disposed to see the gentleman from Philadelphia punished after

all else have been excused. That is not, I apprehend, what the gentleman from Montgomery desires.

Mr. HUNSICKER. I desire to make a personal explanation. If the Convention is ready to adopt a rule for the future and abide by it, if now it is desirous to excuse all those who have been delinquent and are in contempt, then, of course, I withdraw any opposition that I have at present.

Mr. S. A. PURVIANCE. I move that Mr. Campbell be excused.

Mr. D. W. PATTERSON. I have already moved that.

Mr. S. A. PURVIANCE. I wish to say then that I sit near Mr. Campbell, and of all the Philadelphia delegation there has been no member more faithful in attendance than he. I would further say, that when I submitted a resolution on Friday last fixing the hours of meeting of this Convention at half-past nine A. M., and its adjournment at one P. M., to meet again at three, and adjourn at seven, I so drew it that in my judgment it would not require a change of the rule on this day. It read "from and after Monday next." I understand the same interpretation has been given to "from and after" to mean on and after, as well by Mr. Meredith as yourself; but it may have led to mistake on the part of many members present who believed that the hours of session to-day would be the same as they had been hitherto.

Allow me to say that I concur most heartily with my colleague across the way, (Mr. Ewing,) that there should be some rigid rule adopted for the future government of this Convention. Many of us are here three hundred and fifty miles from home. We are away from our families, away from our professions and our business, and we cannot slide into our homes and our offices as gentlemen can who live in this city. Hence I think an appeal to those gentlemen will satisfy them that they are doing us great injustice by absenting themselves from the discharge of their duties; and whether it will do any good or not, I have drawn up a resolution which I would offer, although I would not call it up for a few days, because perhaps the disgraceful proceedings of this Convention this day may be as good a corrective of the evil of which we complain as any other action that we could take in the premises would be. That resolution I will not offer, per-

haps, for some days, unless it becomes necessary.

I desire to say further, Mr. President, that this raises a question about which there may be some controversy, but still it presents the question to the House in reference to recusant members. My resolution is:

Resolved, That hereafter for each day's absence of a member without leave the Committee on Accounts is hereby directed to deduct ten dollars from the pay of the member in the settlement of his account; and where the absence has been continued for ten days without leave or sufficient excuse, the seat of said member shall be declared vacant on the ground of abandonment and refusal to perform the duties of his office.

Mr. STANTON. What has that to do with the motion already pending, to admit Mr. Campbell to his seat?

Mr. S. A. PURVIANCE. I do not ask its adoption now.

The PRESIDENT. The question is on the motion to excuse Mr. Campbell.

The motion was agreed to.

The PRESIDENT. Mr. Parsons is now here. What excuse has he to offer?

Mr. PARSONS. Mr. President: I regret exceedingly that I was detained, but I was compelled to remain at home on account of the financial troubles of the country. We have had a great many difficulties at Williamsport, and my clients insisted on my remaining, and I felt that in conscience and in decency I was obliged to remain. I expected to be here this morning, but was detained by the sickness of my little child. Otherwise I should have been here this morning in ample time.

Mr. NILES. I move that the gentleman be excused.

The motion was agreed to.

SEVERAL DELEGATES. Judge Black is here.

The PRESIDENT. Judge Black is arraigned before the bar of the House for his absence from his place.

Mr. J. S. BLACK. It is not proven [laughter;] and I do not think it can be.

The PRESIDENT. What excuse, if any, have you to urge for not being in attendance?

Mr. J. S. BLACK. The day and the hour. It was the first day after Sunday, and it was necessary for me to come here before I could be here. And the hour was precisely dinner time when I got here, and that kept me that long; and

this thing of having two sessions of this Convention is barbarous at any rate. [Out of order."] No, it is fair self-defence. That is all I have to say, only I hope I shall be expelled. [Laughter.]

Mr. DALLAS. I move that he be excused.

The PRESIDENT. It is moved that the gentleman from York be excused.

The motion was agreed to.

Mr. LITTLETON entered the Hall.

The PRESIDENT. Mr. Littleton, you are arraigned before the bar of the House for your absence. What excuse have you to offer?

Mr. LITTLETON. Mr. President: I have no excuse. I only recollected a few moments ago the change made in the sessions of the Convention, but I do not offer that as an excuse. I am not aware that I have any to offer.

Mr. J. PRICE WETHERILL. I move that Mr. Littleton be excused.

The motion was agreed to.

The PRESIDENT. The question recurs on the motion of the gentleman from Allegheny, (Mr. D. N. White,) to go into committee of the whole for the purpose of special amendment by striking out the words, "by possessing a population exceeding one senatorial ratio, and three-fifths of a second ratio," in the sixteenth section of the article on the Legislature.

Mr. HUNSICKER. I move now that this section be referred to the same committee that reported section seventeen, with instructions to report as soon as possible.

The PRESIDENT. That motion is in order. The question is on the motion to go into committee of the whole for the purpose of striking out the words, "by possessing a population exceeding one senatorial ratio and three-fifths of a second ratio."

Mr. DARLINGTON. Will it be in order to extend the operation of that by going into committee of the whole for general amendment of this section? ["No!" "No!"]

The PRESIDENT. There is a question pending which must be considered, and we can only act upon the subject-matter of that amendment.

Mr. MACVEAGH. If it meets the general sense of the House, I should like to ask the delegate from Allegheny to withdraw this motion and move to refer this section to the Committee on Revision and Adjustment. They state that they did not consider the language of it, and it seems to me that that committee or some

committee had better consider this matter. I do not know. I only suggest that as a means of getting a careful consideration.

Mr. CURTIN. Before that motion is put to the Convention I should like very much to offer an amendment to this section. I wish to strike out "fifty" in the first line and insert "four senatorial districts as nearly equal in population as possible, and that each district be entitled to elect three Senators annually," making the number thirty-six.

The PRESIDENT. That may be in order after the pending question is disposed of. The question now is on going into committee of the whole for the purpose of making the amendment suggested by the gentleman from Allegheny.

Mr. STRUTHERS and Mr. D. W. PATTERSON called for the yeas and nays.

Mr. MACVEAGH. If the gentleman withdraws that, the Chair will entertain a motion to refer to the Committee on Revision and Adjustment.

Mr. D. N. WHITE. Have I any power to withdraw the motion after the vote which has been taken?

The PRESIDENT. The Chair thinks not.

Mr. D. N. WHITE. I have no power to withdraw it.

Mr. MACVEAGH. I do not mean the gentleman from Allegheny; I mean the gentleman who calls for the yeas and nays.

Mr. D. W. PATTERSON. I withdraw the seconding of the call for the yeas and nays.

The PRESIDENT. The seconding of the call for the yeas and nays is withdrawn. The question then is on the motion of the delegate from Allegheny, (Mr. D. N. White.)

The motion was not agreed to.

Mr. HUNSICKER. Now, I move that this section be referred to the select committee of nine who reported section seventeen.

Mr. CURTIN. Before that is offered again, I want to get my amendment before the Convention.

Mr. LILLY. I rise to a point of order, that the whole article is under consideration and not the section, and if you want to refer anything you must refer the whole article.

Mr. STRUTHERS. I understood the yeas and nays were called for.

The PRESIDENT. The seconder withdrew the seconding of the call for the yeas and nays, and the Chair could not

direct the yeas and nays to be called without a second.

Mr. JOSEPH BAILY. I second the call for the yeas and nays.

The PRESIDENT. It is too late now to go back to that.

Mr. MACVEAGH. Now, Mr. President, I move to recommit this section to the Committee on Revision and Adjustment.

The PRESIDENT. The Chair would like to entertain the motion; but the article is before the Convention on third reading as a whole, and the Chair does not see how it can be split up and one section referred to a committee.

Mr. DARLINGTON. Will it be in order to move to go into committee of the whole for general amendment, so as to reach this in some way? If that be in order, we can reach it in that way.

The PRESIDENT. It is moved by the delegate from Chester to go into committee of the whole for the purpose of general amendment of this article.

Mr. CURTIN. That is a dangerous proposition.

Mr. MACVEAGH. I trust we shall not do that.

Mr. LAWRENCE. I wish to inquire of the gentleman from Chester if he means general amendment of the section or of the article.

Mr. DARLINGTON. General amendment of the section.

Mr. MACVEAGH. Before that vote is taken, I desire to submit to the House that that will just get us in the same wrangle.

The PRESIDENT. The Chair decides that a motion to go into committee of the whole for general amendment does not mean amending a section, but amending the article.

Mr. MACVEAGH. Then I move to recommit this article to the Committee on Revision and Adjustment. I will say to the House that for sections sixteen and seventeen, which were reported without having been carefully considered by the Committee on Revision, the gentleman from Lycoming has prepared an acceptable substitute, I think, to the Committee on Revision and Adjustment, and the gentleman from Allegheny (Mr. J. W. F. White) has prepared another. I move, therefore, to recommit the entire report to the Committee on Revision and Adjustment.

The PRESIDENT. The question is on the motion to recommit.

Mr. HOWARD. I understand the motion is to recommit to the Committee on Revision and Adjustment to report tomorrow morning at nine an a half o'clock on this one subject. ["Yes."]

Mr. MACVEAGH. I accept that amendment of my motion.

The PRESIDENT. The question is on the motion to recommit the entire article to the Committee on Revision, with the instructions stated.

The question being put, a division was called for.

Mr. BOYD and Mr. MACVEAGH called for the yeas and nays, and they were taken, with the following result:

YEAS.

Messrs. Achenbach, Armstrong, Barclay, Beebe, Black, Charles A., Black, J. S., Boyd, Calvin, Carter, Cassidy, Corbett, Cuyler, Dallas, Darlington, Elliott, Gibson, Guthrie, Hanna, Howard, Hunsicker, Kaine, Lamberton, Lear, Lilly, MacVeagh, M'Michael, Minor, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, D. W., Purman, Purviance, Samuel A., Sharpe, Smith, H. G., Smith, Henry W., Woodward, and Walker, *President*—40.

NAYS.

Messrs. Baily, (Perry,) Baker, Biddle, Bigler, Bowman, Campbell, Curtin, De France, Edwards, Ewing, Hay, Hazzard, Lawrence, Littleton, MacConnell, M'Clean, Mann, Mantor, Porter, Pughe, Reynolds, Ross, Russell, Stanton, Struthers, Temple, Wetherill, Jno. Price, White, David N., and White, J. W. F.—29.

So the motion was agreed to, and the article was recommitted.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brodhead, Broomall, Brown, Buckalew, Bullitt, Carey, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Green, Hall, Harvey, Hemphill, Heverin, Horton, Knight, Landis, Long, M'Camant, M'Culloch, M'Murray, Metzger, Newlin, Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Runk, Simpson, Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—64.

PROPOSED EXPULSION OF ABSENTEES.

N A Y S.

Mr. MAOVEAGH. I move that we now proceed to the consideration of the next article—Article No. 3, on legislation.

Mr. Kaine. Before that motion is put I ask the gentleman to allow me to offer a resolution.

Mr. MACVEAGH. Certainly.

The PRESIDENT. The motion is withdrawn.

Mr. Kaine. I ask leave to offer a resolution at this time.

The PRESIDENT. Shall the delegate have leave? ["Aye!" "Aye!"]

Mr. Kaine. Let it be read.

Mr. LILLY. I want to know what it is before leave is given.

Mr. D. N. WHITE. I have no objection to its being read for information.

The PRESIDENT. The delegate from Fayette offers a resolution and moves a suspension of the rule in order to introduce it.

Mr. D. N. WHITE. I object.

Mr. CALVIN. Let it be read for information.

Mr. D. N. WHITE. I am willing to have it read for information.

Mr. Kaine. I understood I had the leave of the House, and that it was so decided by the President.

The PRESIDENT. There appeared to be objection. The resolution will be read.

The CLERK read as follows:

Resolved, That hereafter if any member shall absent himself from the sessions of the Convention for the space of two days without leave or on account of sickness, his seat shall be declared vacant, and the Convention will proceed to fill said vacancy according to law.

The PRESIDENT. What order will the Convention take on the resolution?

SEVERAL DELEGATES. Second reading.

Mr. CUYLER. I call for the yeas and nays on the second reading.

Mr. LAWRENCE. I second the call.

The question being taken by yeas and nays resulted as follows:

Y E A S.

Messrs. Achenbach, Baily, (Perry,) Beebe, Biddle, Bowman, Campbell, Carter, Darlington, De France, Edwards, Ewing, Guthrie, Hanna, Hazzard, Howard, Hunsicker, Kaine, Lawrence, MacConnell, MacVeagh, McClean, Mantor, Mott, Niles, Porter, Purviance, Sam'l A., Russell, Struthers, White, David N., Woodward and Walker, *President*—31.

Messrs. Armstrong, Baker, Bigler, Black, Charles A., Boyd, Calvin, Cassidy, Corbett, Curtin, Cuyler, Dallas, Elliott, Gibson, Hay, Lamberton, Lear, Lilly, Littleton, M'Michael, Mann, Minor, Mitchell, Palmer, G. W., Parsons, Patterson, D. W., Pughe, Purman, Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Temple, Wetherill, John Price and White, J. W. F.—36.

So the resolution was not ordered to a second reading.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Brodhead, Broomall, Brown, Buckalew, Bullitt, Carey, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Green, Hall, Harvey, Hemphill, Heverin, Horton, Knight, Landis, Long, M'Camant, M'Culloch, M'Murray, Metzger, Newlin, Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Read, John R. Reed, Andrew, Rooke, Runk, Simpson, Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—66.

LEGISLATION.

Mr. MACVEAGH. I now renew my motion to proceed to the third reading of article number three, on legislation.

Mr. ARMSTRONG. Before proceeding to that I should like to ask leave of absence for to-morrow and next day. I am necessarily compelled to be absent.

The PRESIDENT. We will first dispose of the motion of the gentleman from Dauphin. The question is on the motion.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. ARMSTRONG. I now ask leave of absence for to-morrow and next day.

Mr. D. N. WHITE. I rise to a question of order. That is not in order now.

Mr. ARMSTRONG. I know it is not in order, and for that reason I ask leave to make the motion now as no opportunity will probably occur before the adjournment and I am compelled to be absent to-morrow and the next day and desire to be absent with leave.

Mr. CURTIN. I move that the gentleman have unanimous consent.

Mr. BIDDLE. I second the motion.

The PRESIDENT. Shall the gentleman have leave?

Leave was granted.

LEGISLATION.

The PRESIDENT. Article No. 3, on Legislation, is now before the Convention for consideration on third reading.

Mr. D. N. WHITE. In order to proceed with this article with some sort of system, which we have not been doing, I move that we take up the article, section by section, and consider it until we get through on third reading. With our present mode of considering these articles we cannot tell what we have done.

The PRESIDENT. The whole article is before the Convention and cannot be divided.

Mr. BIGLER. I move that we proceed at once to the third reading of the article.

The motion was agreed to, and the article as amended was read the third time, as follows:

ARTICLE III.

LEGISLATION.

SECTION 1. No law shall be passed except by bill, and no bill shall be so altered or amended in the course of its passage through either House, as to change its original purpose.

SECTION 2. No bill shall be considered unless referred to a committee, returned therefrom, and printed for the use of the members.

SECTION 3. No bill, except general appropriation bills, shall be passed, containing more than one subject, which shall be clearly expressed in its title.

SECTION 4. Every bill shall be read at length on three different days in each House; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, 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 same shall be entered on the Journal, and a majority of the members elected to each House recorded thereon as voting in its favor.

SECTION 5. No amendment to bills by one House shall be concurred in by the other, except by the vote of a majority of the members elected thereto, 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 majori-

ty of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the Journals.

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

SECTION 10. The General Assembly shall not pass any local or special law—

Authorizing the creation, extension or impairing of liens.

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

Changing the names of persons or places.

Changing the venue in civil or criminal cases.

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

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

Vacating roads, town plats, streets or alleys.

Relating to cemeteries, grave-yards or public grounds not of the State.

Authorizing the adoption or legitimating of children.

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

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

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

Granting divorces.

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

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

Changing the law of descent or succession.

Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery or other tribunals, or providing or changing methods for the collection of debts, or the enforce-

ing of judgments, or prescribing the effect of judicial sales of real estate.

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

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

Fixing the rate of interest.

Affecting the estates of minors or persons under disability, except after due notice to all parties in interest, to be recited in the special enactment.

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

Exempting property from taxation.

Regulating labor, trade, mining or manufacturing.

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

Granting to any corporation, association or individual any special or exclusive privilege or immunity or granting to any corporation, association or individual the right to lay down a railroad track.

Nor shall the *General Assembly* indirectly enact such special or local law by the partial repeal of a general law, but laws repealing local or special acts may be passed.

Nor shall any law be passed granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction, to grant the *same* or give the relief asked for.

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

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

SECTION 13. The *General Assembly* shall prescribe by law the number, duties

and compensation of the officers and employees of each House, and no payment shall be made from the State Treasury or be in any way authorized to any person, except to an acting officer or employee elected or appointed in pursuance of law.

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

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

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

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

SECTION 18. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

SECTION 19. No appropriations (except for pensions or gratuities for military services) shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association.

SECTION 20. The *General Assembly* shall not delegate to any special commission, private corporation or association,

any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

SECTION 21. No act of the *General Assembly* shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property; and in case of death from such injuries the right of action shall survive, and the Legislature shall prescribe for whose benefit such actions shall be prosecuted. *No act shall prescribe any limitation of time within which suits may be brought against corporation for injuries to persons or property, or for other causes different from those fixed by general laws, and such acts now existing shall be void.*

SECTION 22. No act of the *General Assembly* shall authorize the investment of trust funds by executors, administrators, guardians, or other trustees, in the bonds or stock of any private corporation, and *such acts now existing shall be void, saving investments heretofore made.*

SECTION 23. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be *provided by law.*

SECTION 24. No money shall be paid out of the treasury, *except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof.*

SECTION 25. No obligation or liability of any railroad or other corporation, held or owned by the Commonwealth, shall ever be exchanged, transferred, remitted, postponed, or in any way diminished by the *General Assembly*, nor shall such liability or obligation be released, except by payment thereof into the State treasury.

SECTION 26. No bill shall be passed giving any extra compensation to any public officer, servant, employee, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim against the Commonwealth without previous authority of law.

SECTION 27. When the *General Assembly* shall be convened in special session there shall be no legislation upon subjects other than those *designated* in the proclamation of the Governor *calling such session.*

SECTION 28. Every order, resolution or vote, to which the concurrence of both Houses may be necessary, (except on the

question of adjournment,) shall be presented to the Governor, and before it shall take effect be approved by him, or bring disapproved, shall be re-passed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.

SECTION 29. A member of the *General Assembly* who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit or demand any such money or other advantage, matter or thing aforesaid for another, as the consideration of his vote or official influence or for withholding the same, or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for said offence, and such additional punishment as is or shall be provided by law.

SECTION 30. Any person who shall, directly or indirectly, offer, give or promise any money, or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the *General Assembly* to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

SECTION 31. Any person who may have offered or promised a bribe, or solicited or received one, may be compelled to testify in any judicial proceeding against any person who may be charged with having committed the offence of bribery as defined in the foregoing sections, and the testimony of such witness shall not be used against him in any judicial proceeding except in a prosecution for perjury committed in the giving of such testimony, and any person convicted of the offence of bribery as hereinbefore defined, shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust or profit in this Commonwealth.

SECTION 32. A member who has a personal or private interest in any measure or bill proposed or pending before the *General Assembly* shall disclose the fact to the House of which he is a member, and shall not vote thereon.

SECTION 33. The *General Assembly* may make appropriations of money to existing institutions wherein the widows of soldiers are supported or assisted, or the orphans of soldiers are now maintained and educated.

SECTION 34. The *General Assembly* shall by law empower the Secretary of Internal Affairs to prepare a system of weights and measures and gauges, for solid and liquid merchandise, and also the requisite implements, tests and instructions to be furnished to each county and municipality, which may, each for itself, appoint officers for *scaling of weights and measures and for the inspection of merchandise, manufactures or live stock*, but no State office shall be continued or created for such purposes.

MR. STANTON. I move that the Convention do now adjourn.

THE PRESIDENT. The question is, shall the article pass on third reading?

MR. MACVEAGH. Are there any amendments to be proposed?

MR. DE FRANCE. I do not think there are any. It is no use to offer amendments.

MR. MACVEAGH. I have none, certainly.

MR. STRUTHERS. I move to go into committee of the whole, for the purpose of amending the sixth line of the fourteenth section, by adding after the word "below" the words "or at." That will make the clause read:

"Be given to the lowest responsible bidder below or at such maximum price."

I want to say but one word. This clause, as it stands, provides that contracts shall be given to the lowest responsible bidder below the maximum price. It does not permit the giving at the maximum. What I wish is to have it read that they shall be given at the maximum unless somebody bids less. The clause ought to read, "below or at."

THE PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment indicated by the gentleman from Warren.

The motion was rejected.

MR. J. W. F. WHITE. Mr. President: We have now before us the article on legislation. This morning the Committee

on Revision had their printed report laid on our tables. I confess, as a member of this Convention, that I have not read the report of the committee on this article.

My whole thought was taken up with the report of the Committee on the Legislature, and working on that the whole day I have not yet had an opportunity of reading the report of the Committee on Revision and Adjustment on this article, and I am satisfied that the members of the Convention have not read it or carefully examined it. I understand that such is generally the case.

THE PRESIDENT. The Chair will state that this article was reported in printed form on Friday last.

MR. H. W. SMITH. It was not laid on my table until a very few minutes ago.

MR. J. W. F. WHITE. The Chair may be right, but I confess, that I, for one, have not read it, and I doubt if any other gentlemen has had time to consider it. In view of this fact, I believe we had better adjourn until to-morrow morning. The previous article was taken from us by a motion and referred to a committee, and this action leaves us in such a condition that we shall do better work and more satisfactory if we adjourn until to-morrow morning. We shall come here in the morning better prepared to discuss it and act properly upon it. I move that we adjourn.

MR. S. A. PURVIANCE. We can vote upon this article now, and if there are any oversights committed they can be very easily corrected by a reconsideration.

MR. D. W. PATTERSON. I wish merely to say that the Committee on Revision and Adjustment made no alteration in substance, merely in form in a few instances.

THE PRESIDENT. The Chair cannot permit debate upon a motion to adjourn.

MR. MACVEAGH. I call for the yeas and nays upon the motion to adjourn.

MR. J. PRICE WETHERILL. I second the call.

Upon the question of agreeing to the motion to adjourn.

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

YEAS.

Messrs. Armstrong, Baker, Beebe, Bidle, Bigler, Black, Charles A., Boyd, Cassidy, Corbett, Curtin, Cuyler, Dallas, De France, Elliott, Ewing, Gibson, Guthrie, Hanna, Howard, Kaine, Lamberton, Lear, Lilly, Littleton, M'Clean, M'Mi-

chael, Minor, Mott, Parsons, Pughe, Ross, Smith, Henry W., Struthers, White, J. W. F., Woodward and Walker, *President*—35.

N A Y S.

Messrs. Achenbach, Baily, (Perry,) Barclay, Black, J. S., Bowman, Calvin, Campbell, Carter, Darlington, Edwards, Hazzard, Hunsicker, Lawrence, MacConnell, MacVeagh, Mann, Mantor, Mitchell, Niles, Palmer, G. W., Patterson, D. W., Porter, Purman, Purviance, Samuel A., Reynolds, Russell, Sharpe, Smith, H. G., Temple, Wetherill, John Price, and White, David N.—31.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew,

Brodhead, Broomall, Brown, Buckalew, Bullitt, Carey, Church, Clark, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Green, Hall, Harvey, Hay, Hemphill, Heverin, Horton Knight, Landis, Long, M'Camant, M'Culloch, M'Murray, Metzger, Newlin, Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Runk, Simpson, Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Wherry, White, Harry, Worrell and Wright—66.

So the motion was agreed to; and (at five o'clock and thirty minutes P. M.) the Convention adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FIFTY-FOURTH DAY.

TUESDAY, September 30, 1873.

The Convention met at half-past nine o'clock, A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. William B. Cullis, of Scranton, Pa.

The Journal of yesterday's proceedings was read.

CORRECTION OF THE JOURNAL.

Mr. T. H. B. PATTERSON. I rise to make a correction of the Journal. I was absent yesterday necessarily and made arrangements here that I should have leave of absence, and I think the Journal is wrong. My name is recorded as absent without leave. I left word with one of my colleagues to ask leave.

The PRESIDENT. The Journal does not show that the gentleman had any leave of absence.

LEAVES OF ABSENCE.

Mr. LILLY asked and obtained leave of absence for Mr. Fell.

Mr. KAINE asked and obtained leave of absence for Mr. Collins for a few days from to-day on account of sickness.

Mr. EWING asked and obtained leave of absence for Mr. Turrell for a few days from yesterday.

Mr. H. W. PALMER asked and obtained leave of absence for Mr. Wright for a few days from to-day.

Mr. BIDDLE. I ask leave of absence at twelve o'clock to-day for Mr. Dallas, for Mr. Baker, for Mr. Smith, of Lancaster, for Judge Woodward and for myself to attend the memorial meeting of the Philadelphia Bar at twelve o'clock to-day. It is the request of the members of the Philadelphia Bar that we should go.

The PRESIDENT. The question is on granting leave of absence to the gentlemen indicated.

Leave was granted.

HOURS OF SESSION.

Mr. BRODHEAD. I offer the following resolution:

Resolved, That the House will adjourn to-day at three o'clock P. M., and there shall be no afternoon session; and that

hereafter the daily sessions shall be from half-past nine o'clock until 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 ayes fifty-three, noes thirty.

The resolution was read the second time and considered.

Mr. HAZZARD and Mr. S. A. PURVANCE called for the yeas and nays on the adoption of the resolution.

Mr. DARLINGTON. I move to amend the resolution by striking out "three" and inserting "four o'clock P. M." as the hour of adjournment.

The amendment was rejected.

Mr. HANNA. I move to strike out "half-past nine" and insert "ten" o'clock as the hour of meeting.

The amendment was rejected.

Mr. CARTER. I move to postpone the consideration of the resolution for ten days.

The motion was not agreed to.

Mr. H. W. SMITH. I move to amend the resolution by adding to it, "and that there be no sessions on Saturdays."

The question being put on the amendment, a division was called for, which resulted ayes fifty, noes thirty.

Mr. HAZZARD and Mr. S. A. PURVANCE called for the yeas and nays.

Mr. NILES. I second the call.

The question being taken by yeas and nays, resulted as follow:

YEAS.

Messrs. Addicks, Armstrong, Baker, Bartholomew, Beebe, Biddle, Bigler, Black, J. S., Brodhead, Broomall, Buckalew, Calvin, Carey, Corson, Curry, Curtin, Dallas, Dunning, Elliott, Funck, Gibson, Gilpin, Guthrie, Hanna, Harvey, Hemphill, Howard, Hunsicker, Kaine, Lambertson, Lear, Lilly, MacVeagh, Michael, Minor, Mott, Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pugh, Purman, Rooke, Ross, Simpson, Smith, Henry W., Stanton, Stewart, Temple, Wetherill, J. M., White, J. W. F., Woodward and Walker, *President*—53.

N A Y S.

Messrs. Achenbach, Ainey, Bailly, (Perry,) Barclay, Black, Charles A., Bowman, Boyd, Campbell, Carter, Clark, Corbett, Darlington, De France, Edwards, Ewing, Hay, Hazzard, Lawrence, Landis, Littleton, MacConnell, M'CLean, M'Murray, Mann, Mantor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Porter, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Runk, Russell, Sharpe, Smith, H. G. Struthers, Wetherill, John Price, and White, David N.—41.

So the amendment was agreed to.

ABSENT.—Messrs. Airicks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Brown, Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Cuyler, Davis, Dodd, Ellis, Fell, Finney, Fulton, Green, Hall, Heverin, Horton, Knight, Long, M'Camant, M'Culloch, Metzger, Newlin, Read, John R., Smith, Wm. H., Turrell, Van Reed, Wherry, White, Harry, Worrell and Wright—39.

Mr. LAWRENCE. I move to postpone this subject indefinitely. ["No!" "No!"] Gentlemen may say no, no, as much as they please, but I make the motion.

The PRESIDENT. The question is on the indefinite postponement of the resolution.

Mr. LAWRENCE. I had ardently hoped, as I suppose many members in this Hall did, that this subject would not be brought up again, and I regret exceedingly that my friend from Northampton (Mr. Brodhead) has brought up again this vexed question of adjournment, and I regret more that a majority of this House have agreed that they will have no Saturday session. I do not care for my own part whether you have one session or two sessions per day if we can only get members to attend here and do their duty; but I believe we can do more business with two sessions than with one. Hence I have voted for two sessions steadily all the time, and I hope the Convention will now let the resolution remain as it is and have two sessions per day, an afternoon session and a morning session, as other deliberative bodies have that try to get through their work properly.

I call for the yeas and nays for the purpose of putting my name on the record. As we have been here over seven months, I want the people to know who are in favor of finishing the work and who are opposed to it, and willing to trifle away the time. We have a majority here now,

a fuller House than we have had for some time, and we should go on steadily from day to day and do our work. I call for the yeas and nays.

Mr. T. H. B. PATTERSON. I second the call.

Mr. KAINE. On what question are the yeas and nays called for?

The PRESIDENT. On the indefinite postponement.

Mr. KAINE. Cannot the gentleman reach the same object by a direct vote on the resolution?

Mr. MANN. I ask the gentleman from Washington to withdraw his motion and let us take a vote on the resolution. We just waste time in calling the yeas and nays on the postponement. The object he seeks can be reached just as well by a direct vote on the resolution.

Mr. LAWRENCE. I made the motion to postpone indefinitely that I might say a word upon the subject. It was the only motion that I could make which would allow me to speak on the subject. Now I withdraw that motion, and if gentlemen wish to take a vote on the resolution they can do so.

The PRESIDENT. The question is on the adoption of the resolution as amended.

Mr. T. H. B. P. TTERSON and Mr. LAWRENCE called for the yeas and nays.

Mr. LILLY. Let us have it read as it stands.

The PRESIDENT. The resolution will be read as amended.

The CLERK read as follows:

"Resolved, That this House will adjourn to-day at three o'clock P. M., and there shall be no afternoon session; and that hereafter the daily sessions shall be from nine and a half A. M. until three o'clock P. M., and there shall be no session on Saturdays."

The PRESIDENT. The Clerk will call the names of delegates on the resolution.

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

Y E A S.

Messrs. Ainey, Armstrong, Baker, Barclay, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Brodhead, Broomall, Calvin, Carey, Cassidy, Corbett, Corson, Curry, Curtin, Cuyler, Dallas, Darlington, Dunning, Elliott, Gibson, Gilpin, Guthrie, Hanna, Harvey, Hemphill, Howard, Hunsicker, Lamberton, Lear, Lilly, MacVeagh, M'Michael, Mann, Mott, Newlin, Niles,

Parsons, Patterson, D. W., Pughs, Reynolds, Ross Runk, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stanton, Stewart, Temple, Wetherill, J. M., Wetherill, John Price, White, J. W. F., Woodward and Walker, *President*—60.

NA YS.

Messrs. Achenbach, Addicks, Baily, (Perry,) Beebe, Buckalew, Campbell, Carter, Clark, De France, Edwards, Ewing, Funck, Hay, Hazzard, Kaine, Landis, Lawrence, Littleton, MacConnell, M'Clean, M'Murray, Mantor, Minor, Mitchell, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Struthers and White, David N.—37.

So the resolution as amended was agreed to.

ABSENT.—Messrs. Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Brown, Bullitt, Church, Cochran, Collins, Craig, Cronmiller, Davis, Dodd, Ellis, Fell, Finney, Fulton, Green, Hall, Heverin, Horton, Knight, Long, M'Camant, M'Culloch, Metzger, Read, John R., Smith, Wm. H., Turrell, Van Reed, Wherry, White, Harry, Worrell and Wright—36.

MEREDITH MEMORIAL.

Mr. CAREY. I am instructed by the committee on the memorial of Mr. Meredith to make a report.

The report was received and read as follows:

The special committee appointed under the following resolution, to wit: "*Resolved*, That a committee of nine be appointed to take order for the preparation of a memorial of the deceased," passed September 16, 1873, respectfully report the following resolution and recommend its adoption by the Convention:

Resolved, That the committee appointed to take order for the preparation of a memorial of Mr. Wm. M. Meredith, be and are hereby directed to procure fifteen hundred copies of a memorial volume which shall contain a portrait of Mr. Meredith and the remarks made in Convention upon the announcement of his death.

The resolution was read the second time and considered.

Mr. MACVEAGH. Is the number fifteen hundred necessary?

Mr. DALLAS. That was considered by the committee.

Mr. MACVEAGH. It seems to me very large.

The PRESIDENT. The question is upon the passage of the resolution.

The resolution was agreed to.

REPORTS OF REVISION COMMITTEE.

Mr. MACVEAGH. Now, I move that we proceed to the consideration of article number three, on legislation, on third reading.

The motion was agreed to.

Mr. D. W. PATTERSON. I will take this occasion to say that I am pleased to hear the motion just made that we proceed to consider the report on legislation, for the Committee on Revision, to whom the article on the Legislature was referred last evening with instructions to report at half-past nine o'clock this morning, were not able to meet and consider the question so as to be able to report at this time. We will, however, meet during the day and report as soon as possible; but the Convention has enough to work on in this article and others.

Mr. BUCKALEW. I rise to a privileged question. I move that the Committee on Revision have the time extended to make a report on the legislative article.

The PRESIDENT. It is moved that the time of the committee to report on the legislative article be extended.

The motion was agreed to.

The PRESIDENT. The article on legislation is before the Convention.

Mr. KAINE. Mr. President: I rise to ask a question of the Chair. I want to know whether it is considered by this Convention that the report of the Committee on Revision and Adjustment upon this article has been adopted by the Convention. ["No." "No."]

Mr. DARLINGTON. There is no adoption about it.

The PRESIDENT. There has been no such action, as the Journal shows, and as the Chair's recollection is.

Mr. KAINE. Then I should like to know in what position the report is.

The PRESIDENT. It is on third reading.

Mr. DARLINGTON. The article is on third reading, as reported by the committee, and we can make amendments.

The PRESIDENT. It was the pleasure of the House yesterday to order it to be put on third reading.

Mr. DARLINGTON. I wish to ask the attention of the Convention to a single word in the tenth section and twelfth line. The words "this and any other State" should be—

Mr. MANN. I wish to make a suggestion to the gentleman from Chester.

Mr. DARLINGTON. I refer to the clause relating to ferries, bridges, &c., where occurs the expression "except for the erection of bridges crossing streams which form boundaries between this and any other State." It should be "another State." I move to amend by making "any other" read "another."

Mr. MANN. I rise to a point of order. Amendments on third reading shall be reduced to writing. I ask that that rule be enforced, because where I sit we cannot hear a word that the gentleman from Chester says. I ask that the order be enforced requiring amendments to be reduced to writing.

The PRESIDENT. The Chair will endeavor in future to enforce the order that motions to go into committee of the whole for any specific purpose shall be reduced to writing.

Mr. KAINE. I rise to a point of order on the amendment, that it is not reduced to writing.

The PRESIDENT. The point is well taken until the amendment is reduced to writing.

Mr. EWING. I should like, while the gentleman from Chester is reducing his amendment to writing, to ask and obtain information from the Chair. Those of us who are ignorant of parliamentary rules will in time, no doubt, appreciate the advantage and excellence of what we see here of the practice of going into committee of the whole for the purpose of amending an article, and coming out again without any vote. Some of us are very ignorant as to how these things are done. Now, we have voted to go into third reading on this article on legislation. We had that article passed in the Convention to second reading, and we have it printed in pamphlet form. We have also a report of the Committee on Revision on the same article. That report has not been adopted. We are now on the third reading of the article on legislation. Are we passing on the article as the Convention passed it on second reading, or are we upon it as the Committee on Revision have reported it? I had supposed that the Committee on Revision merely reported amendments recommendatory; that we were on the third reading of the article as it passed the Convention, and that the suggestions of the Committee on Revision would be taken up and acted upon by the Convention.

The PRESIDENT. As the Chair understands, we are now on third reading without adopting the report of the Committee on Revision. If the amendments proposed by that committee are inserted in the article, a motion must be made for that purpose.

Mr. MACVEAGH. Then I move to reconsider the vote, because I was not aware that the House agreed to proceed to the third reading of the article. I understood the Chair, when I made the motion this morning, to state that it was to proceed to the third reading of the article as reported from the Committee on Revision. If that was not the motion, then clearly the motion ought to be reconsidered. There need be no difficulty about this matter. The first motion in parliamentary order is to adopt the report of the committee. The next motion is to proceed to the consideration of the article on third reading as reported by the committee whose report has been adopted, and then we have it up for amendment.

Mr. BIGLER. It is proper to say that I made the motion yesterday to proceed to the third reading of the article. I made that motion under the impression that the report of the committee had been accepted or adopted before it was ordered to be printed, and I found the Convention yesterday acting or attempting to act on the article without going into third reading. Now, sir, I desire to say what I have said repeatedly, that all this is mere matter of form without a particle of substance. The report of the Committee on Revision becomes the text upon which the body is to act; every feature of it is liable to be disposed of just as the original matter exactly, and we cannot get it in any better possible condition than we now have it to go through this business.

Mr. MACVEAGH. / Then I make the motion to reconsider the vote on proceeding to the third reading of the article. Certainly nobody wants to go to the reading of the old article as it stood before it was referred to the committee.

The PRESIDENT. How did the gentleman vote?

Mr. MACVEAGH. I either voted affirmatively or did not vote at all.

Mr. KAINE. The yeas and nays were not called, and everybody is supposed to have voted in the affirmative.

Mr. MACVEAGH. The gentleman from Franklin (Mr. Sharpe) says I voted in the affirmative.

Mr. LILLY. I cannot see how this difficulty is in any way obviated by the motion of the gentleman from Dauphin. The Convention will recollect, and the Journal will show, that we took a dozen different votes on this article yesterday on third reading.

Mr. NILES and OTHERS. That was the other article, the article on legislation.

Mr. LILLY. No; on this one. I understand what I am talking about exactly. We took it up yesterday afternoon, and several motions to amend were made.

Mr. HAY. I second the motion of the gentleman from Dauphin.

Mr. BUCKALEW. On this motion to reconsider I have a few words to say. I speak now because the question is important in the transactions of our business on all these articles. The Convention proceeded to consider the report of the Committee on Revision on the Declaration of Rights, which is article number one. They amended the report in one particular, and then regularly adopted the report. Then on my motion that article was transcribed for a third reading. Subsequently, it was taken up on third reading and proceeded with in the usual way, the report of the Committee on Revision constituting a part of the text of the article.

It seems that when the second article, that upon the Legislature was reached, a different course was taken. A motion was made simply to take the article up on third reading. Now, in what condition did the Convention find itself? A number of members have spoken to me about the utter confusion and uncertainty that prevailed. The amendments of the committee and all sorts of amendments that anybody could offer were all mixed up together, and the Convention was utterly unable to make any amendment without going into committee of the whole. The inevitable result with every article from this to the end will be that we shall sacrifice an enormous amount of time by having these amendments of form and style and detail mixed up with amendments of substance. We ought to follow in the road we began on the Declaration of Rights, and then we shall have no difficulty. In the case of each of these articles, let us proceed with the report of the committee and vote on that, the amendments will be confined to the report of the committee, and not to the article generally. We can get through in a short time in that way with each one of these

reports; we shall have our article in perfected form as far as details are concerned; and when we get to third reading there will be none of these little motions which occupy time upon detail, and we shall only have amendments in relation to matters of substance.

Mr. MACVEAGH. I desire to state that I am informed by the Clerk that the Journal does not show the motion of the delegate from Clearfield, (Mr. Bigler,) and therefore we are disembarassed by it, and my first motion is in order, without any reconsideration whatever, to proceed with the consideration of the report of the Committee on Revision on the article on legislation. I renew the motion.

The PRESIDENT. Then the Chair is compelled to state that the Journal does not show the transactions of yesterday.

Mr. BUCKALEW. I desire to make one further remark. Of course, after the committee make a report upon an article, the Convention is not bound to take any notice of it. The Convention can go on and transcribe the article and take it up for third reading, and the report of the committee goes for nothing at all. If you get into committee of the whole at some time for general amendment or vote to go in for specific amendment, you can reach the amendment of the committee, but they will possess no more force than if they were offered by an independent member of the Convention. They will become mixed up, as I said before, with all the other amendments, and we shall get into confusion.

Now, sir, I have no doubt that we shall save one-half the time we should otherwise spend on these articles, by taking up the report of the committee in each case, sticking to that, touching nothing else, voting upon it, and then at a subsequent time taking up the article for third reading.

SEVERAL DELEGATES. "Question!" "Question!"

The PRESIDENT. What is the question? I do not know that any one has made a motion to reconsider who voted in favor of the motion adopted yesterday, or that it has been seconded by any one who voted in favor of it.

Mr. MACVEAGH. I am assured by two gentlemen that I voted in favor of that resolution.

The PRESIDENT. Who seconds the motion?

Mr. HAY. I second the motion.

The **PRESIDENT**. The question is on reconsidering the vote of yesterday agreeing to go into committee of the whole on article number three.

The motion was agreed to.

Mr. **MACVEAGH**. Now I move to proceed to the consideration of the report of the Committee on Revision on the article, number three, on legislation.

Mr. **STEWART**. I second the motion.

Mr. **STRUTHERS**. I rise to a point of order.

The **PRESIDENT**. The Chair will first hear the motion of the delegate from Dauphin.

Mr. **MACVEAGH**. I move that we proceed to the third reading and consideration of the report of the Committee on Revision and Adjustment upon the article on legislation, Article No. 3, in accordance with the suggestion of the delegate from Columbia.

The **PRESIDENT**. That motion is before the House.

Mr. **STRUTHERS**. That motion is certainly out of order, and it was in reference to that motion that I rose to make my point of order when the Chair recognized the gentleman from Dauphin. We must first take the vote on the motion, the vote upon which this Convention has just agreed to reconsider. It has agreed to reconsider the vote of yesterday, and that brings the resolution itself before the House now.

Mr. **MACVEAGH**. Not necessarily.

Mr. **MANN**. That was reconsidered.

The **PRESIDENT**. The Chair is compelled to state that the delegate from Warren is certainly right. We agreed to reconsider the vote on the motion of the delegate from Clearfield, (Mr. Bigler.) That motion, therefore, is the question before the House, and the motion is to proceed to the third reading and consideration of the report of the Committee on Revision and Adjustment on the article on legislation.

Mr. **BIGLER**. I shall be very glad to withdraw that motion if the House will allow me to do so.

The **PRESIDENT**. The gentleman has no right to withdraw it.

Mr. **BIGLER**. I know that, but I can do so if the House will give unanimous consent.

Mr. **MANN**. On the motion to proceed to third reading of this article, I desire to make a few remarks.

The **PRESIDENT**. That is not before the House.

Mr. **MANN**. What is before the House?

The **PRESIDENT**. The question before the Convention is the motion of the delegate from Clearfield.

Mr. **MANN**. What is that motion?

The **PRESIDENT**. To go into third reading.

Mr. **MANN**. Precisely, and that is what I want to speak about.

The **PRESIDENT**. The gentleman from Potter will proceed.

Mr. **MANN**. I ask the courtesy of the Convention for a few moments. We have been discussing points of order, and I desire to make a suggestion upon this motion. My suggestion is, that if the gentleman from Columbia (Mr. Buckalew) will think for a moment, he will modify his suggestion as to the course which we here ought to pursue. My conviction is that a motion to proceed to the third reading and consideration of any report of the Committee on Revision and Adjustment ought to be construed as the adoption of the committee's report. This course is the proper one to be pursued, and if we so act it will save time, because then when we come to consider the question of proceeding to the third reading of the report, if there is anything wrong in the report we can strike it out. Unless we do this we shall have to give four separate readings to every article instead of three, which is something our rules do not contemplate, and we shall prolong the sessions of this Convention a month or six weeks by that process.

Mr. **BUCKALEW**. I understood the gentleman to desire to make a parliamentary suggestion, and that he was by the Chair allowed to do so. Clearly the motion now under consideration now is not debatable.

The **PRESIDENT**. It is not debatable.

Mr. **BUCKALEW**. Instead of making a suggestion the gentleman from Potter is entering into an argument. If he is now to be permitted to argue this question, I desire to be allowed to answer him.

The **PRESIDENT**. The question is not debatable, and the Chair must enforce the rules. It is not the fault of the Chair that a question is not always debatable, and if gentlemen be offended when the Chair so decides, he cannot help it. He will pursue the course that under all parliamentary construction he must pursue.

Mr. **MANN**. I was trying to make a suggestion.

The **PRESIDENT**. The question is upon the motion of the gentleman from Clear-

field to go into third reading and consideration of the article on legislation, reported by the Committee on Revision and Adjustment. The Chair can allow the question to be discussed no further.

The motion was rejected.

Mr. MACVEAGH. I now move that we proceed to the consideration of the report of the committee on that article.

The motion was agreed to.

Mr. DARLINGTON. Are amendments in order now?

The PRESIDENT. The Chair cannot state whether they are or are not.

Mr. DARLINGTON. I move to amend the report in the tenth section and the twelfth line, by striking out the words "any other," and inserting the word "another."

Mr. MACVEAGH. I think that is unimportant.

The PRESIDENT. It is moved that the Convention go into committee of the whole for the purpose of making the amendment indicated by the gentleman from Chester.

Mr. MACVEAGH. I beg the Chair's pardon. We do not need to go into committee of the whole on this amendment to the report of the committee.

The PRESIDENT. The Chair is of opinion that this is no amendment to the report of the Committee on Revision and Adjustment. It is an amendment to the original article.

Mr. LILLY. I differ entirely with the Chair. It is not proper to amend this report at this stage. This Convention must adopt it as a whole or reject it as a whole, one way or other; because, as the Chair remarked the other day, it was equal to a fourth reading of this report, and so it is. I think the report should be adopted just as it comes from the Committee on Revision and Adjustment; or else just as it comes from that committee it should be voted down. You must adopt the whole text of the article or you must reject the whole text, and I consider that our only course now is, in one shape or other, to adopt the whole text and then proceed to third reading for any amendment that may be required. This proceeding to amend the report, in the manner indicated by the gentleman from Chester, is equivalent to a fourth reading.

Mr. MACVEAGH. We are in precisely the same position as if the gentleman from Columbia had proposed an amendment embodying the series of amendments reported by the Committee on Re-

vision and Adjustment. The delegate from Chester has an amendment to offer, and this House is entitled to have a vote on it here and now. He is not entitled to amend the general article on this motion, because that is not the report of the Committee on Revision and Adjustment.

The PRESIDENT. We must confine ourselves to the point now before us. The delegate asks to amend the original text.

Mr. MACVEAGH. That is not in order.

The PRESIDENT. The Chair decides that it is not in order.

Mr. BIGLER. Now, once for all, the last time I shall ever speak upon this subject, I desire to say to my friend from Dauphin that he is utterly and entirely wrong. Now, look at it. This article on legislation was referred to the Committee on Revision and Adjustment. They were to correct the style of it, and they were to report it back. Now, sir, when they report it back, there can be no proper objection to receiving it back; and the first thing, and the only thing, that the Convention can do is to proceed to consider it as reported back.

Mr. HOWARD. Certainly.

Mr. MACVEAGH. Not at all.

Mr. BIGLER. But if you now commence to amend the report outside of any reading, look at the attitude you get in. Then you make the Convention a whole body of revision.

Mr. MACVEAGH. So the Convention ought to be a body of revision if it so desire. No committee of this body has a right to incorporate into any article its language into the Constitution if this Convention objects. That is the very object of the gentleman from Columbia.

Mr. BIGLER. Precisely, and the Convention will shape the article when it comes into third reading.

Mr. HOWARD. Undoubtedly. This committee report back their suggestions, and they have reported back the whole article. Therefore, the whole article is before the Convention, when we have a right to the possession of the whole article, and we have a right to amend it. We have a right to amend not only their suggestions, but their report. They have reported their suggestions and also the whole article, and the whole article is their report, and this is what we have before the Convention now.

Unquestionably we have the control of this whole article now. Anything else will lead to confusion and difficulty, and we shall be compelled, as has been so well

remarked here, to have four readings instead of three. Certainly no delegate can ask intelligently that we shall have any such construction as that put upon this question.

Mr. H. W. PALMER. I move the adoption of the report of the Committee on Revision and Adjustment just as it stands. That motion is capable of amendment, and if any gentleman desires to amend the motion he can do so.

The PRESIDENT. The delegate from Luzerne moves that the report of the Committee on Revision and Adjustment on this article be adopted.

Mr. DARLINGTON. Before the question is taken on that motion, I want to understand the effect of it. I cannot understand when a committee of this body make a report to the body, that any action of the body upon it is necessary in the way of adoption or rejection. What will be the effect if this motion of the gentleman from Luzerne should be, by a vote of this body, rejected? The Convention may adopt the report or they may reject it, for if they can vote to adopt it they certainly can vote to reject it. This is simply a report of a committee of the body upon a certain matter, for the action of this body, to be taken up in connection with the subject to which the report relates. Now, sir, upon first reading and upon second reading, this article relative to the Legislature has passed through this body. It has then gone to a committee to amend it in matter of form, but not to alter the substance. Then the report of that committee comes to us; when we are to consider the article on third reading, and then in the consideration of the article upon third reading that report is entitled to be considered, and we adopt it on third reading, or adopt it in part, or reject it in part, or reject it *in toto*. The only action of the Convention, I take it, must be upon the article on third reading, and I therefore oppose any question being taken on the mere adoption or rejection of the report of this committee.

Mr. KAINE. I think the gentleman from Chester is entirely mistaken in his view of the question. The only thing, in my opinion, to be done now in this Convention is to adopt the report of the committee, order the article to be transcribed for third reading, and then proceed to consider it on third reading. Then the Convention may strike out any words that the Committee on Revision and Ad-

justment have put in. They may strike out any section that was adopted on second reading, or they may change or alter the whole article by going into committee of the whole. But the only way for us to proceed now is to adopt the report of the Committee on Revision and Adjustment, let the article on legislation be transcribed for a third reading, and then proceed to consider it on third reading, striking out what this committee have put in, or adding to their report, or doing anything else with it that the Convention may desire to do.

The PRESIDENT. When the former report was before the Convention on the third reading of article one, the opinion of the Chair was that that was right, and he has not changed his opinion. The question now is upon adopting the report of the Committee on Revision and Adjustment.

The motion was agreed to, there being on a division, ayes sixty-four, noes fourteen.

Mr. D. W. PATTERSON. Now I move that the article be transcribed for a third reading.

The motion was agreed to.

Mr. D. W. PATTERSON. Now I move that we proceed to the consideration of article No. 3, on third reading.

Mr. BUCKALEW. I desire to make a suggestion at this time. Just let us take up these reports one after another, as they are made. We have several articles here which we can dispose of in a few minutes, if we just sit them out.

Mr. D. W. PATTERSON. Which articles?

Mr. BUCKALEW. Article No. 4, on the Executive Department; article No. 5, on the Judiciary, and article No. 6, on impeachment and removal from office.

Mr. D. W. PATTERSON. I withdraw my motion.

Mr. BUCKALEW. I move, then, to proceed to consider the report of the Committee on Revision and Adjustment on article 4, on the Executive Department.

Mr. D. N. WHITE. Why not go on with the present article?

The PRESIDENT. The Chair has not the article referred to by the gentleman from Columbia.

Mr. BUCKALEW. The original number is seven.

Mr. D. N. WHITE. I have heard no reason why we should not go on with the present article.

Mr. MACVEAGH. These are merely formal motions to get rid of the question of order; that is all.

The PRESIDENT. It is moved that the Convention proceed to the consideration of the report of the Committee on Revision and Adjustment on article number four, on the Executive Department.

The motion was agreed to.

Mr. MACVEAGH. Now I move that the report of the committee on that article be adopted.

The motion was agreed to.

Mr. MACVEAGH. Now I move that that article be transcribed for third reading.

The motion was agreed to.

Mr. MACVEAGH. Now I move that we proceed to the consideration of the report of the Committee on Revision and Adjustment on the judiciary article, number five.

The motion was agreed to.

Mr. MACVEAGH. Now I move that we adopt the report of the committee on that article.

The motion was agreed to.

Mr. MACVEAGH. Now I move that it be transcribed for a third reading.

The motion was agreed to.

Mr. MACVEAGH. Now I move to take up the report of the same committee on article No. 6, "On Impeachment and Removal from Office."

The motion was agreed to.

Mr. MACVEAGH. I move the adoption of that report.

The motion was agreed to.

Mr. HOWARD. We do not understand what is going on here. The delegate from Dauphin and the President seem to be running this machine. [Laughter.] We should like to know what is going on. I do not understand this business of adopting reports. I have always acted in bodies where reports were accepted and the committees discharged, and then the reports taken up for consideration and brought properly before the body. If you adopt a report you have got it body and breeches. What do you want to do with it afterwards? Take it up for consideration after you have adopted it? I never heard of such a thing.

The PRESIDENT. When a committee reports a bill to the House, unless the House dispose of it, it is accepted.

Mr. HOWARD. Very well; let them move to accept the report and vote on that.

The PRESIDENT. There is no motion to accept a report. The adoption of a report is acceptance.

Mr. MACVEAGH. I was in favor of the plan suggested by the gentleman from Allegheny (Mr. Howard) undoubtedly, to consider the formal amendments made by the Committee on Revision on the question of adopting their report; to allow the gentleman from Chester or anybody else to move amendments to those amendments, and vote upon them and get rid of the formal matters, and then on third reading, when the article was transcribed, to offer amendments to the substance of the bill, and get rid of the substantial questions then. But the Chair and the House and the gentleman from Fayette seemed to be of opinion that it was better to formally pass these articles, order them to be transcribed for a third reading, and that then on third reading the entire article as transcribed would be before the House, including the amendments of the Committee on Revision and Adjustment. ["That is right."] I simply yielded to the view of the House in that regard, and with that understanding I am sure there cannot be any harm in doing it.

Mr. HOWARD. After we have adopted all these articles, a motion to adjourn *sine die* will be in order; our work is done. ["No."] There is no question about it. The moment we adopt all these articles our work is done, and the motion to adjourn *sine die* will be in perfect order. What have we got to do with a report after we have adopted it? Nothing further.

Mr. D. W. PATTERSON. I would ask the gentleman from Allegheny to read the thirty-first rule.

Mr. MACVEAGH. The question is on adopting the report of the Committee on Revision and Adjustment.

The PRESIDENT. The question is on the motion to adopt the report of the Committee on Revision and Adjustment on article No. 6, "Of Impeachment and Removal from Office."

The motion was agreed to.

Mr. MACVEAGH. I move that article No. 6 be transcribed for a third reading.

The motion was agreed to.

LEGISLATION.

Mr. DARLINGTON. I move that we now proceed to consider on third reading the article on legislation.

The PRESIDENT. It is moved that the Convention proceed to the consideration

on third reading of article number three, on legislation.

Mr. T. H. B. PATTERSON. Before the question is put I would ask the Convention to consider the matter, as to whether it is best to go into the consideration of that article in the absence of the chairman of the Committee on Legislation (Mr. Harry White.) I suggest that there are three or four other articles that we might go on with. ["No." "No."]

Mr. BUCKALEW. I desire to explain in a word that the chairman of the Committee on Legislation has seen all these amendments and consented to them.

The motion was agreed to, and the Convention proceeded to the consideration on third reading of article number three.

Mr. DARLINGTON. I now move to go into committee of the whole for the purpose of amending the tenth section, twelfth line, by striking out the words, "any other," and inserting "another."

Mr. KAINE. I submit that that motion is out of order.

The PRESIDENT. Why?

Mr. KAINE. The thirty-first rule provides that each article shall be read three times. The first thing in order now is the reading of this article through, unless it be waived by the Convention.

The PRESIDENT. The Chair thinks the gentleman is right, and if the third reading is insisted on the article will be read at length.

Mr. CORSON. I move that the reading be dispensed with.

The motion was agreed to.

The PRESIDENT. The question now is on the motion of the delegate from Chester, to go into committee of the whole for the purpose of amending the article in section ten, line twelve, by striking out "any other," and inserting "another," before the word "State."

Mr. LAWRENCE. That amendment is proper, and I think it can be done by unanimous consent.

The PRESIDENT. Will the Convention unanimously agree to the amendment? ["Aye." "No."] Objection is made. The question is on going into committee of the whole for the purpose of making the amendment indicated.

The motion was not agreed to.

Mr. DARLINGTON. I move now that we go into committee of the whole for the purpose of amending the same section in the fourteenth line, by striking out the word "of," and inserting the words "belonging to," so as to read:

"Relating to cemeteries, grave-yards or public grounds not belonging to the State."

The motion was not agreed to.

Mr. HOWARD. I move to go into committee of the whole for the purpose of amending section one in the second line, by striking out three words, "the course of." The section reads just as well and a little better without them.

SEVERAL DELEGATES. Let it be done by unanimous consent.

The PRESIDENT. Will the Convention agree unanimously to the amendment? ["Aye."] It is agreed to.

Mr. LILLY. I move to go into committee of the whole for the purpose of special amendment, which is in the sixteenth and seventeenth lines of the tenth section, to strike out the words: "Erecting new counties or changing county lines."

Mr. President, this is a very important question whichever way the Convention fix it. If they do not strike out these words, it makes the present county lines as rigid as the laws of the Medes and Persians from this time on, as long as this Constitution stands. It will be impossible to change a county line, because it will have to be done by a general law. If you go to the Legislature and ask for a general law to change a county line, let it be ever so important that the line should be changed, it cannot be done for this reason: You array the representatives of every county in the Commonwealth of Pennsylvania that do not want their county lines touched against the proposition. Now, I submit to gentlemen that as this great Commonwealth advances in its development and improvement, as new settlements are made and cities grow up in the wilderness and changes take place, as they have taken place in the last thirty years, it will be absolutely necessary to change county lines and erect new counties. If we now provide that it shall only be done by general law, we practically make it impossible. There is not one disinterested man in a thousand who understands the geography of Luzerne county and understands the wants of the people of that county to-day who will not say that Luzerne ought to be divided.

I think the Convention ought to consider this question fairly and squarely. Why, sir, the people of one portion of Luzerne county are obliged to travel within seven miles of the county seat of Carbon county, and then travel fifty miles in the other direction to get to Wilkesbarre. That is only one point. I am not speak-

ing of the wants of other parts of the State but I believe that such a state of affairs may grow up in any portion of the Commonwealth, and we should provide in this Constitution a means by which they can get relief, and not send them off and say it cannot be done. Under this provision as it stands it will be utterly impossible to have a change of a county line. I submit the amendment to the Convention, and I hope it will be voted upon fairly and squarely.

Mr. WOODWARD. I wish to ask the gentleman from Carbon why it will be more difficult for a court to change a county line under a general law than it is to change a township line?

Mr. LILLY. For the very reason which I have before stated, that you cannot get such a general law passed by the Legislature. The Legislature will never pass such a general law for the reason that the county of Berks, the county of Montgomery, and other large counties, will be there by their representatives to vote against it, because if you pass such a law with a view of dividing a certain county it throws the door open and will allow other counties to be divided. It is an impossibility ever to get such a law through the Legislature. I repeat, if you want to make your present county lines as rigid as the laws of the Medes and Persians, leave this clause in your Constitution.

I trust the gentlemen of the Convention fully understand this matter, and I shall say no more. If they vote it down, well and good; I have discharged my duty.

Mr. WOODWARD. I hope the motion of the gentleman from Carbon will not prevail. What he says about the rigidity of this requirement is all beside the point. The section provides that there shall be no special legislation upon the several subjects that are enumerated, and that means that the legislation on any of those subjects is to be a general act and not a special act. Now what is a general law as regards the change of county lines? Why, sir, we have a general law now in regard to the change of township lines; a law which vests in the courts the power to change them, to change their name, to change their place of location, to change everything about the township. That is a general law under which the thing is going on quietly in Pennsylvania, and has been for many years. Now, it is proposed to make that rule applicable to the change

of county lines; and in what the difficulty consists I do not know.

The point the gentleman has made, that some of the people of Luzerne county do come down the Lehigh Valley road within certain miles of Mauch Chunk, which is the capitol of Carbon, in order to go to Hazleton, in Luzerne county, ought not to affect the question very much. The people of Luzerne county are not complaining of it. The gentleman does not represent Luzerne county. He is not sent here to make that complaint. If they choose to go by way of the railroad, instead of across the country, it is nobody's business; they do not complain of it. If the argument of the gentleman means that he wants a slice of Luzerne county to be set off in order to give Carbon county better proportions, that argument will be intelligible; but that ought not to weigh with this Convention. This clause provides that this subject of county lines shall be arranged under a general law vesting in the courts or the county commissioners or some other tribunal the power to change those lines after the manner in which the courts now under a general law change township lines, and it strikes me it is a wise provision and one which by no means ought to be stricken out. The illustration which the gentleman gives, as he does not represent Luzerne county, it seems to me ought not to influence the members on this floor.

One word more. I do not know of any greater source of iniquity and corruption in Pennsylvania than the attempt to make new counties by special legislation. It is all-important that we cut up that source of corruption.

Mr. STRUTHERS. I wish to ask the gentleman a question before he sits down. The courts have power to change the lines of townships. That is within a county in which there is a court; but when you come to change county lines you cannot resort to the same authority or power to make the change.

Mr. WOODWARD. If that be true the power could be vested in all the courts of the counties that were affected by the change, or in the Supreme Court, or in any other tribunal that the Legislature might choose to provide. The principle we are dealing with is, shall that question be disposed of under a general law or under a special law, and I think it very important that it should be under a general law.

Mr. LILLY. I call for the yeas and nays on my motion.

Mr. DUNNING. Mr. President: This motion brings before the Convention again a question that was very extensively discussed at an earlier period of our proceedings, when the article was adopted fixing the manner in which new counties should be made in this Commonwealth hereafter. If these words are retained in this article, the article that was adopted on the subject of the division of counties becomes a perfect nullity. Now, gentlemen propose that the question of the erection of new counties, as well as the change of county lines, shall be left with the courts of the counties. Now, sir, is there any man in his senses on this floor who believes that there is a county in the Commonwealth of Pennsylvania that will ever be divided under any general law which leaves the matter entirely to the courts of that county? You all know the history of county seats, and the interests that cluster about them, and the influences that govern and control in those matters, and it is absurd to suppose that if a general law were passed on this subject, leaving it to the courts, you would have a division of any county, no matter what might be the necessities of the case.

Now, sir, I trust that these words may be stricken out, that we may be consistent with ourselves. I hold that no general law can be made that will reach the different cases which will arise throughout the Commonwealth. It is true there may be but few cases where the necessity for such a division exists; but where it does exist, why will you, by the vote of this Convention, put it out of the power of such counties to secure such a division?

Now, sir, here is an argument that is unanswerable. When you talk about a general law for the division of counties by the Legislature, it is well understood that a large majority of the counties of this Commonwealth do not want any division, and when there are efforts throughout the Commonwealth to secure a division they are very unpopular in those counties, and for fear that they might be touched they will vote against any general law that will permit the division of a county in this Commonwealth. More than eight-tenths, perhaps, of the representation in the Legislature will be opposed to the division of counties everywhere; and think you that a body thus constituted would pass a law leaving the possibility of a division? Never. Therefore I say it is

unjust to place this question thus in jeopardy.

Now, sir, if Luzerne county be the only county susceptible of division under the article we have adopted, as I am here in part to represent Luzerne county, I say it would be unjust on the part of this Convention to place anything in the Constitution that would prohibit that division, and because gentlemen on this floor are representing counties generally opposed to division, I say it is unfair in them to prohibit a division where we have shown a perfect case, as we have in the arguments heretofore on this question.

Mr. NILES. It seems to me that the delegate from Luzerne county misapprehends the force of the section as reported by the committee, as passed by this Convention on second reading, and as reported from the Committee on Revision and Adjustment. What is this proposition? It simply says that the Legislature shall pass no local or special law upon various subjects, among which are included the erection of new counties and the changing of county lines. I do not understand what Luzerne county has to do with this provision. I understand that it is a general proposition; and if the Legislature is to be restricted in its powers, if there is anything good in the restriction of legislative powers, it seems to me to be wise and well that we should retain this clause in this article just as it has been kept by this Convention on two successive readings.

The discussion that has heretofore taken place in this body on the question of new counties was not in this article. It was on an amendment that I had the honor to introduce.

Mr. DUNNING. I wish to correct the gentleman. When the article was under consideration in committee of the whole, I moved to strike out this entire clause.

Mr. NILES. But the main discussion to which the gentleman refers, and which took place between two of the delegates from Luzerne, was upon the article in reference to new counties. I undertake to say that the words which the delegate from Carbon now proposes to strike out have passed this Convention twice without any substantial difference of opinion on the part of anybody. Now, I hope the Convention will refuse to go into committee of the whole; that we shall adhere to our former action, and that the people of old counties may feel in the future

that they have some sort of protection from legislative spoliation.

Mr. CUYLER. I desire to add a single thought which I have not heard presented by any of the gentlemen who have spoken on the question. Our system of representation in the House is based on county lines, and the cities having a population exceeding one hundred thousand have not their full proportion of representation. I did not vote in favor of that scheme, but such is the rule as settled by the House. The cities, therefore, have a very deep stake in preventing changes of county lines hereafter, which shall still further reduce their representation. If it is to be easy for the Legislature itself, by cutting up and reconstructing counties, to increase the county representation, it will be at the expense of the cities. For this reason I should be in favor of depriving the Legislature of the power of accomplishing such a result, except it be by the operation of general laws.

The PRESIDENT. The yeas and nays have been called for on the motion of the gentleman from Carbon (Mr. Lilly.)

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Beebe, Bowman, Carter, Curtin, De France, Dunning, Ewing, Harvey, Hazzard, Landis, Lawrence, Lilly, Minor, Mott, Palmer, G. W., Pughe, Rooke, Runk and Simpson—19.

NAYS.

Messrs. Achenbach, Addicks, Armstrong, Baily, (Perry,) Baker, Barclay, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Brodhead, Broomall, Buckalew, Calvin, Campbell, Carey, Cassidy, Clark, Corson, Curry, Cuyler, Dallas, Darlington, Edwards, Elliott, Funck, Gibson, Gilpin, Guthrie, Hall, Hanna, Hay, Hemphill, Howard, Hunsicker, Kaine, Knight, Lamberton, Lear, Littleton, MacConnell, MacVeagh, M'Clean, M'Michael, M'Murray, Mann, Mantor, Mitchell, Newlin, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Ross, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, John Price, White, David N., Woodward and Walker, President—75.

So the motion was not agreed to.

ABSENT.—Messrs. Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Boyd, Brown, Bullitt, Church, Cochran, Collins, Corbett, Craig, Cronmiller, Davis, Dodd, Ellis, Fell, Finney, Fulton, Green, Heverin, Horton, Long, M'Camant, M'Culloch, Metzger, Reed, Andrew, Smith, William H., Temple, Turrell, Van Reed, Wherry, White, Harry, White, J. W. F., Worrell and Wright—39.

Mr. PURMAN. I move to go into committee of the whole for the purpose of striking out the words "General Assembly," in the first line of the tenth section, and inserting the word "Legislature" in lieu thereof, and so also in the article wherever the words "General Assembly" occur.

This is not a matter of substance; it is a matter of mere taste and style, and I make this motion as much at the instance of the chairman of the Committee on Legislation as to accommodate my own views on the subject. He is very anxious that the word "Legislature" should be retained and the words "General Assembly" stricken out. The Committee on Legislation in the article originally reported by them to the Convention, adopted the word "Legislature." The Committee on Revision and Adjustment recommend the striking out of the word "Legislature" and the insertion of the words "General Assembly." This article is entitled an article "on legislation," and to restore the word "Legislature," striking out the words "General Assembly," would be in harmony with the article itself, although as I said before, it is not a matter of substance, but a matter of taste entirely.

Mr. D. W. PATTERSON. That is true. This is a matter of taste pretty much. The Committee on Revision struck out the word "Legislature" and inserted the words "General Assembly," for the reason that in the article on Legislation you will find the first section makes this declaration:

"The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives."

Hence we thought that in order to make the two articles consistent we should make the phrase uniform in the article on legislation and the article on the Legislature. The chairman of the Committee on Legislation made no objection to our action, but thought it eminently proper.

Mr. MANN. I desire to say, in addition to what the gentleman from Greene has said in favor of this motion, that the Committee on Revision and Adjustment have inserted two words where one would answer just as well, in every instance where these words occur. It is deemed important to save a word unless something is gained by adding more words. The Committee on Revision and Adjustment themselves in article two, headed the article "The Legislature," thereby confessing that that word was an expressive one, for they used it. "The Legislature" is the heading of their own article.

I admit that when they came to define in general terms the composition of that body, it was well enough to call it "the General Assembly of Pennsylvania." But in the Constitution defining the powers of that body, where it is to be repeated very often, is it wise to take two words where one answers the same purpose, as this Committee on Revision and Adjustment has done? I hope the motion to go into committee of the whole for the purpose of making this amendment will prevail.

Mr. KAINE. I hope the motion will not prevail. The very technical objection made by the gentleman from Potter (Mr. Mann) that this is using two words in place of one, I do not think amounts to much, as the two words together are very little longer than the other one. "General Assembly" is very little longer than "Legislature."

The words "General Assembly" are used as the form in every act of Assembly that has been passed in the Commonwealth of Pennsylvania. "The Senate and House of Representatives in General Assembly met, hereby enact by the authority of the same" is the perforce to every act of Assembly. I do not see any use at this late day in going back and changing that old familiar expression. I am reminded both by the delegate from York (Mr. J. S. Black) and by the gentleman from Greene (Mr. C. A. Black) that "General Assembly" was the phrase used in the present Constitution, and I believe it was also used in the Constitution of 1776. Let it be as it was. Let it remain. Do not make these little changes that will interfere with everything in the past legislation of the State. Therefore I hope that the amendment of the gentleman from Greene (Mr. Purman) will not prevail, and that the report of the Committee on

Revision and Adjustment will be retained.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment indicated by the gentleman from Greene (Mr. Purman.)

The motion was not agreed to.

Mr. BIDDLE. I now move to go into committee of the whole for the purpose of amending line seven in section twenty-three, as printed, which should be section twenty-one, by changing the word "those" into the word "that;" and also in lines nine and ten of the same section to change the words "shall be void" into the words "are avoided."

I will explain the reason why I make this motion. The Committee on Revision and Adjustment have misapprehended the thought of this section. The language is; "No act shall prescribe any limitation of time"—the object is to prevent any limitation of time—"within which suits may be brought against corporations for injuries to persons or property, or for other causes different from that"—that is, *that* limitation of time—"fixed by general laws." The Committee on Revision and Adjustment have changed the word "that" to "those" in misapprehension of the thought, and if I am not correct in the supposition, I would like any member of the committee to state why it was done. The meaning of the language was very plain at the time; the section was very carefully considered and discussed at great length. Perhaps, if there is no objection, we might adopt this amendment by unanimous consent.

The PRESIDENT. The gentleman from Philadelphia asks unanimous consent to make the amendment which he has indicated. Shall unanimous consent be given?

SEVERAL DELEGATES. No!

Mr. BIDDLE. Then I insist on my motion to go into committee of the whole for the purpose of amending in the manner indicated.

Mr. CUYLER. I move to amend the motion in order that we may go into committee of the whole for the purpose of striking out the section.

The PRESIDENT. That cannot be made in order now, but will be in order subsequently.

Mr. BUCKALEW. I will state that the reason why this change was made was because as the section came to the Committee on Revision and Adjustment, it

read: "Nor shall any act prescribe any limitation of time within which suits may be brought against corporations for injuries to persons or property, or for other causes, different from that fixed by the general laws prescribing the time for the limitation of actions." Now, observe, this provides for the prescription of no limitation of the time within which a suit may be brought for injuries or causes different from those fixed by existing laws; that is, there are limitations, and therefore the expression ought to be in the plural.

Mr. BIDDLE. Then you must put "limitation" in the plural.

Mr. BUCKALEW. No, sir.

Mr. BIDDLE. Then you cannot have "those" to mean "limitation."

Mr. MACVEAGH. Yes, you must change "limitation."

Mr. BUCKALEW. Well, "limitations" will be proper. But the word "those" is correct, because the word "that" would imply that there was only one limitation fixed.

Mr. BIDDLE. You must make it singular or plural in both cases. I do not object to "limitations."

Mr. BUCKALEW. Then make it read: "No law shall prescribe limitations," &c.

Mr. BIDDLE. I do not object to that and will modify my amendment to that extent.

The PRESIDENT. Does the delegate from Philadelphia withdraw his motion to go into committee of the whole?

Mr. BIDDLE. I desire the amendment made either by unanimous consent in Convention or in committee of the whole. If the House desires the plural in the first instance so as to make the word "limitation" read "limitations," I am willing to have the clause read in that way, and I desire to so modify my amendment.

The PRESIDENT. Will the House agree to the amendment to make "limitation" read "limitations?"

Mr. BUCKALEW. Make the phrase read: "No laws shall prescribe limitations."

Mr. BIDDLE. I would like to hear it read as the gentleman from Columbia desires it to be.

The CLERK read the amended phrase as follows: "No laws shall prescribe limitations of time within which suits may be brought against corporations," &c.

Mr. BIDDLE. That is satisfactory; we can do that, I presume, by unanimous consent.

The PRESIDENT. Shall unanimous consent be given to make the amendment?

Mr. DARLINGTON. No, sir, make them both singular and let the phrase read: "No law shall prescribe limitation."

The PRESIDENT. Does the delegate from Chester object to unanimous consent being given?

Mr. DARLINGTON. Yes, sir, I object to making the words plural; they should be singular.

The PRESIDENT. The delegate from the city (Mr. Biddle) asks unanimous consent that a proposed amendment be made. The gentleman from Chester (Mr. Darlington) objects, and there being objection, we shall have to go into committee of the whole to make the amendment.

Mr. BIDDLE. Then I move to go into committee of the whole for that purpose.

Mr. MACVEAGH. One moment! Let us see what the objection of the gentleman from Chester is.

Mr. DARLINGTON. I desire to be informed as to what is desired to be done. I shall not make any captious opposition.

Mr. BUCKALEW. I desire that the clause in controversy, shall read:

"No law shall prescribe limitations of time," &c.

Mr. DARLINGTON. That is what I want.

The PRESIDENT. Will the Convention unanimously agree to that modification being made? There is no objection. The modification is made.

Mr. BIDDLE. Now, in the ninth and tenth lines, the avoiding clause reads, "shall be void." I think it ought to be in the present tense. It ought not to point to any future time. As I understand the thought, the moment the Constitution is adopted, existing laws are void, not "shall be void." Therefore I move to go into committee of the whole for the purpose of amending, by striking out the words "shall be void," and inserting the words, "are avoided."

Mr. MACVEAGH. I trust that will be unanimously adopted.

Mr. D. W. PATTERSON. I trust unanimous consent will be given.

Unanimous consent was given and the amendment made.

Mr. BIDDLE. One other amendment. In the next section, I want the words "shall be void," in the fourth line, changed to the words "are avoided." It is the

same amendment precisely as that which we have just agreed to, and does not change the thought. I ask unanimous consent for that purpose.

Unanimous consent was given, and the amendment was made.

Mr. HOWARD. I move to go into committee of the whole for the purpose of amending section thirty-five by adding to it these words: "But such appropriations shall be applied exclusively to the support of such widows and orphans," so as to make the section read:

"The General Assembly may make appropriations of money to existing institutions wherein the widows of soldiers are supported or assisted, or the orphans of soldiers are now maintained and educated; but such appropriations shall be applied exclusively to the support of such widows and orphans."

I remember very well, Mr. President, the day the Convention had this subject before them for consideration. Their attention was directed to guarding the public treasury against such abuses as have heretofore existed upon the subject of appropriations to private charities. I remember very well that the delegate from Centre (Mr. Curtin) made a very eloquent appeal on behalf of the widows of soldiers and their orphan children; and it was under the influence of that appeal that this section was inserted as an addition to the article. In reading it I find that it provides for existing institutions "wherein the widows of soldiers are supported or assisted." Then a large establishment of a strictly private character might have a soldier's widow, or it might hire a widow if it could get her in no other way, and that would authorize the Legislature to make a general appropriation for that entire institution.

It is perfectly proper that the widows of soldiers and their orphan children should be protected by the Commonwealth, and they should be supported where it is necessary; but this proposition is too general. With the amendment I have offered, it meets every claim that can be made upon the Commonwealth on the part of widows and orphans of our soldiers by saying that private institutions which may have two or three or four or half a dozen, or whatever the number may be, of these orphan children or those widows, shall, if they receive an appropriation from the State, apply it exclusively to the support of such persons. When that is done, whenever such an institution looks for an

appropriation, the first thing asked would be, "How many widows have you? how many orphan children have you? how much will it take to support them in your institution?" These questions being answered, the members of the Legislature will understand what is necessary and will make an appropriation sufficient to support the widows and orphans of soldiers who are in that institution. I say we should not open the door wide in the manner which the section allows by permitting the Legislature, wherever a private institution has one or two orphan children or a single widow, perhaps, of a soldier, to make a general appropriation to that institution for whatever in the discretion of the Legislature they may think proper to give.

My purpose in this amendment is to make it necessary to inform the Legislature, when it is called upon to make appropriations to private institutions because they have some soldiers' widows or orphans, to know how many there are, and confine the appropriation exclusively to their support, so that it shall not be a general appropriation to be expended at the discretion of the institution.

This amendment, I think, meets precisely the spirit that has been manifested by the Convention so far in protecting the public treasury, and I hope it will be adopted. It is not at all objectionable to the argument raised by the distinguished delegate from Centre, that many institutions having these children and these widows would be cut off from all appropriation for their support. This provides for that and simply says the Legislature shall not go any further.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Howard.)

The motion was agreed to, there being on a division, ayes fifty-five, noes twenty.

The Convention accordingly resolved itself into committee of the whole, Mr. Stewart in the chair.

The CHAIRMAN. The committee of the whole has had referred to it section thirty-five for the purpose of inserting an amendment adding to the section the words: "but such appropriations shall be applied exclusively to the support of such widows and orphans." The amendment is made, and the committee will now rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Stewart) reported that the commit-

tee of the whole had made the amendment which they were instructed to make to the thirty-fifth section.

Mr. MACVEAGH. In that same section, unless there is some reason against it, I should like to strike out the word "existing" in the second line and the word "now" in the third line. I can see no reason why we should tie the hands of the Legislature from maintaining the widows and educating the orphans of such soldiers as may fall in any future war, any more than in the past. It is the policy of this House that the widows of soldiers may be supported and that the orphans of soldiers may be educated at the expense of the Commonwealth. Who knows but that to-morrow, or next week, or next month another necessity may be upon us?

The PRESIDENT. What is the motion?

Mr. MACVEAGH. It is to go into committee of the whole for the purpose of special amendment, striking out the word "existing" in the second line of the thirty-fifth section and the word "now" in the third line.

Mr. BRODHEAD. Let it be done by unanimous consent.

Mr. BARTHOLOMEW. Will the delegate from Dauphin allow me to interrupt him for a moment?

Mr. MACVEAGH. Certainly.

Mr. BARTHOLOMEW. Is the gentleman's construction of section thirty-five that it precludes the Legislature from providing for the support of widows and orphans for the soldiers of future wars?

Mr. MACVEAGH. With these words in.

Mr. BARTHOLOMEW. Certainly not. It restricts the appropriation to existing institutions, not to the widows and orphans of soldiers who may have fallen heretofore in war. It simply refers to existing institutions.

Mr. CURTIN. If the gentleman from Dauphin will allow me, I will explain that a previous section in the article would preclude the Legislature from making just such appropriations as that, and this section was put in to save all appropriations now made to existing institutions.

Mr. MACVEAGH. Then, as I understand the delegate from Centre, no power exists in any future calamity to provide for exactly this same charity?

Mr. CURTIN. The delegate is perfectly right: there would be no such power in the future.

Mr. BIDDLE. Mr. President: it seems to me that the amendment of the gentle-

man from Dauphin is eminently proper. The Legislature cannot grant any appropriation to an institution existing at the time of the adoption of the Constitution if the word "existing" remains; and undoubtedly the "now" would refer to those who are widows and orphans at the time the Constitution shall be adopted. I hope therefore, that the Convention will agree to go into committee of the whole to make both those changes. It strikes me they are eminently proper.

Mr. CORBETT. I hope the Convention will not go into committee of the whole on this subject. There is nothing in this article preventing the State maintaining institutions for the education of the orphans of soldiers or the support of their widows; but there is a section preventing the granting of gratuities to private institutions, which institutions may only have two, three or four soldiers' orphans. This saving clause was put in for the purpose of saving institutions that are now maintaining orphan children and educating them.

I hope the Convention will not open the door on this subject. The article does not prevent the Legislature making appropriations to institutions under the control of the State for this purpose, but it prevents gratuities for private institutions which are only maintaining a few, appropriations to which have been a source of great fraud.

Mr. KATNE. I do not think section thirty-five was necessary from the beginning, because the whole matter is sufficiently provided for in the eighteenth section of this article which declares that "no appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth." Now, the soldiers' orphan schools are exclusively under the control of the Commonwealth, and all institutions of this kind are in the same condition, so that the Legislature will not be prohibited under this section from making appropriations to soldiers' orphan schools as they now are. I think, therefore, it was entirely unnecessary to put in the thirty-fifth section in the beginning, because the matter was amply provided for in the eighteenth section.

Mr. HOWARD. The delegate from Fayette is entirely mistaken. I remember very well the circumstances under which the thirty-fifth section was introduced. It was to provide for a class of persons who could not be provided for under the

eighteenth section, because that is a positive prohibition unless the institutions are under the absolute control of the State and are exclusively State institutions. Section thirty-five was inserted because there were widows and orphans of soldiers in private institutions to which the State had been making appropriations for their support, and it was proposed to allow that to be continued. The amendment now made to that section requires that all appropriations for that purpose shall be applied exclusively to the support of such widows and orphan children; and this amendment being in, I have no objections to striking out the word "existing." I am willing to go as far as any one in protecting the public treasury; but I am perfectly willing that the widows and orphans of soldiers hereafter may be supported by the State in private institutions where the appropriations for the purpose are confined exclusively to their support and are not general appropriations for the institutions, because the section as now amended would require a statement in detail and specifically as to their number and the cost of supporting them before any appropriation could be obtained. We know that in many instances the widow of a soldier might not be willing to go into a State institution and yet might be willing to go into a private institution nearer home to receive assistance. For that reason I should be in favor of striking out the word "existing."

MR. D. N. WHITE. Mr. President: I will state briefly the history of this section. Section nineteen provides: "No appropriations (except for pensions or gratuities for military services) shall be made for charitable, educational, or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

That section passed. After its passage it was brought to our notice that there is an institution somewhere near Philadelphia called the Lincoln Home which has within its walls some widows and orphans of soldiers; and the gentleman from Centre was anxious that that institution should have support from the State. That was the origin of this section. Now, if we open the door in the way proposed, we might as well strike out all the work we have done in trying to protect the State Treasury from constant raids upon it by the institutions

which are gotten up throughout the State for charitable purposes.

MR. CURTIN. I desire to say a word to the Convention on this subject. The eighteenth section I beg leave to say to my friend from Fayette, would exclude too kind of appropriations protected by this section, which was offered as an amendment late in the second reading of this article. It is true that the Lincoln Institute in Philadelphia was used as an illustration during the discussion of the question when it was before the Convention on second reading, and this section was intended to protect appropriations of money made for the support of the widows and orphans of soldiers in institutions not under the immediate control of the State as contemplated in section eighteen, but under the control of religious denominations. For the purpose of protecting these appropriations made for the support of the orphans of soldiers in such institutions, this thirty-fifth section was introduced.

Now, gentlemen of the Convention will understand that besides the Lincoln Institute in Philadelphia, there are in Pittsburgh, in the Allegheny Orphans' Asylum, in the St. Paul's Orphan Asylum in Butler, in the Home of the Friendless in Allegheny City, in the Episcopal Church Home at Pittsburgh, in the York Home, in the Catholic Home at Philadelphia, in St. John's Orphan Asylum, Philadelphia, in the Industrial School, Philadelphia, in the Church Home, Philadelphia, in the Orphans' Home, Germantown, in St. Vincent's Asylum, Tacony, in the Northern Home for Friendless Children, and in other institutions, over seven hundred soldiers' orphans, and these are not institutions controlled by the State; indeed the State had not institutions of its own to put them in. These children were put in these institutions and their support is paid for by the State. This section was intended to protect them, a work on the part of the State of the highest beneficence.

MR. KAINE. I desire just here, and now, to say to the gentleman that I was not aware that soldiers' orphans were in those private institutions at all. I thought they were provided for in no other way but by the general soldiers' orphan schools of the State. I therefore withdraw my suggestion.

MR. CURTIN. Objection is made to the amendment offered by the gentleman from Dauphin, because it is said that will

open the door to such appropriations of money in the future. Well, I say, open the door as wide as you can open it, and let it stand open. I would put the orphan of a dead man who died for my country anywhere that I could have him supported rather than let him be a vagabond on the streets. [Applause.]

Mr. D. N. WHITE. I just want to say here that I have always voted for appropriations for the soldiers' orphans—

Mr. CURTIN. I have no doubt of that.

Mr. D. N. WHITE. And there are schools distributed throughout the State for that purpose. But here a private institution gets up—

Mr. CURTIN. I have the floor, I believe.

Mr. MACVEAGH. I should like to ask the gentleman from Allegheny whether he does not know, as he speaks of his experience as a member of the Legislature, that the charges of fraud and corruption have in every instance been connected with the State institutions, and no word of the kind has ever been breathed about these institutions controlled by private Christian charity.

Mr. CURTIN. There has never been a taint on any of these institutions. There were no institutions in the State in which the children could be placed. The children were on the hands of the State, and they were put into existing institutions. Where there was a Presbyterian institution, the child of a dead Presbyterian was put there; where there was a Catholic institution, the child of a dead Catholic was put into that institution; and they have been there since; they have been provided for and educated and trained and nurtured. I am in favor of the amendment offered by the gentleman from Dauphin, so that in the future, if ever such a necessity should occur again, the State can be as benevolent and beneficent as it has been in the past.

Mr. D. N. WHITE. I just wish to say that the State has some ten or fifteen institutions to which it appropriates half a million dollars a year for the support of soldiers' orphans, scattered throughout the State; that there are very few of these orphans in the private institutions, just enough here and there to enable the institutions to claim the charity of the State.

The PRESIDENT. The question is on the motion of the delegate from Dauphin, to go into committee of the whole to make the amendment suggested by him.

Mr. D. N. WHITE. I call for the yeas and nays.

Mr. BOYD. I second the call.

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

YEAS.

Messrs. Achenbach, Addicks, Armstrong, Barclay, Bartholomew, Biddle, Bigler, Black, Charles A., Bowman, Brodhead, Buckalew, Calvin, Campbell, Carey, Carter, Cassidy, Clark, Corson, Curry, Curtin, Cuyler, Darlington, Davis, De France, Dunning, Edwards, Elliott, Funck, Gibson, Gilpin, Hall, Hanna, Harvey, Hay, Hazzard, Heverin, Howard, Hunsicker, Kaine, Lamberton, Landis, Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'Clean, M'Michael, M'Murray, Mantor, Mitchell, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Reynolds, Rooke, Ross, Runk, Russell, Sharpe, Smith, Henry W., Stanton, Stewart, Struthers, Van Reed, Wetherill, J. M., Wetherill, John Price, White, J. W. F., Worrell and Walker, President—80.

NAYS.

Messrs. Baily, (Perry,) Beebe, Black, J. S., Boyd, Corbett, Ewing, Guthrie, Hemphill, Mann, Minor, Read, John R., Reed, Andrew and White, David N.—13.

ABSENT.—Messrs. Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Baker, Bannan, Bardsley, Broomall, Brown, Bullitt, Church, Cochran, Collins, Craig, Cronmiller, Dallas, Dodd, Ellis, Fell, Finney, Fulton, Green, Horton, Knight, Littleton, Long, M'Camant, M'Callloch, Metzger, Mott, Simpson, Smith, H. G., Smith, Wm. H., Temple, Turrell, Wherry, White, Harry, Woodward and Wright—40.

So the motion was agreed to; and the Convention resolved itself into committee of the whole, Mr. Landis in the chair.

The CHAIRMAN. The committee of the whole have had referred to them a special amendment to section thirty-five, as follows: Strike out the word "existing," in the second line, and the word "now," in the third line, which amendment will be made and the committee will rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Landis) reported that the committee

of the whole had, according to the instruction of the Convention, agreed to an amendment of the thirty-fifth section.

Mr. BRODHEAD. I move that the Convention go into committee of the whole for the purpose of making the following amendment to the second line of the first section—

Mr. BUCKALEW. I rise to a question of order. I desire to know what has become of the report of the committee of the whole. I understand that when we go into committee of the whole for special amendment, the committee must report the amendment, but still the Convention has a vote on that. I understand the effect of the vote to go into committee of the whole is simply to get the report from the committee.

The PRESIDENT. The amendment of the delegate from Northampton (Mr. Brodhead) will be read.

The CLERK. The amendment is in the second line of the first section to strike out the words, "on its passage through either House."

Mr. BRODHEAD. The Convention have already stricken out the three words, "the course of." I wish to have the whole stricken out, from the word "on," inclusive, to the word "House." The section as we have it now will only prevent the two Houses in their consideration of bills from acting on what is in those bills. I at first intended to insert the words, "or in committee of conference," but I think that this proposed amendment will reach the evil that I propose to remedy, which is to prevent a like occurrence to what happened last winter when in making an appropriation to the pastors and folders and all the other officers connected with the Legislature, an appropriation was made by the action of a committee of conference which sent three distinguished gentlemen to Europe. By striking out these words that whole matter will be remedied; such a clause cannot be inserted in either House, and neither can a committee of conference insert it. My object in moving the amendment is to meet an evil of that kind.

Mr. LILLY. If the gentleman were familiar with legislation, he would know that the report of a committee of conference has to go through both Houses, and his object is covered in that way. The mere report of a committee of conference does not pass bills, but that report has to be adopted in both Houses.

Mr. BRODHEAD. Exactly; and that is just what I want to reach.

Mr. DARLINGTON. I understand that last winter it was a debatable question between the two Houses whether a committee of conference could insert a provision entirely new, some members holding that they could, others that they could not. In point of fact they did in committee of conference, on one occasion, if not more, insert a provision that was not in the bill in its passage through either House. Now the object of the gentleman from Northampton is to cut that off entirely, and I think very properly.

The PRESIDENT. The question is on the motion of the delegate from Northampton.

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

Mr. HEMPHILL. I second the call.

Mr. MACVEAGE. I shall vote against this amendment, because I think it is unnecessary.

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

Y E A S .

Messrs. Achenbach, Addicks, Alricks, Bigler, Brodhead, Buckalew, Campbell, Clark, Corson, Curry, Darlington, De France, Gibson, Gilpin, Guthrie, Hanna, Harvey, Hemphill, Howard, Hunsicker, Kaine, Knight, Lamberton, Lilly, McClean, M'Michael, M'Murray, Minor, Palmer, G. W., Patton, Reynolds, Runk, Russell, Sharpe, Smith, Henry W., Stewart, Struthers, Van Reed, Wetherill, J. M. and White, J. W. F.—40.

N A Y'S .

Messrs. Armstrong, Baily, (Perry,) Bartholomew, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Broomall, Carey, Carter, Cassidy, Corbett, Cuyler, Edwards, Elliott, Ewing, Funck, Hall, Hay, Heverin, Lawrence, MacConnell, Mann, Mantor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pugbe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Ross, Wetherill, John Price, White, D. N., Worrell and Walker, *President*—44.

So the motion was not agreed to.

ABSENT.—Messrs. Ainey, Andrews, Baer, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Black, J. S., Brown, Bullitt, Calvin, Church, Cochran,

Collins, Craig, Cronmiller, Curtin, Dallas, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Green, Hazzard, Horton, Landis, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Metzger, Mott, Newlin, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Temple, Turrell, Wherry, White, Harry, Woodward and Wright—49.

Mr. H. W. PALMER. I move to go into committee of the whole for the purpose of specially amending section twenty-three, by inserting after the word "laws," in the eighth line, the words, "regulating actions against natural persons."

The purpose of this section was to provide a uniform limitation of actions. As the law stands at present, one year is the limitation of time within which actions may be brought against railroad companies for injuries resulting in death. The intention of the Convention, as I understand it, was to provide for a uniform system, and that the same rule should apply to corporations or artificial persons as to natural persons. As the section now stands, without amendment, it seems to me what is intended would not be reached. The section reads: "No law shall prescribe limitations of time within which suits may be brought against corporations for injuries to persons or property, or for other causes different from those fixed by general laws." It would seem to be evident that there might be a general law enacted fixing a limitation for corporations different from the limitation fixed for individuals. You can pass a law fixing one year as the limit of time within which actions may be brought against corporations. That undoubtedly would be a general law, and would come within the purview of this section, and would be constitutional, but the intent of the Convention might not be effectuated. You may have another general law fixing six years as the limit of time within which actions shall be brought for the same class of injuries against individuals. Possibly this objection is not well taken, but for the purpose of making this matter so clear that there can be no mistake about it, for the purpose of fixing it so that our astute corporation counsellors cannot drive a four-horse team, or any kind of a team, through it, I propose to insert the words, "regulating actions against natural persons." Then the object will be effected, and all the laws passed on the subject of the limitation of actions will be uniform.

The PRESIDENT. The question is on the motion of the gentleman from Luzerne to go into committee of the whole for the purpose of making the special amendment stated by him.

Mr. EWING. Cannot we pass that amendment by unanimous consent? ["No!" "No!"]

The PRESIDENT. Objection is made. The Chair will put the question on the motion.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole; Mr. Gibson in the chair.

The CHAIRMAN. The committee of the whole have under consideration section twenty-three for the purpose of amending the same in the eighth line by inserting after the word "laws" the words "regulating actions against natural persons." The amendment will be inserted.

The committee of the whole then rose, and the President having resumed the chair, the Chairman (Mr. Gibson) reported that the committee of the whole had adopted the amendment they had under consideration.

Mr. EWING. I move to go into committee of the whole for special amendment, and suggest to amend section four as follows: Strike out the word "shall" in the fifth line; insert the word "be" after the word "House," in the sixth line; and strike out the word "thereon" in the sixth line, and insert the words, "on the Journal thereof;" so that the clause will read: "The names of the persons voting for and against the same 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."

Mr. President, the amendment to this clause by the Committee on Revision is the only one that I notice which essentially changes the meaning and character of the section. As passed through the special committee originally and in committee of the whole and on second reading, the latter part of this section was intended to and did make it an essential to the validity of a law that on its final passage the vote should be by yeas and nays, that the yeas and nays should be entered on the Journal, and that the Journals themselves should show a majority of all the members elected to each House voting in its favor.

Mr. D. W. PATTERSON. I suggest to the gentleman from Allegheny that I

think his amendment can be made by general consent. That was the intention of the committee.

Mr. EWING. I will state how this occurred, so far as regards the committee. It is pretty evident. The printer in printing this section, as it passed second reading, inserted the word "shall," which I propose to strike out, and the committee taking it as it stood, as it was printed on second reading, undertook to correct it. Their corrections were proper if it was intended to make the section merely directory on the Legislature, whereas it was intended to make it an essential to the validity of a law.

The PRESIDENT. The Clerk will read the section as proposed to be amended.

Mr. HUNSICKER. I suppose those corrections can be made by unanimous consent.

The PRESIDENT. The section will be read as proposed to be amended, so that we may understand the effect of the amendments suggested.

The CLERK read as follows:

"Every bill shall be read at length on three different days in each House; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, 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 same be entered on the Journal, and a majority of the members elected to each House recorded on the Journal thereof as voting in its favor."

Mr. CUYLER. However desirable the purpose of this section is, it will under existing authority fail to accomplish its purpose, because, strange to say, wherever sections like this have been drawn into adjudication in the courts, as they have been in four or five States of the Union, words such as are used here have been held by the courts to be directory and not mandatory. So far as I am aware, that remark is true without an exception. You are not permitted to introduce the Journals of the House and Senate in evidence for the purpose of showing that that which is required by this section was not in point of fact done. We need stronger language in the whole section to achieve the purpose which is had in view. The courts have uniformly held that the approving signature of the Governor implies the regularity of the previous steps, and they have not permitted counsel to in-

troduce the evidence of the Journals for the purpose of showing the contrary under such circumstances. I would suggest therefore, to amend it by inserting in the third line the words, "though approved by the Governor," so as to read: "And no bill, though approved by the Governor, shall become a law," &c. Otherwise, squarely within the meaning of these decisions, it will fail to accomplish its purpose. I suggest to the gentleman from Allegheny to add that to his amendment.

Mr. CORBETT. I suggest that we vote on the first amendment first.

Mr. EWING. I will say that I have no objection to that amendment; but the gentleman from Philadelphia is entirely mistaken in regard to the uniform decisions of the courts. He will find quite a number of decisions in the New York courts on the very point and on wording as near this as can be, in which they have held that the Journals of the Houses were evidence, and that unless the Journals showed a majority of three-fifths, which was the last case—for their Constitution required a three-fifths vote in a similar provision to this—the act was a nullity.

Mr. CUYLER. I would say to the gentleman that I have had occasion to examine the law on this question within three or four months past most thoroughly, and I must say regretfully that I found the authorities to be as I stated, and I was not permitted to introduce evidence.

Mr. J. R. READ. I trust the gentleman from Allegheny will withdraw a portion of his amendment; I mean that part which refers to the words "on the Journal thereof." It seems to me that it would read much better if it simply said:

"The names of the persons voting for or against the same shall be entered on the Journal, and a majority of the members elected to each House be recorded thereon as voting in its favor."

Let it be read as it was in the report of the committee. The word "thereon" can refer to nothing else but the Journal, and therefore I see no necessity in again inserting in the last line the words "on the Journal of each House." I trust that the gentleman from Allegheny will see the force of this.

Mr. EWING. It is a mere matter of wording. I prefer the other, but I will accept this.

The PRESIDENT. What is the suggestion of the gentleman from Philadelphia?

Mr. J. R. READ. To make the clause read : "The names of the persons voting for or against the same be entered on the Journal," striking out in the fifth line the word "shall," and a majority of the members elected to each House be recorded thereon as voting in its favor."

Mr. EWING. That will do. The Clerk will please strike out of my amendment the words "on the Journal thereof."

The CLERK. That has been done.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the proposed amendment.

Mr. MANN. Let unanimous consent be given to do it.

Unanimous consent was given and the amendment was made.

Mr. CUYLER. I now move further to amend, by inserting in the third line, after the word "bill," the words "though approved by the Governor and enrolled," and by altering the word "become" into the word "be," so that the clause will read :

"And no bill, though approved by the Governor and enrolled, shall be a law."

I ask unanimous consent to that amendment.

Mr. HUNSICKER. No; I object.

Mr. CUYLER. Then I move to go into committee of the whole for the purpose of making this amendment.

Mr. HUNSICKER. And I call for the yeas and nays upon that motion.

Mr. MINOR. I second the call.

Mr. HUNSICKER. Before the vote is taken I want to state why I object to this amendment. I had hoped that this fight would have been delayed until the article on the judiciary came up. The same question precisely is there embraced in section twenty-one of that article ; but if we here enact a clause that a law shall not be a law, even if approved by the Governor and enrolled, you will have precisely the same thing that is embraced in the report of the Committee on the Judiciary in section twenty-one of their article. Where will that leave us? It will leave us just in this position, that no matter with what solemnity a law may be passed, it will never become a law while any interested party can assail its validity.

Mr. CUYLER. Will the gentleman pardon a question?

Mr. HUNSICKER. Yes, sir.

Mr. CUYLER. Does he not know that the section to which he alludes in the

judiciary article applies only to bills passed by fraud or deception?

Mr. HUNSICKER. I do not care, for this purpose, whether they are passed by fraud or deception, or how they are passed. When an act of Assembly is passed and approved by the Governor it becomes a law and obligatory on judge and layman. It is the duty of the judge to enforce the law, as he finds it on the statute books; and to place a clause in your Constitution providing that it shall not be a law, notwithstanding it has gone through all the forms provided, is to transfer your Legislature into the several courts of the Commonwealth. You will have no law at all; you will have chaos, disorder and confusion. No man will know where he is, and no man will know by what title he holds his own. Therefore I trust that the Convention will not recklessly run into any such proposition that will revolutionize the Commonwealth and destroy all our laws.

Mr. DARLINGTON. I think this proposed amendment will be most unfortunate, certainly most unwise. The section pre-supposes that the Legislature are to pass bills under the limitations prescribed in the Constitution, and that no bill shall pass either House of the General Assembly unless under the limitations prescribed as to voting by yeas and nays, and the consent of a majority of those elected. Now, to say that such a bill, so passed, shall not be a law although the Governor signs it, is to pre-suppose that the Governor would sign a bill before it had passed the two Houses. It would be monstrous to think that after a bill has gone through all the specified forms of Legislation, we may inquire whether the Governor has been cheated into the putting of his signature there, and go back of the Governor's signature and the certificate of the Secretary of State, and inquire whether a majority of each House of the Legislature voted for it or not.

What are we doing here? We are informing the Legislature how they shall pass a bill and how, when the bill is passed, it shall go to the Governor and receive his signature. Are we to believe that he would affix his signature to a bill which had not passed, or are we to believe that a majority of both Houses of the Representatives of the people, would be so regardless of their oaths and regardless of their duty as to pass a bill without any of the forms of law being complied with?

Mr. CUYLER. Will the gentleman from Chester permit me to ask him a question?

Mr. DARLINGTON. Certainly.

Mr. CUYLER. What is the use of a law where there is no power of enforcing it? Why provide in the Constitution that certain forms shall be observed and that a law is void if these forms have not been observed, and then have no power to inquire whether these forms have been observed?

Mr. DARLINGTON. My answer to that is, that this is but an injunction upon the Legislature that they shall not pass bills without their being read three times on separate days and voted on separately, the amendments being all printed; and when all this has been done and recorded upon the Journals, and a majority of each House votes for it, it goes to the Governor for his inspection, who is to be satisfied that all the forms of the Constitution have been complied with, and who must sign it before it becomes a law. Now, when all that is done and all that is complied with, no State upon the face of the earth ever thought of such a thing as going back of the representatives of the people and the Executive into an inquiry into the legitimacy of the law. It would be impracticable, impossible, unwise.

Mr. J. S. BLACK. Will the gentleman allow himself to be interrupted.

Mr. DARLINGTON. With pleasure.

Mr. J. S. BLACK. Is not this merely prescribing what shall be the constitutional forms that a bill shall go through before it becomes a law?

Mr. DARLINGTON. That is what I say. Certainly.

Mr. J. S. BLACK. Is it not necessary that these, among other forms, should be observed?

Mr. DARLINGTON. Yes, I say so.

Mr. J. S. BLACK. That there should be a vote, and that the names of the members present voting for and against the bill should be put on the Journal?

Mr. DARLINGTON. All right; but when all that is done and the bill is submitted to the Executive and certified and signed by him, you cannot go behind his signature.

Mr. J. S. BLACK. We propose that we shall go behind his signature.

Mr. DARLINGTON. Well, I propose that you shall not. [Laughter.]

Mr. J. S. BLACK. Why? A bill is not passed. Somebody goes to the Executive, lays the bill before him, and asks

him to put his name to it, and he states that it has been passed according to the proper forms. The Governor so supposes, and he signs it, and it is enrolled. As the law now stands, it is unquestionably true, as the gentleman from Philadelphia says, that you cannot go behind that enrolment; it is a record superior to all other records.

Mr. DARLINGTON. And it ought to be.

Mr. J. S. BLACK. You cannot introduce any evidence, written or oral, by which that record can be contradicted. Now I want to know whether the gentleman thinks that a fraud like that ought to be made sacred. Why not say that a law shall not be considered a law unless you prove that it has gone through not only the form of receiving the Governor's approval and the enrolment of the Secretary of the Commonwealth, but that it has also received the approbation of the Legislature, and then make, in order that there may be no uncertainty about this matter, the Journals of the two Houses conclusive evidence of the fact that the bill has been passed? That is the record, and it is so sacred a record that it may very well be supposed that it is kept as honestly as the record is kept in the office of the Secretary of the Commonwealth. Why should you not require that all the forms shall be proved to have been observed, as that only one of them has been done?

Mr. DARLINGTON. I would just as soon think of going back of a judgment of the Supreme Court and inquiring into a fraud on the part of a judge in entering up a judgment.

Mr. J. S. BLACK. The gentleman is under some superstition about this, I suppose, because it is an Executive act.

Mr. DARLINGTON. No, I am for treating all alike.

Mr. J. S. BLACK. The Executive may be imposed upon.

Mr. BARTHOLOMEW. I would suggest to the gentleman from Philadelphia who offered this amendment, that the signature of the Governor and the enrolment should be *prima facie* evidence.

Mr. CUYLER. They are, of course.

Mr. BARTHOLOMEW. Not on the proposition as understood by the gentleman from York, (Mr. J. S. Black,) because he states that it ought to be the duty of a party offering a law not only to show the signature and the enrolment, but to prove affirmatively that all the forms have been complied with. I take it that

that will not do at all. Any man who attacks a law must set up a non-compliance with the provisions or forms directed in the Constitution.

Mr. CUYLER. Any man who has intellect enough to perform the instinctive functions of his nature must see that it must be so.

Mr. BARTHOLOMEW. I should think so; but I understand the argument of the gentleman from York to the contrary, and that it must be proved affirmatively.

Mr. J. S. BLACK. The gentleman is throwing his lance in the empty air, and has nobody at the end of it.

Mr. BARTHOLOMEW. I will take the language of the gentleman as reported, and let it speak for itself.

Mr. HOWARD. When this subject was up for consideration before, I remember endeavoring to get some resolution adopted specifying what shall be the duties of the Governor under this section. Undoubtedly, if we pass this section as it now is, the Legislature then will prescribe by law what shall be the duty of the Governor before signing a bill, in order to prevent the questions that will be raised under this Constitution, because, undoubtedly, even with this section as it now stands, questions will be raised in regard to the validity of laws if these forms are not observed. No doubt the Legislature, at its first session after the adoption of this Constitution, will pass an act of Assembly prescribing the mode and manner in which the Governor shall be certified in regard to whether all the provisions of the Constitution have been complied with.

I am opposed to the amendment offered by the gentleman from Philadelphia. By that amendment I understand that under the Constitution we are to generalize the laws of the Commonwealth; and if any person, individual or corporation should be opposed to some of the laws that are passed, they might take issue with them and hang them up on pegs for years. They might send the Journals into the office of every court in the Commonwealth, and into the office of every justice of the peace in the Commonwealth. No! never put that into the Constitution that, notwithstanding the signature of the Governor, a measure shall not become a law. We had better leave it as it is. Leave it to the Legislature to prescribe the mode in which the Governor shall certify, when he signs an act, whether he has examined it, whether he has caused it to be examined,

or whether, before the Governor signs it, he shall have certificates specifically specifying, from the clerks or from the speakers of the two Houses, that all the provisions of the Constitution in regard to the passage of an act have been complied with, and there will be no difficulty about it practically, and the Governor will feel it to be his duty in every case to make the inquiry, and he would refuse his signature unless these forms had been complied with.

Mr. H. W. PALMER. I am not in favor of the amendment of the gentleman from Philadelphia for quite a different reason from that which seemed to animate the gentleman from Allegheny. It seems to me that the language of this section would never be construed by any court to be directory, but must of necessity be construed to be mandatory. No bill shall become a law unless certain things have been done. Suppose it shall have been enrolled and received the signature of the Governor, will that dispense with all other requisite formalities in its passage?

Mr. CUYLER. The court having said that the signature of the Governor estops all inquiry as to the regularity of the steps before it, it is perfectly proper to provide a manner for inquiring into the regularity of the steps behind the signature.

Mr. H. W. PALMER. We are here to frame an organic law. In it we prescribe that certain formalities *shall* be observed before an act can be a law, whatever may have been decided in the past. It seems to me no court will be found to decide against the solemn provisions of this supreme law, when they are as emphatic as words can make them, and so plain that a wayfaring man, though a fool, need not err therein. It seems to me that even if the Governor has approved a bill and has attached his signature, that if the formalities prescribed in this section have not been observed, the facts, under the requirements of the section on the subject, already adopted by the Convention, may be inquired into and the law declared to be void. Otherwise it is useless for us to be here devising and passing sections of this character.

Mr. ANDREW REED. I shall be compelled to vote against the amendment of the gentleman from Philadelphia, although I am in favor of the objects sought to be attained by it. The distinguished delegate from York has shown several illustrations where certainly such a thing should be inquired into; and there should

be a time and a manner prescribed for so doing; but I vote against it because I am in favor of that section of the judiciary report that makes it the duty of the Attorney General, or a certain officer of this Commonwealth, within a certain time to inquire whether a law which has passed has gone through the regular formalities, as well as whether it has been passed by fraud. I say let it be done by him, and let the decision reached in that case be conclusive on the whole State. There is no doubt that there may be a case where the Journal itself is a fraud. That ought to be inquired into; but under the rule contended for here, the Journal is conclusive. We may reach it under the provision in the judiciary article making it the duty of the Attorney General within a certain time to assail the validity of an act improperly passed, and if not done within that time, let the law be conclusive, so that no power on earth can go behind it; but if you are to take the Journal into every justice of the peace's office or into every court, what will be the result? In twenty years hereafter the Journal itself may be erased; a name may be altered, and that which at one time may appear by the Journal printed to be a law will become no law, and rights which had been vested twenty years may become null and void. For that reason I am opposed to the amendment and in favor of amending this section of the judiciary article which will make it apply to such things as these.

The PRESIDENT. The yeas and nays will be taken on the motion of the delegate from Philadelphia (Mr. Cuyler.)

The CLERK proceeded to call the roll.

Mr. ALRICKS. [After first voting in the negative when his name was called.] I understand there is an express decision that words of this import are merely directory, not mandatory. I therefore change my vote and vote "yea."

The result of the call of the yeas and nays was announced as follows:

YEAS.

MESSRS. Achenbach, Alricks, Armstrong, Beebe, Black, J. S., Buckalew, Calvin, Carey, Corbett, Cuyler, Davis, Ewing, Gibson, Gilpin, Guthrie, Hay, Hazzard, Kaine, Knight, Landis, MacVeagh, Mitchell, Parsons, Patterson, T. H. B., Ross, Runk, Russell, Sharpe, Struthers, Worrell and Walker, *President*—81.

NAYS.

MESSRS. Ainey, Baily, (Perry,) Bartholomew, Biddle, Bigler, Black, Charles A., Broomall, Carter, Cassidy, Corson, Curtin, Darlington, De France, Dunning, Edwards, Funck, Hall, Harvey, Hemphill, Howard, Hunsicker, Lamberton, Lawrence, Lear, Lilly, MacConnell, M'Clean, M'Michael, Mann, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Rooke, Smith, Henry W., Stanton, Stewart, Van Reed, White, David N., and White, J. W. F.—50.

So the motion was agreed to.

ABSENT.—MESSRS. Addicks, Andrews, Baer, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bowman, Boyd, Brodhead, Brown, Bullitt, Campbell, Church, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Dallas, Dodd, Elliott, Ellis, Fell, Finney, Fulton, Green, Hanna, Heverin, Horton, Littleton, Long, M'Camant, M'Culloch, M'Murray, Metzger, Porter, Purman, Read, John R., Simpson, Smith, H. G., Smith, Wm. H., Temple, Turrell, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, Harry, Woodward and Wright—52.

Mr. J. S. BLACK. I move that the Convention go into committee of the whole for the purpose of amending the article, by striking out the thirty-first section and inserting the following provision in its place:

"A member of the Legislature shall be guilty of bribery and punished as shall be provided by law, who, after his election and during his term of office, shall solicit, demand, accept or consent to receive, directly or indirectly, upon any pretence whatever, for himself or any other person, from any candidate, person, association or corporation having a special or private interest in legislation, any gift or promise of money, property, office, or thing of value or personal advantage, or shall make any contract which gives him a private interest in the legislation of this State; or who, after his election and during his term of office, shall consent to become or continue to be and act as agent, attorney or employee of any person, association or corporation, knowing that such person, association or corporation has or expects to have any private or special interest in the legislation of the State.

"All corporations holding franchises by grant from the State, or doing business in the State, their officers, agents, attorneys and employees; all contractors or persons having an interest in contracts with the State; all officers, judicial, executive and ministerial, of the State and of the United States; all persons who engage themselves for hire or reward to oppose or promote the passage of any measure by the Legislature; all candidates for any office in the gift of the Legislature, including candidates for the Senate of the United States, shall be conclusively presumed to have a special interest in legislation.

"No person having, or presumed to have, an interest in legislation, shall address any member of either House in private solicitation, speech, or argument, orally or in writing, to influence his vote on any subject whatsoever. Both the person offering such solicitation and the member who voluntarily and knowingly hears it, shall be taken for criminal offenders and punished as the law may prescribe."

Mr. D. W. PATTERSON. Had we not better have that printed before we vote on it? It appears to be very lengthy and difficult to understand. I should like to have it in print so that I can examine it. It is peculiar. I heard the United States mentioned there. I presume we cannot affect United States officers. I should like to have the opportunity of examining it before we vote on it.

Mr. BEEBE. I should like to inquire of the gentleman from York if his section does not cover section thirty-two also.

Mr. J. S. BLACK. I think it does. Let that be stricken out, too.

Now, Mr. President, the object that I have in offering this amendment was mainly and principally to correct a blunder of the most disgraceful character to this Convention. Here is a definition of bribery in the thirty-first section which leaves out the most important feature in that crime, and allows a man to commit it with perfect impunity if he will do it in a certain way. According to the definition as given in the section, any man that wants to corrupt a member of the Legislature or all the members of the Legislature may go to him and offer him, in money or in property or anything else, whatever consideration he thinks will buy him, and after he has been thus bought, as it now stands, there can be no

conviction unless you couple proof of the fact that he has given a bribe, with evidence clearly showing that there was a contract, either express or implied, between the parties that the vote should be given for the money and the money given for the vote.

Sir, by the common law and by every statute that has ever been passed, as far as I know, in every civilized and christian community, the public officers are punished for receiving a gift from a person who is interested in their official conduct. If you go to a judge, you being a party in a suit, and pay him a certain sum of money and call it a present, you are guilty of bribery, and the judge, if he accept of it, is guilty of taking a bribe, although there is no contract expressed in words and although it is accompanied with no act which implies a contract between the parties that a judgment shall be given for that money.

I say now what I said before, and I say it without any fear of contradiction, that this provision as it stands is an invitation to anybody who desires it to bribe men in that way. All he has to do is simply to say nothing, or to say nothing before any witness at the time that he gives the money. He may even do it openly. A candidate for public office, for State Treasurer, if you please, or for Senator of the United States, may ride from county to county after the election and pay down \$1,000, \$10,000, or any other sum that he pleases, as he goes along, leave it with each member of the Legislature, and those members may go to the Capital of the State and they may vote for that man afterwards, and that does not amount to bribery.

Remember that all penal laws are construed strictly, and especially all penal provisions that are inserted in the Constitution. All of our provisions must be construed with equal strictness. There is a double strictness about the construction of a penal provision contained in the fundamental law of the country. Therefore, you must not only prove the fact according to that law, but you must prove it by clear and incontestible evidence. Implications are not sufficient.

Now, sir, for us, the members of this Convention, to have come here and insert such a definition of bribery as that into our Constitution in such times as these, when the corruptions of the Legislature are the fretting leprosy of the age that we live in, and when they are threatening us

with total destruction, is, I repeat, such a disgrace as never blackened the brow of any public body in this country before. It would be a great deal better if you would leave out this provision altogether, strike it out, put nothing in, leave it a blank, let it stand to be legislated for hereafter in any way that the Legislature themselves may choose. But we are here for the purpose of making a fence that cannot be jumped over against rascality of that particular kind, if of any kind; and what is the use of making a fence if you leave such a great big hog hole as this in it, that every porcine scoundrel can thrust his snout through without even rooting into the ground. [Laughter.]

THE PRESIDENT. The question is on the motion of the gentleman from York.

MR. MACVEAGH. Before that vote is taken—as this vote, as I understand the ruling, will commit the Convention to this amendment—it is certainly important for us to understand it a little more clearly than we did by the hasty reading of it from the Clerk's desk. In the first place, I cannot assent—and by my silence I fear I might be considered as assenting, if nobody else makes the objection—to the construction which the distinguished delegate at large gives to the thirty-first section of this article. I cannot possibly understand that that construction is accurate. If it is, then a very able committee of this body has utterly misunderstood the law. What does it provide? It seems to use every possible word that could be used to exclude the conclusion at which the distinguished delegate has arrived. It says that the receipt of anything of value by a member of the Legislature, with any understanding, not expressed, but with any understanding implied in the nature of the transaction, shall be bribery. Any transaction whatever, whereby a member receives an advantage, if it is with an implication that a jury of the country can draw, is bribery. To say that a jury of this country, upon being confronted with the naked proof that a member of the Legislature was paid a sum of money by a party having an interest in his vote, is not thereby—

MR. J. S. BLACK. That is not there.

MR. MACVEAGH. Yes, it is there in the plainest language and in a dozen different forms of expression. Who can say that a jury will not hold, in the absence of any other evidence, that that is impliedly to govern his vote? Who will tell me that if a judge is approached and

takes a bribe, the gentleman can indict a judge for bribery by simply alleging that he received the money? I say the gentleman's indictment can never be so drawn, and it is not wise for this Convention to take such statements as law, even from the most distinguished sources in the land. If the gentleman sits down to draw an indictment against a suitor or a judge, he must follow the language of this section. It is very difficult for young and inexperienced lawyers here to resist legal doctrines so announced; but there is no danger of any man who knows us suspecting that we desire corruption anywhere, or desire to leave loop-holes anywhere; and I say now, upon the very small and limited responsibility I can have as an expounder of the law, that it is utterly without foundation that any indictment can be drawn in any civilized community that any judge, the learned judge himself, would tolerate for a minute upon the doctrine of jurisprudence he has here announced. It cannot be so.

This section was carefully drafted. I think perhaps it has too much language in it; but it was carefully drawn; and I am reminded by the delegate from Franklin (Mr. Sharpe) that the thirty-second section is in the same direction. If it is necessary to go further, let us go further; but do not let us admit, if we do not believe, that after months spent here in the consideration of this question we have offered a premium for corruption in the legislative body. Will any body reading these two sections—any other lawyer in this body than the gentleman from York—say that he believes they offer an inducement and a premium for the purchase of votes? I submit not.

MR. J. S. BLACK. Nobody has said so.

MR. MACVEAGH. I think the gentleman said that these sections constituted an invitation to corruption. If he did not say so, I misheard him; but I think he did. Now, what is the substitute proposed? The first part of it is not objectionable:

"A member of the Legislature shall be guilty of bribery and punished, who, after his election and during his term of office, shall solicit, demand, accept, or consent to receive directly or indirectly, upon any pretence whatever, for himself or any other person, from any candidate, person, association or corporation having a special or private interest in legislation, any gift or promise of money, property, office or thing of value or personal ad-

vantage or shall make any contract which gives him a private interest in the legislation of this State; or who, after his election and during his term of office, shall consent to become or continue to be and act as the agent, attorney or employee of any person, association or corporation, knowing that such person, association or corporation has or expects to have any private or special interest in the legislation of the State."

Then comes this:

"All corporations holding franchises by grant from the State or doing business in the State, their officers, agents, attorneys and employees; all contractors or persons having an interest in contracts within the State; all officers, judicial, executive and ministerial of the State and of the United States; all persons who engage themselves for hire or reward to oppose or promote the passage of any measure by the Legislature; all candidates for any office in the gift of the Legislature, including candidates for the Senate of the United States, shall be conclusively presumed to have a special interest in legislation."

That is, as I infer, that candidates for the United States Senate are not to be allowed to be members of the Legislature at the same time.

Mr. J. S. BLACK. Not to give gifts.

Mr. MACVEAGH. Not to give gifts for votes to members. The Legislature may not elect under this section one of its own members.

Mr. CASSIDY. It cannot under that language.

Mr. MACVEAGH. I thought so at first, but on looking at it again, I am inclined to think it can. These persons are to be "conclusively presumed to have a special interest in legislation."

Mr. J. S. BLACK. Yes; and there is no provision that says a member shall not be a candidate.

Mr. MACVEAGH. No; but any member who, "during his term of office, shall consent to become, or continue to be or act as the agent or employee of any person, association or corporation" who "has or expects to have any private or special interest in the legislation of the State." Perhaps it does not prohibit a member of the Legislature being a candidate for United States Senator.

Mr. J. S. BLACK. Let me make a suggestion to the gentleman for one moment; I know he will excuse me.

Mr. MACVEAGH. Certainly.

Mr. J. S. BLACK. Mr. Fielding, in one of his introductory chapters of Tom Jones, spends three pages in proving this proposition: That any gentleman will not speak or write much the worse upon any given subject for knowing a little about it. [Laughter.]

Mr. MACVEAGH. "Shall be conclusively presumed to have a special interest."

Mr. J. S. BLACK. The gentleman had better consider that matter.

Mr. MACVEAGH. "No person having or presumed to have an interest in legislation shall address any member of either House in private solicitation, speech or argument, orally or in writing, to influence his vote on any subject whatsoever. Both the person offering such solicitation and the member who voluntarily and knowingly hears it, shall be taken for criminal offenders and punished as the law may prescribe."

It seems to me that that is going very far.

Mr. J. S. BLACK. Allow me to say to the gentleman that that last part seemed to be disapproved when it was offered in another form. There was a somewhat similar provision inserted in the oath, which I agreed, upon the solicitation of a great many persons, to withdraw, and it was withdrawn accordingly. I do not know that I can be considered as insisting on it now, and I have no objection, if anybody else desires it stricken out that it should be stricken out.

Mr. BIDDLE. Mr. President; I hope and trust this House will not be induced to go into committee of the whole for the purpose of accepting this as a substitute for the thirty-first section, because if they once go into committee it is accepted. I want to call attention to several passages in it which I think very objectionable. I may say to the distinguished mover of the proposition that I can only take it as it is. How much he means to strike out I do not know. I take it as it is offered, and it contains in it phrases that strike me as most objectionable.

"All corporations holding franchises by grant from the State or doing business in the State, their officers, agents, attorneys or employees; all contractors or persons having an interest in contracts with the State; all officers, judicial, executive and ministerial, of the State and of the United States"—

That includes every officer in the State, of course —

—"All persons who engage themselves for hire or reward to oppose or promote the passage of any measure by the Legislature; all candidates for any office in the gift of the Legislature, including candidates for the Senate of the United States, shall be conclusively presumed to have a special interest in legislation."

Now, what is the meaning of that? What is the meaning of a *conclusive* presumption; that every judge and every executive officer, and every ministerial officer, together with every corporation, is conclusively presumed to have an interest in legislation. Has not every man, woman and child that has life, liberty or property at stake, an interest in legislation?

Mr. J. S. BLACK. "Private interest" is what it says.

Mr. BIDDLE. The language is not "private interest." As I said before, I can only take this proposition as I find it. The language is "special interest," not "private interest." I say that every man who has anything to lose, every man whose liberty is involved, every man whose life may be at stake, has got a "special interest" in any legislation which is introduced, the effect of which may be to touch property, life or liberty. The Convention will be moving from its moorings if it goes into committee of the whole to pass any such thing as this without understanding the force of it. I ask again, what is the meaning of it? Every man who has anything to lose or anything to gain has an interest in legislation; and are you going to fasten in advance not a *prima facie* presumption but a conclusive presumption of guilt against him, for that is the case, because the legislation may effect his interests? I ask this House to pause before they are misled by the eloquence of the very distinguished gentleman to commit themselves to any such proposition as this.

Mr. J. S. BLACK. The gentleman, I take it for granted, is not afraid of being misled by a simple explanation, which I will give him.

Mr. BIDDLE. Not at all. I want to have this thing thoroughly discussed, and I will stop to give the gentleman a chance to say what he pleases.

Mr. J. S. BLACK. Mr. President—

The President. The Chair, unless the Convention over-rides him, must stop the gentleman from York, for he has already spoken over ten minutes. The Chair indulged him because it was his pleasure to

do so, but unless the Convention give unanimous consent the Chair will enforce the order.

Mr. NILES. Let him have unanimous consent.

Mr. MANN and OTHERS. I object.

Mr. J. S. BLACK. My only argument

The President. There is objection, and the gentleman from York cannot speak again on this subject.

Mr. BIDDLE. So far as I am concerned, I am happy to be interpellated by the gentleman from York. He does not interrupt me at all; I like to hear him, especially on this subject, because I think it will require all his very great ability to satisfy this House that they will be acting wisely in committing themselves to such a project as this. It strikes me that it is the apprehension of bribery running into a delirium; I can call it nothing else. Are not these sections that we have now sufficient? As the gentleman from Dauphin said very well, if this House passes the four sections which cover this subject, can any human being assert that we are not doing all in our power to stop the tide of corruption, about which so much is being said? But it strikes me as a frenzy, if I may be allowed to use such phrases—I can call it nothing else, no matter from what source it comes—when we are told that there is a conclusive presumption, that is, as every lawyer knows, a presumption which cannot be rebutted, that every man who has anything to gain or lose by any legislation is in advance tainted with crime. The House cannot mean that; the gentleman, perhaps, does not mean it, but his language, if pushed to its fair conclusion, means that very thing.

Mr. J. S. BLACK. What part of it?

Mr. BIDDLE. That part of it I have just read. I will read it again, because the House could not have heard this and been willing to pass it.

Mr. J. S. BLACK. Go on.

Mr. BIDDLE. It reads:

"All corporations holding franchises by grant from the State, or doing business in the State, their officers, agents, attorneys and employees; all contractors or persons having an interest in contracts with the State; all officers, judicial, executive and ministerial, of the State and of the United States; all persons who engage themselves for hire or reward to oppose or promote the passage of any measure

by the Legislature; all candidates for office"—

Which I suppose includes the whole community—

—"In the gift of the Legislature, including candidates for the Senate of the United States, shall be conclusively presumed to have a special interest in legislation."

That is to say, if there is a question—

Mr. J. S. BLACK. To have a special interest in legislation is not a crime.

Mr. BIDDLE. It is no crime; but it is tainting in advance every man mentioned in that category for whose benefit legislation is or may be supposed to be passed, by the use of those words. You could not introduce a bill to raise the salary of a judge, you could not introduce a bill to relieve any man in that category from any penalties without affixing a brand in advance of promoting that legislation.

Now, I am very willing to go as far as the next man in checking that about which so much has been said; but I do trust this House will never commit itself to phraseology so sweeping as that is and about which we cannot have any satisfactory understanding, because the gentleman himself thought there was language in it which does not appear in it at all. He thought the word "private" was there, which is not there at all.

Mr. J. S. BLACK. "Special" and "private" mean the same thing.

Mr. BIDDLE. That may be; but it is not there. I hope therefore we shall not commit ourselves by going into committee of the whole. Print it if you like. Let it lie over for a night for counsel on your pillow, but do not go into committee of the whole now on this proposition.

Mr. BUCKALEW. Mr. President—

Mr. J. S. BLACK. I do not care how long a time; the gentleman from Philadelphia may have as much time as he wants ["Order!" "Order!"] to consider on his pillow, and I want him to have something to sleep on, because I am sure he will sleep the sounder when he finds

The PRESIDENT. The delegate from Columbia has the floor. [Laughter.]

Mr. BUCKALEW. Mr. President: It is not difficult now to perceive the inconvenience we are to be subjected to by the construction given to parliamentary law with reference to going into committee of the whole on third reading; and I insist that the view which has been taken of

this subject is not accurate. Besides its inconvenience, it is not correct. According to the accepted practice into which we are slipping, a member of this Convention now upon third reading may offer a proposition that has never been thought of in the Convention, considered by any committee or individual member, and if he can get a majority vote it is put in on third reading beyond the reach of the Convention to alter it hereafter. Why, Mr. President, I do not see how we shall get along with the remainder of our work. We have got either to sternly put our lips together and vote "no" on everything to avoid this danger, or we have got to change our rules.

We have no rule on this subject in our own code; that is clear. Our State Senate has this rule:

"When the Senate shall resolve to go into committee of the whole on a bill on third reading, the question before the Senate when the Speaker shall have resumed the chair and the chairman of the committee has made report, shall be, Will the Senate agree to the report of the committee?"

In the rules of the House of Representatives there is nothing on the subject, as far as I can perceive, and there is nothing, as I understand, on which this construction of parliamentary rule is based except the loose observation of Mr. Ziegler, once Clerk of the House, in his Manual, in which, without distinctly and roundly laying it down as a rule, he seems to refer to some practice into which the House of Representatives has fallen that when on a specific amendment a report is made and no other question offered, the next question put by the Speaker of the House is, "Shall the bill pass?"

Mr. MACVEAGH. Will the gentleman allow a question?

Mr. BUCKALEW. Certainly.

Mr. MACVEAGH. What inconvenience is there if we discuss it fully before the vote is taken? Everybody has a chance of being heard.

Mr. BUCKALEW. The inconvenience is this, that a first opinion, formed by the Convention is a final opinion, it may be upon matter entirely new; whereas everything offered at a previous stage, in committee of the whole or on second reading, and determined, is not put beyond the power of the Convention.

Now, if the Chair thinks he is bound to enforce the dictum of Mr. Zeigler, in his Manual, in reference to some loose prac-

tice in the House of Representatives, I am in favor of our adopting a new rule, a rule which shall be exactly that of the State Senate: and then when a member offers to go into committee of the whole for special amendment, if that is agreed to, the effect will be that the committee must report that amendment back to the House; but if upon debate, which may take place in committee of the whole or afterwards, the judgment of the House is changed, we shall not be bound by our first opinion.

I speak to that now, and I have but a word upon this particular amendment which we are asked to go into committee of the whole to insert upon third reading, and of course I must vote "no" if it is to be beyond the reach of any future change. I believe the mover himself concedes that a portion of it ought not to be adopted by the House if it preserves its consistency.

Mr. J. S. BLACK. No, I do not. I do not admit anything of the sort. I only alluded to what I had been requested to leave out in another provision.

The PRESIDENT. If the delegate from Columbia yields the floor the Chair must hold the gentleman from York to be out of order.

Mr. J. S. BLACK. He sat down.

Mr. BUCKALEW. I yielded to an explanation.

Mr. KAINE. I should like to understand the ruling of the Chair, whether a member who has spoken and is being replied to by another member has not a right to rise to explain. The gentleman from Columbia to put an interrogatory to the gentleman from York.

The PRESIDENT. Certainly, he has a right to explain.

Mr. KAINE. I understood that the gentleman from York rose to explain in answer to an interrogatory from the gentleman from Columbia.

The PRESIDENT. The gentleman from Columbia had taken his seat. Whilst he was standing I permitted the explanation to go on, and I will permit it a hundred times.

Mr. BUCKALEW. Now, Mr. President, I do not know of anything I am willing to vote for in addition to what we have already in this article, except something based upon one of the clauses of the gentleman's amendment. I am willing to vote for an additional provision in the Constitution—I think it ought to be put there—against the offence of "boring." He not said anything about that: but if a

carefully-drawn provision to expel utterly hereafter from both Houses those professional people who go there to influence members of the Legislature, who are as well known and recognized there and elsewhere in this Commonwealth as the members themselves, and their business too—if somebody will draw a section striking at those people, I will cheerfully vote for it. Otherwise I do not see what we can add to the sections already in this article.

Mr. ARMSTRONG. Mr. President: I cannot conceive of a more dangerous practice to grow up in a deliberative assembly than that which we shall inaugurate if we adopt this provision. Here is a section not even printed, which proposes to change articles which have already been adopted on two successive readings, submitted to, considered by, and reported by two separate committees; and now in violation of a legislative practice as well established as it is profoundly wise, that no bill shall pass upon less than three readings, we propose to put through a monstrous proposition upon one. It is not printed, it is not understood. If it were, I think it could not commend itself to the judgment of this House. Now look at it a moment:

"A member of the Legislature shall be guilty of bribery and punished," &c.

Going on with certain provisions not in any degree more stringent nor in any degree more capable of enforcement than what we already have in the section before us. But it goes on:

"Or shall make any contract which gives him a private interest in the legislation of this State, or who, after his election and during his term of office, shall consent to become, or continue to be and act as the agent, attorney or employee of any person, association or corporation, knowing that such person, association or corporation has or expects to have any private or special interest in the legislation of the State."

Now, I say there is not an attorney in the Commonwealth who dare go to the Legislature under such a provision. There is not a man connected with a corporation either as employee or as an attorney, or in any wise, that would dare to go into the Legislature in the face of such a provision. I believe the effect of such a provision would be, instead of purifying the House, to hand over the Legislature of the State to that class of men who would take an oath without hesitation and break it without compunction.

The PRESIDENT. The gentleman from Lycoming will permit the Chair to make a suggestion. When this amendment was offered first, the Chair thought it his duty to rule it out as improper to be introduced; but no gentleman made a suggestion of that kind, and I did not wish in technical matters to play the tyrant. I now, however, consider it my duty, occupying the Chair, as an appeal can be taken from the decision, if the Convention is dissatisfied with it, to decide that the amendment is out of order.

Mr. ARMSTRONG. Of course, then, I have nothing further to say.

Mr. J. S. BLACK. Mr. President: Are we now to understand that the Chair, with the concurrence of this whole House, proceeded in this way to make amendments and did make amendments; that you have been going on here for days until you have got over the whole of that section, and when an amendment comes that is intended to stop corruption in the Legislature you will stay all and become suddenly conscientious? [Laughter.]

The PRESIDENT. Delegates will take their seats.

Mr. H. W. PALMER. I rose for the purpose of appealing from the decision of the Chair.

The PRESIDENT. I am happy to have an appeal taken.

Mr. H. W. PALMER. I entertain the highest respect for the ruling of the Chair, and I appeal from his decision because I think this goes to the root of the whole matter, and will involve us in serious trouble unless we understand it now.

The PRESIDENT. The gentleman will reduce his appeal to writing.

Mr. H. W. PALMER. I ask indulgence for that purpose. ["Agreed."]

Mr. H. W. PALMER proceeded to reduce his appeal to writing.

Mr. MACVEAGH. The House is still in session, and I should be glad to know whether that was a decision to which the Chair, on thorough reflection, cared to adhere in view of the interesting character of the discussion.

The PRESIDENT. That decision the Chair will not reverse. He has no reason to adhere except that he deemed it his duty so to rule.

Mr. MACVEAGH. I hope the Chair will withdraw the decision.

Mr. D. W. PATTERSON. I hope the Chair will adhere to his decision, or we shall never get through with these articles, introducing new matter in this way.

The appeal was reduced to writing and read, as follows:

"The Chair having decided that the amendment proposed by the gentleman from York, as a substitute for the thirty-first section of the article now under consideration, is not in order, we respectfully appeal from the decision of the Chair.

H. W. PALMER,
MALCOLM HAY.

Mr. ARMSTRONG. Mr. President: I will move, in a moment, that the House adjourn, and for this reason: The proposition submitted by the gentleman from York, is one of exceeding great importance, which I earnestly trust may not be adopted. Nevertheless, it is one which ought to receive fair and just consideration. My own impression is that the Chair is wrong upon the question of the decision just made. In that we may be in error. ["We have an hour."] We have an hour, but it is the first day when the rule was made, and there are members here who had made their arrangements, in view of the rule which formerly prevailed, to adjourn at one o'clock until three.

Mr. MACVEAGH. Will the gentleman allow a suggestion? If he desires a postponement, and other gentlemen do—though I am quite ready to dispose of this matter now—let it go over; but let us go on with other amendments, utilize this hour, and get through with this article.

Mr. ARMSTRONG. I have no objection to that.

Mr. BARTHOLOMEW. Why not dispose of this matter now? Let the appeal from the decision of the Chair be taken now.

Mr. HUNSICKER. Let the Chair state the question.

Mr. ARMSTRONG. I withdraw the motion. The sense of the Convention seems to be against adjourning now.

Mr. BIGLER. Mr. President: There certainly can be no other question than that of the appeal, and I desire to express simply to the Chair my regret at being unable to support him in a decision of this kind, for I have no partiality for the proposition, and I would rule it out if I could; but inasmuch as it is perfectly competent to go into committee of the whole for special amendment, it is also competent to go into committee of the whole for general amendment. I do not see under the powers we have, that it would be competent to rule the amendment out of order. It would probably be a dangerous course of proceeding.

Mr. LILLY. I desire to be informed on what ground the Chair ruled that the amendment was out of order. We here were not able to understand fully the grounds on which he ruled it out. We are in the same condition with the delegate from Clearfield, who has just taken his seat. We want to sustain the Chair if we possibly can, but we want to know what the law is on the subject.

The PRESIDENT. The Chair ruled it out on this ground: That it is introducing an entirely distinct subject matter to the articles that were voted on. It is voting down sections that the Convention on first and second reading have adopted. It is inserting instead of them a section that has never been before a standing committee, a committee of the whole, or the House on second reading; and it is enabling this body, when an article is on the final reading, to introduce a section and pass it for the first time without its passing through a standing committee, a committee of the whole or the House on second reading. If the House rules to the contrary, the Chair will abide by it, but he will not reverse his decision.

Mr. BROOMALL. I only desire to repeat what I said the other day upon a similar question, that if the ruling of the Chair is right, in the position in which we find ourselves upon many of these articles, it is a very unfortunate one. There are articles that will require amendment by the entire change of sections, by the introduction of new ones more or less introducing new matter. I am sorry to differ in opinion with the Chair, the more especially that I have for some twenty years been looking for my opinions to the present President of the Convention upon many questions; but on this question I must differ from him. I hold that it is competent for this body at any time before its final adjournment to go into committee of the whole for the purpose of doing anything with the instrument. If that is not so, we have been acting very hastily indeed in some matters. If that is not so, then we have been passing a law like the laws of the Medes and Persians, unalterable—at least unalterable for the purpose of making it so that we can recommend it to the people for their votes. I think the Chair is wrong and shall vote (of course with the utmost reluctance) not to sustain the decision. I hope delegates, if they have any doubt upon this matter, will let the fact that we shall be obliged at some time to over-rule

the decision, will let the fact that otherwise our position will be a very unfortunate one, weigh with them, and will not, by sustaining the decision of the Chair in this respect, shut the door upon amendments and throw away the key—amendments that every one present must know must be made.

Mr. MACVEAGH. The judiciary article, for example.

Mr. BROOMALL. Exactly; the judiciary article among others, and the one on taxation. Let me again say that the only safe ground for us to-day is, that on the very day before our final adjournment we can resolve to go into committee of the whole to introduce the Ten Commandments, or anything else, into any article we choose; that is a matter for the discretion of the body, and there is no principle of order or rule against it.

Mr. MANN. I think the gentleman from Delaware fails to make the distinction between going into committee of the whole for special purpose and for general amendment. If this was a motion to go into committee of the whole for general amendment, then when we go into committee of the whole for that purpose, of course any proposition can be submitted, and the Convention will have the entire control of it.

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

Mr. MANN. Certainly.

Mr. BROOMALL. I understand the distinction between going into committee of the whole for special amendment and going in for general amendment to be just this: That when we go into committee of the whole for special amendment, we go in under a positive order to insert that amendment; where we go into committee of the whole to amend generally, we go in just as we were in committee of the whole when the article was regularly there.

Mr. MANN. I do not see that that changes at all the point I was endeavoring to make. I say there is no kind of difficulty in sustaining the decision of the Chair upon this question, and yet retaining entire control over every article and every section of the Constitution as passed thus far. The Convention has only to go into committee of the whole for general amendment, and then they have every section under their control, and they may strike out every one of them, notwithstanding that the decision of the Chair is

right upon this question, as I think it is, and I hope the Convention will sustain it.

Mr. BOYD. I rise to a point of order. Is this question debatable?

The PRESIDENT. It is.

Mr. MANN. I was simply pointing out the distinction and showing that no possible danger and no inconvenience could arise from sustaining the decision of the Chair on this question. It leaves the Convention with entire control over the Constitution; and there is this reason for sustaining the Chair in this case. As every one has seen, when a motion is made and carried to go into committee of the whole for a special purpose, the Convention is tied up, as the gentleman from Columbia (Mr. Buckalew) has stated, though I do not agree with him that we ought to change the rule. I believe that when we desire to accomplish any such purpose we ought to go into committee of the whole for general amendment, and then there will be no such inconvenience as the gentleman from Columbia suggested; but when we go in for special amendment it does seem to me that that amendment should not be one that goes to strike out the entire article or section, and thus put the Convention in a position where it must decide on the instant upon such important matters as the one now suggested. There will be more danger in not sustaining the decision of the Chair than there will be in sustaining it, because any gentleman may propose an amendment that strikes at matters that we have been discussing and maturing for a year almost, and upon the spur of the moment it is stricken out, and it is beyond the control of the Convention under any other ruling than this one of the President; and yet the Convention can easily, by modifying or changing the motion, retain the entire control of the whole subject. I hope, therefore, that the decision of the Chair will be sustained.

Mr. LAWRENCE. Mr. President: We are in a very awkward position. I see that many of those who have had the largest experience in parliamentary bodies differ with the Chair, and they regret that they do differ with him. I would suggest that we lay this appeal upon the table, and that then the President leave the question to the Convention to decide themselves, without reversing his decision. I therefore move to lay the appeal of the gentleman from Luzerne on the table, and then let the President submit the question to the body.

The PRESIDENT. It is moved to lay the appeal on the table.

Mr. BUCKALEW. That motion, of course, is not debatable.

The PRESIDENT. It is not.

Mr. BUCKALEW. I should like to understand what course the President would pursue if this motion should be adopted?

The PRESIDENT. I will submit the matter unquestionably to the Convention.

Mr. BUCKALEW. That is all right.

Mr. H. W. PALMER. I have no objection to that course being pursued. There is no man here who entertains a higher respect for the Chair than I do, and I am entirely willing that this question shall be disposed of in any way that will meet the difficulty. If this is a solution of it I am very glad that it is reached, because I have not the slightest desire to over-rule the Chair, nor to have any difficulty about it.

Mr. NILES. Withdraw your appeal.

Mr. H. W. PALMER. If the question is submitted to the House I will withdraw the appeal.

The PRESIDENT. The Chair then, if it is so desired, will submit it to the House. The appeal is withdrawn. The Chair leaves it to the Convention to decide whether the motion is in order or not, and we may as well go back to the position we occupied when the gentleman from Lycoming (Mr. Armstrong) was on the floor, and proceed to take a vote, and if the Convention, by that vote, vote the amendment in, let them do it.

Mr. KAINE. The suggestion is, that the Convention shall decide the question of order.

Mr. MACVEAGH. The decision is withdrawn, and therefore there is no decision necessary.

The PRESIDENT. At the suggestion of gentlemen the decision is withdrawn. The Chair will put the question back to the position where it was. The Chair need not leave it to the House; but the delegate from Lycoming can proceed with his remarks, and then we can take a vote on the motion.

Mr. LAWRENCE. The Chair evidently did not understand all that was contemplated by the motion. I moved to lay the appeal on the table, and then the suggestion was that the President submit the question of order *pro forma* to the Convention, because otherwise the question will necessarily come up again.

The PRESIDENT. When it comes up the next time, I will leave it to the House.

Mr. LAWRENCE. Very well.

The PRESIDENT. The delegate from Lycoming will proceed.

Mr. ARMSTRONG. I have no desire, sir, to prolong the debate on this question, nor to enter into anything like an elaborate discussion of it. I had said pretty much all that I intended to say; and yet there were a few things more in the way of criticism upon this proposition to which I desired to call the attention of the House.

In the first place it reads: "A member of the Legislature shall be guilty of bribery and punished as shall be provided by law who, after his election and during his term of office, shall solicit, demand, accept or consent to receive, directly or indirectly, upon any pretence whatever, for himself or any other person, from any candidate, person, association or corporation having a special or private interest in legislation, any gift," &c. The next paragraph provides that "All corporations holding franchises by grant from the State, or doing business in the State, their officers, agents, attorneys or employees; all contractors or persons having an interest in contracts with the State; all officers, judicial, executive and ministerial, of the State and of the United States; all persons who engage themselves for hire or reward to oppose or promote the passage of any measure by the Legislature; all candidates for any office in the gift of the Legislature, including candidates for the Senate of the United States, shall be conclusively presumed to have a special interest in legislation."

Now, sir, a provision like that embraces almost every man in the community. It is so broad that it will be difficult to know who is left out in the multiplied and intimately connected relations of business as they now stand.

Then I find a part of the next paragraph stricken out; but there remains this clause:

"No person having, or presumed to have, an interest in legislation shall address any member of either House in private solicitation, speech, or argument, orally or in writing, to influence his vote on any subject whatever. Both the person offering such solicitation and the member who voluntarily and knowingly hears it shall be taken for criminal offenders and punished as the law may prescribe."

Mr. President, I cannot conceive of a proposition which strikes more directly at the utility of legislation, or that more distinctly embarrasses an honest member of the Legislature. Members of the Legislature are not presumed to have information on all subjects. A thousand matters come before them upon which they have no special information, and they do absolutely require to be informed not only orally, but in writing, and the citizen has an inalienable right to solicit his representative to procure the passage of any bill which he considers important either for public or private interests. To say that a man shall be criminally guilty when he applies to the Legislature in the only mode known to the Constitution for the adoption of a law which he conceives to be important, that it shall be made *ipso facto*, and without any suggestion of fraud or corruption, a criminal offence, is a monstrous proposition to my mind. The remedy is infinitely worse than the disease. It prevents all legislators from procuring that information which will enable them to judge wisely and act discreetly upon measures which are submitted to their consideration. Taking this whole proposition as it stands, it adds nothing whatever to the efficiency of the provision we make against corruption, while it does trammel and embarrass legislation to a degree which would prevent legislators from properly understanding their relations to the subject-matter of legislation.

Again, under the provision of the article as it stands the question of bribery or corruption becomes a judicial question to be submitted to the jury under the direction of the court, and it is not to be supposed that jurors are to be deceived by slight and frivolous pretences. The jurors will be honest, and when an indictment for corruption or for bribery is brought to their attention in due form of law, they will judge of it upon its merits, and they will not allow men to escape under flimsy pretences that they have received money or gifts with no intent to be corrupted. I believe that the power is safely and wisely vested in the court and jury under the provisions of the article as it stands already printed, and that the provision now offered by the distinguished gentleman from York ought not to commend itself to the approval of the Convention.

Mr. STEWART. There appears to be but a single copy of this amendment in this House, and I have seen that only in

the hands of some delegate who has been discussing the measure. I do not believe the Convention can act intelligently on this question under these circumstances. I am free to admit that I cannot. For intelligent action on my part I shall require a printed copy of the amendment, and in order that we may all have it I move that the proposed amendment be printed, and that the Convention do now adjourn. ["No." "No."] It will delay the Convention very little more than half an hour.

Mr. MACVEAGH. I call for the yeas and nays on that motion. We have just agreed to have but one session because we could stay until three o'clock without inconvenience to anybody; and now it is proposed to adjourn at two.

Mr. BOYD. I second the call.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Alricks, Baker, Black, J. S., Boyd, Cassidy, Clark, Davis, Elliott, Ewing, Gibson, Gilpin, Guthrie, Hay, Hemphill, Kaine, Lamberton, Lilly, M'Murray, Minor, Newlin, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Pughe, Read, John R., Reed, Andrew, Ross, Smith, Henry W., Stanton, Stewart, Van Reed, Wetherill, J. M., White, J. W. F., Woodward and Worrell—38.

NAYS.

Messrs. Achenbach, Ainey, Armstrong, Baily, (Perry,) Bartholomew, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Brodhead, Broomall, Buckalew, Calvin, Campbell, Carter, Corbett, Corson, Curtin, Cuyler, Darlington, De France, Edwards, Funck, Hall, Hanna, Howard, Hunsicker, Landis, Lawrence, Lear, Littleton, MacConnell, MacVeagh, M'CLean, M'Michael, Mann, Mantor, Mitchell, Mott, Purman, Purviance, J. N., Purviance, Samuel A., Reynolds, Runk, Russell, Sharpe, Smith, H. G., Struthers, Wetherill, John Price, White, David N. and Walker, *President*—52.

So the Convention refused to adjourn.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Brown, Bullitt, Carey, Church, Cochran, Collins, Craig, Crommiller, Curry, Dallas, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Green, Harvey, Hazzard, Heverin, Horton, Knight, Long, M'Camant, M'Culloch, Metzger,

Palmer, G. W., Patton, Porter, Rooke, Simpson, Smith, Wm. H., Temple, Turrell, Wherry, White, Harry and Wright—43.

Mr. H. W. PALMER. Mr. President: The gentleman from York claims to have discovered that sections thirty-one and thirty-two as reported from the Committee on Legislation are deficient in important particulars; that those sections undertake to define the crime of bribery, but in fact limit and circumscribe the offence. The character and reputation of that gentleman for great legal ability entitle his discovery to careful consideration. For the purpose of enabling the Convention to duly and properly weigh and pass upon his amendment, I ask him as the only possible road out of this difficulty, to withdraw his amendment for the present and have it printed during the night and laid on our desks in the morning. I am sure we all desire to give his proposition a fair hearing, I intend to vote for it. If he will withdraw it and allow it to be printed and placed on the desks of members in the morning, then it can be taken up and considered understandingly.

Mr. J. S. BLACK. I will assent to that course. I withdraw the amendment.

The PRESIDENT. The proposed amendment is withdrawn.

Mr. KAINE. I rise to a personal explanation. Since the commencement of this morning's session I have received a telegram which makes it absolutely necessary, imperative, indeed, that I should be absent from the proceedings of this Convention to-morrow. I therefore ask leave of absence for myself for to-morrow.

The PRESIDENT. Shall the gentleman have leave?

Leave was granted.

Mr. STEWART. I now move to go into committee of the whole for the purpose of amending the article on legislation by striking out section nineteen.

The PRESIDENT. That motion is before the Convention.

Mr. STEWART. In making this motion, sir, I do not forget that the section was fully discussed in committee of the whole and when it was considered by the Convention on second reading; but that discussion failed to remove the objections that I had to the section, and I am now unwilling to let this opportunity pass of asking this Convention to reconsider its action without embracing it. I believe that the section is not only unnecessary, but exceedingly unwise. It is aimed at

no particular abuse. No one urges that the Legislature has ever abused the power that it now has in this regard. It is unwise because it would restrain the Legislature from doing that which it may be its solemn duty to do.

And, sir, there is another thought in this connection which I shall be permitted to express for the consideration of this Convention. This section is not only unnecessary and unwise, but it exposes our work to the hostility of people throughout this Commonwealth, in different sections of it, which we ought not willingly to incur when we can avoid it or avert it without compromising a principle or conviction.

I know the force of this argument. It does not touch the merits of the question itself, but becomes a question of expediency. Still it is well worth our consideration. Had we not better sacrifice our individual views and wishes in some respect, than our entire work? I would not ask this Convention to compromise itself by the surrender of any honest conviction on questions of great principles, or the discharge of its whole duty in regard to them for reasons of expediency. But here is a matter upon which the Convention is divided; it is simply a question of policy in itself whether or not we shall restrain the Legislature in its charitable action. It is not a question upon principle any more than a great many others which have been decided by this Convention upon just such reasons as this one that I now press upon its consideration. Do not let us excite unnecessary hostility to our Constitution. We all want to see it accepted by the people, but to insure this result we must each be content with something less than the individual delegate himself accepts as a perfect instrument. I trust, sir, that the former action of the Convention on this question will be reconsidered.

Mr. J. N. PURVIANCE. I very heartily concur in the remarks of the gentleman from Franklin. I have heard this section very severely criticised by many ministers of the gospel. They have expressed a very decided disapprobation of it. They seem to have some misapprehension of it, or if they have a proper construction of it they think that to all charitable institutions of every character whatever, or to any institution that has anything like a moral influence, or for the education of clergymen, the Legislature is prohibited from making appropriations.

Now, I take it that this is somewhat in the sense of Stephen Girard's will, that it is an incorporation into our Constitution of the idea which that gentleman had when he penned his will, that the Legislature must be bound to make no appropriations of any kind whatever to any charitable institution, where religion has anything to do with its management. Now, surely that was not the intention of this Convention, nor is it the intention of the Convention to put a Constitution before the people with such a rotten plank as that in it. It should be removed at once, and I trust that the Convention will go into committee of the whole for the purpose of making so important an amendment as to strike out that entire section.

Mr. BUCKALEW. I desire to move to amend the amendment by striking out only a portion of the section.

Mr. BARTHOLOMEW. Make that a separate amendment.

Mr. BUCKALEW. I move to amend the motion by moving that the Convention go into committee of the whole for the purpose of amending the section, by striking out in the first and second lines the words "except for pensions or gratuities for military services," and in the third line, the words "any person or community, nor to."

The PRESIDENT. The Chair cannot receive that amendment.

Mr. BUCKALEW. I offer it under the ordinary principle of perfecting the text before the original motion to strike it all out is agreed to.

Mr. NEWLIN. It will not be agreed to.

The PRESIDENT. The Chair does not think that the amendment of the gentleman from Columbia can be made now. The delegate from Franklin has moved to go into Committee of the whole for the purpose of striking out the entire section. That motion may be voted down, and then the gentleman from Columbia can make his motion.

Mr. BUCKALEW. My idea is that we can amend the language of any section before we take a vote on a proposition to strike out the entire section; but if the Chair decides otherwise, I desire to say that I will vote against the motion of the gentleman from Franklin, to strike out the whole section, intending afterward to move the amendment that I have indicated.

Mr. D. N. WHITE. Before that vote is taken I wish to say a word. The object

of this section is to prevent the State from appropriating money to religious denominations and religious sects. It is to prevent bargains and sales by religious denominations for political votes. We all know, those of us who have read the history of the State of New York especially, what trouble they get into there upon this particular subject. One of the great objects of reforming the Constitution of that State is to prevent the evils that have arisen there, where certain denominations have received millions of dollars from the Treasury of the State, no doubt for their votes. We have in our first article declared that there shall be no religion established by law. Let us guard the very portals of our liberties in this matter. No religious denomination going up to the Legislature to ask for an appropriation for building a church, or building a college, or anything of that kind, should have a dollar of the State funds. Let every religious denomination take care of itself.

Mr. MACVEAGH. Will the gentleman from Allegheny allow me to ask him a question?

Mr. D. N. WHITE. Certainly.

Mr. MACVEAGH. Would not an appropriation by the Legislature to an infidel educational school be perfectly constitutional? Is it not only Christian schools, Christian asylums and Christian hospitals that are excluded from appropriations of the State funds by this section?

Mr. HOWARD. No.

Mr. D. N. WHITE. No sectarian institution whatever.

Mr. MACVEAGH. Yes, but suppose it has no religion whatever.

Mr. D. N. WHITE. I consider this of exceeding importance in our fundamental law to guard against evils which will certainly arise if it is not put in; evils which have arisen in other States and which are a source of a great deal of trouble in those Commonwealths. I say here that, as far as I have conversed with members of religious denominations, with ministers of the gospel and others, there is a universal acquiescence in it. It is fair to all. Let every one stand by himself and for himself. Let the State funds be appropriated for the common good of the whole State, without regard to any religious denomination or sect whatever. I hope that this Convention will not go back on its former action and strike out this section of the article.

Mr. STEWART. It occurs to me—

Mr. D. N. WHITE. I call the gentleman to order. He has already spoken once on this subject.

Mr. STEWART. I did not rise to speak a second time. I simply rose to say that the view of the gentleman from Columbia is, in my opinion, certainly correct. He has a right to introduce his amendment before the vote is taken upon my proposition; but as the Chair has decided otherwise, I withdraw mine in order that the vote may be taken upon his. Then I will renew my amendment.

The PRESIDENT. The gentlemen from Franklin withdraws his motion, and the gentleman from Columbia will now be in order.

Mr. BUCKALEW. I move to go into committee of the whole for the purpose of amending the nineteenth section by making the word "appropriations," in the first line, read "appropriation;" then by striking out of the first and second lines the words "except for pensions or gratuities for military services;" also in the third line, by striking out the words, "any person or community, nor to."

Mr. BARTHOLOMEW. How will the section read as amended?

Mr. BUCKALEW. I ask that the Clerk read it as I propose to amend it.

The CLERK read as follows:

"No appropriation shall be made for charitable, educational or benevolent purposes to any denominational or sectarian institution, corporation or association."

Mr. BOYD. Will the gentleman from Columbia allow me to ask him a question?

Mr. BUCKALEW. Yes, sir.

Mr. BOYD. Will not the effect of that amendment, if it be adopted, be to open the door to the claims that have been repeatedly made, and are still pending before the Legislature, from Chambersburg and Gettysburg and all that part of creation?

Mr. HOWARD. Certainly; that is what this thing is for.

Mr. BUCKALEW. It certainly would leave open the door for such appropriation.

Mr. BOYD. Then I am opposed to it.

Mr. BUCKALEW. Or rather, the amendment I have proposed will be, if agreed to, a simple prohibition against the appropriation of the public moneys of the State to any sectarian institution in the Commonwealth, making our disbursements for educational purposes and the

other purposes mentioned similar to those which we make to public schools, to institutions either founded by the State itself or institutions which have no sectarian character. I am in favor of a section of that kind, but I am opposed, strongly opposed, to the provision which the gentleman from Montgomery seems to favor, that is a prohibition in the Constitution against any appropriation of public money under any circumstances for the relief of any human being or any community in this State. Why, it seems to me about a thousand years behind the age to ask that we should put here on the face of the Constitution such an unlimited prohibition upon any possible case of future benevolence or charity to any individual or community in this State.

The gentleman is disturbed by the ghost of the Chambersburg claim. Does not the gentleman know that that question was in the Legislature at the last session, was pressed there with all the zeal and diligence that can ever be expected to be used to secure the recognition of such a claim, and that it received but sixteen votes in the House of Representatives? There is no danger, no probability, no likelihood that any appropriation of public money from the Treasury of the State to that particular object will be made, and I deny that the people of this State require you to put into the fundamental law a prohibition against any possible case of charity or relief in the future in cases of suffering humanity. There are many such possibilities in the future that we ought not to close up, and I undertake to say that the Legislature will always act under the most stringent limitation in regard to appropriations of this character. It will always act under the pressure of a selfishness that will rest continually upon the members of the two Houses in any particular case. They will always be reluctant, of course, to appropriate the money of their own people to others in any part of the State in which those constituents are not interested. There is no danger of abuse in that direction.

I desire again to call the gentleman's attention to the fact that this case of the Chambersburg claim, or rather of the claims from Franklin county and some of the adjoining counties, is one of an unexampled character. It was one which arose in a time of war under peculiar circumstances and it came addressed to the Legislature under circumstances that may never be expected to accompany

any future claim. I shall not now go into a general argument upon that subject, nor will I re-state the grounds upon which, in my judgment, the action of the Legislature in that case was properly based. It is sufficient to state that we have no reason to expect the recurrence of any such claim as that in the future of the Commonwealth. But if another shall occur, where a town shall be swept from the face of the earth in a single night, by the public enemy, and the families of its former inhabitants, including women and children, shall be in a state of destitution, crying aloud for relief to every human being in the Commonwealth, I shall be content if the Legislature shall appropriate a reasonable sum of money for their relief, stricken down, as they will be, as a part of our general community by a public enemy. I shall not complain if the Legislature shall extend a moderate amount of relief to them.

But the great bulk of that claim for depredations by the public enemy has not been paid by the State and never will be, and even that portion which was paid is a subsisting demand by the government of our State upon the United States. Provision was made in the passage of the law for presenting the claims in the city of Washington by our State authorities, and I say here that if it had been pressed upon the attention of Congress as it ought to have been pressed, before this time every dollar of it would have been repaid to the Treasury of the State of Pennsylvania. However, I shall not enter into that subject.

Mr. J. N. PURVIANCE. Will the gentleman from Columbia allow me to ask him a question?

Mr. BUCKALEW. Certainly.

Mr. J. N. PURVIANCE. In your experience as a legislator, extending, I believe, over some twenty years, have you ever known appropriations made to sectarian or denominational institutions?

Mr. BUCKALEW. You mean in this State?

Mr. J. N. PURVIANCE. Yes, sir.

Mr. BUCKALEW. I am not going into particular cases.

Mr. HOWARD. That is too bad!

Mr. BUCKALEW. The gentleman knows perfectly well that this subject of appropriating the moneys of States to sectarian institutions has been discussed in other States in the Union and has been productive of great excitement, particularly in the State of New York, where the Legis-

lature have been appealed to session after session for appropriations to private religious institutions in the city of New York and elsewhere in that State; and the same question has been agitated in the State of Ohio. We have not been so much troubled with it in this Commonwealth, and perhaps the gentleman will find no single case in our own Commonwealth heretofore where public sentiment has been outraged in that direction.

But we are here making provisions for the future, and I say you should keep our government entirely severed from these religious institutions, certainly in the way of patronizing them by appropriations of public money, and when my taxes and the taxes of other gentlemen are paid into the Treasury of the State it should be understood that there is no power which can divert them to the support of any religious sect in this State. They must depend upon the religious sentiment of the people and must be supported by the voluntary contributions of their own members.

Mr. BOYD. As I have been called out by the gentleman from Columbia, I presume that, out of respect to him, I cannot do less than respond to his call. And I beg to say first, in answer to his speech, that he has undertaken to be wiser than the majority of this body, for they certainly did decide after full debate the very question that he opens up here, and which he has taken the liberty to state was decided by a majority of this Convention unwisely. That I would consider in any less distinguished person than him as at least a sort of presumption. Now, the idea seems to be that this thing is to be opened afresh; it is to be gone into at large, and the gentleman from Columbia confesses upon this floor that his object in offering this amendment is to open the door to future claims to be made against the State, like the Gettysburg, Chambersburg and all that class of claims, and he justifies it upon the ground that the State ought to pay them, when almost in the same breath he declared that it was the duty of the United States to pay them, which we all know to be the fact.

But, sir, so long as I breathe and so long as I live, if it is to the crack of doom and I remain here all that time, I will never vote in a direction that will open the treasury and will let out of it one dollar for any such purpose, because the government of the United States is bound

to pay these people for any injury that they may have sustained from the depredations of the public enemy; and as the gentleman from Columbia himself says they would have paid them if the claims had been properly presented, or that if properly presented in the future they will be paid.

Then when the gentleman tells us that there has been no corruption or irregularity in anything that has been done in the past for Chambersburg or for Gettysburg, I say, with all due deference for the gentleman, that if common fame be true, the million that has already been paid out of the State Treasury to Chambersburg and that locality, was wrung out of the Treasury of the State and brought out through corruption and bribery, and there may be gentlemen not far distant from where I stand that can tell the very per cent. that was paid to bring about that result.

Now then, in the name of charity, which they seek to have introduced into this section as a means by which they seek to bring in these claims, I say that it is unfair, in the name of charity, to crowd out really charitable objects, and to place those of us who are in favor of reasonable appropriations, out of the State Treasury, for really charitable purposes in such a position that we are prevented and excluded from voting for such objects, without we also vote for a section that would give that kind of charity which has been advocated here to-day upon this floor. We must be excluded from voting for any charity whatever, because this proposition lets in claims which I have condemned.

Nor am I willing for one to vote for a proposition such as has been suggested by the gentleman from Butler, (Mr. J. N. Purviance,) simply because he gets up here and states that the clergy of the State demand it.

Our present experience fully satisfies me with the clergy's interference with secular matters, in the matter of their recommendation to invest in Northern Pacific railroad bonds, which has just resulted in the ruin of thousands of our people. After this it will be a sufficient reason for me to vote against any recommendation of theirs in secular matters.

I was very sorry to hear my respected friend from Centre (Mr. Curtin) declare that he not only wanted to see the door opened for these appropriations by the Legislature in the name of charity, but he

wanted to see it thrown wide open. Well, what does it mean? It means that this thing shall go on as it has in the past, and that there shall be certain gentlemen who shall have the privilege of going before the committees, from time to time, in the Legislature, urging them to report in favor of appropriations to particular charitable denominations; and for the professional services thus rendered, of course, a commission is to be paid out of the very charitable fund that is procured in that way. I am free to confess that if I were a member of the bar at Harrisburg, or even situated as I am, if I should have considerable calls to go there on business of that kind, and I should realize out of that business the large and handsome percentage that has been paid in the past, I do not know but I would be in favor of opening the door just as wide as it has been asked for.

What has been asked for as charity has heretofore been greatly abused, and I may add that the necessity for these appropriations has ceased to a great extent. We all know that in almost every community there is a very large class who are able and willing to support and maintain any educational or charitable institution that may be there located, and they do it freely all the time. Our situation is not what it was thirty or forty years ago when localities were too poor to maintain their

charitable institutions, but wherever there is a population, wherever the community has grown rich, the people by their voluntary contributions and local taxation sustain what charitable institutions are reasonably necessary for the purpose of the particular community.

I shall therefore vote against this motion to go into committee of the whole for the purpose of making this amendment, and hope that we will stick by the section as it has been adopted, because we settled it before after full debate.

MR. J. N. PURVIANCE. I wish to say that the gentleman from Montgomery is mistaken in his quotation of my remarks. I did not say that the clergy of the State demanded that this section be stricken out.

MR. BOYD. What did they demand?

MR. J. N. PURVIANCE. I said that they thought the section was an injury to the Constitution.

MR. BOYD. That they desired it struck out.

MR. J. N. PURVIANCE. That it was an injury to the instrument.

MR. BOYD. Who cares if they did?

MR. CURTIN. I move that the Convention do now adjourn.

The motion was agreed to, whereupon, at two o'clock and fifty-seven minutes P. M., the Convention adjourned until tomorrow morning at half-past nine o'clock.

ONE HUNDRED AND FIFTY-FIFTH DAY.

WEDNESDAY, October 1, 1873.

The Convention met at half-past nine o'clock, A. M., Hon. John H. Walker, President, in the Chair.

Prayer by Rev. W. I. Campbell, of Washington county, Pa.

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

MEMORIALS.

The PRESIDENT presented a communication from George L. Harrison, president of the Board of State Charities, submitting on behalf of that board a memorial concerning the education and industrial training of the ignorant, destitute and neglected children of the Commonwealth.

Mr. J. PRICE WETHERILL. I move that the memorial be printed in the Journal.

Mr. HAY. I desire to inquire whether that motion is to print the pamphlet which has been laid on our tables.

SEVERAL DELEGATES. Yes.

Mr. HAY. Then I hope it will not be printed in the Journal. I should like to understand what the real motion was.

The PRESIDENT. The motion was to place the memorial on the Journal.

Mr. HAY. I wish to inquire whether this is the memorial? [Holding up a pamphlet.]

Mr. J. PRICE WETHERILL. It is the memorial.

Mr. HAY. Then I object to the printing. I cannot see the necessity of printing a pamphlet over again in our Journal. Each of us has a copy of it, and we all understand what it is. We have it before us in print, and what is the use of printing it over again?

Mr. DARLINGTON. This memorial was presented by me a week or two ago and is on the Journal printed.

Mr. J. PRICE WETHERILL. That being the case, I withdraw the motion.

The PRESIDENT. The motion to print is withdrawn.

The memorial was laid on the table.

The PRESIDENT presented a petition of citizens of Columbia, Lancaster county,

in favor of the prohibition by the Constitution of the sale of intoxicating liquors, which was laid on the table.

LEAVES OF ABSENCE.

Mr. HANNA. I ask leave of absence for my colleague (Mr. Addicks) for two days.

Leave was granted.

Mr. H. W. SMITH. I ask leave of absence for my colleague (Mr. Barclay) for a few days. He is about to attend the funeral of a member of the bar of reading.

Leave was granted.

DICTIONARY.

Mr. ARMSTRONG. I desire to call the attention of the Convention to the fact that now, whilst we are on third reading, in the examination of words and their meaning, there is not in this Hall, and has not been from the beginning, any dictionary, unless it be one that is generally locked up and wholly inaccessible.

Mr. LILLY. I have one.

Mr. STANTON. I have one.

Mr. ARMSTRONG. They are very small. [Laughter.] I desire to move that the Clerk be directed to procure an unabridged Webster's dictionary for the use of this Convention. It will not cost more than ten or twelve dollars.

Mr. STANTON. I will inform the gentleman that I have a large Bible and a large dictionary. [Exhibiting them.]

Mr. ARMSTRONG. Does the gentleman read them?

Mr. STANTON. Yes, sir. [Laughter.]

Mr. ARMSTRONG. I will not make a motion at present.

COMMITTEE ON COMPARISON.

Mr. J. N. PURVIANCE. I offer the following resolution:

Resolved, That a comparing committee of three be appointed whose duty it shall be to take charge and care of the articles severally, as they shall be finally adopted, have them accurately transcribed in duplicate, in a plain legible hand, and after careful comparison with the original, present the same to the Convention at the close of the session for the signature of the members.

The PRESIDENT. What order will the Convention take with the resolution?

Mr. J. N. PURVIANCE. I ask that it lie on the table for the present.

The resolution was laid on the table.

LEAVE OF ABSENCE.

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

Resolved, That hereafter no leaves of absence shall be granted without good and sufficient cause.

On the question of proceeding to the second reading and consideration of the resolution, Messrs. Barclay and MacVeagh called for the yeas and nays.

Mr. CORSON. I rise to a point of order. This is now the rule. It is one of the rules of the Convention that were adopted at Harrisburg.

The PRESIDENT. The recollection of the Chair is that we have such a rule, and the Chair has been endeavoring this morning to carry it out. If the gentleman from Berks will withdraw the call for the yeas and nays, the Chair will endeavor to enforce the rule in future.

Mr. MACVEAGH. Let the rule be read as it stands.

Mr. LILLY. The probable effect of putting the resolution to a vote would be to strengthen the rule if it does exist.

Mr. MANN. Let us have the rule read. I do not know of any such rule.

Mr. MACVEAGH. Let the delegate from Montgomery point out the rule.

Mr. CORSON. I never read the rule but once, but my memory is clear on that point.

Mr. JOS. BAILY. Let us have the yeas and nays taken.

The PRESIDENT. The Clerk will call the names of members.

Mr. MACVEAGH. Is there any such rule?

The PRESIDENT. I cannot say that there is.

Mr. LAWRENCE. I do not think there is any such rule.

Mr. MANN. Rule thirty-four is the only one that refers to the subject.

Mr. MACVEAGH. That says nothing about this.

Mr. MANN. Certainly not.

The question being taken by yeas and nays resulted as follows

YEAS.

Messrs. Achenbach, Ainey, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Beebe, Black, Chas. A., Bowman, Calvin, Campbell, Carter, Darlington, De France,

Guthrie, Hay, Hazzard, Howard, Landis, Lawrence, MacConnell, MacVeagh, McCulloch, Mann, Niles, Patterson, D. W., Porter, Purviance, John N., Purviance, Samuel A., Rooke, Russell, Smith, H. G., Struthers, Wetherill, John Price, White, David N., White, J. W. F., Woodward and Walker, *President*—38.

NAYS.

Messrs. Alricks, Armstrong, Bartholomew, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Clark, Corbett, Corson, Curry, Curtin, Dallas, Davis, Dunning, Edwards, Elliott, Ewing, Funck, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Hemphill, Hunsicker, Lamberton, Lilly, M'Clean, M'Michael, M'Murray, Mantor, Minor, Mitchell, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Purman, Reed, Andrew, Reynolds, Ross, Sharpe, Simpson, Smith, Henry W., Stanton Stewart, Temple, Van Reed and Wetherill, J. M.—54.

So the motion to proceed to the second reading and consideration of the resolution was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baker, Bannan, Bardsley, Bigler, Brown, Bullitt, Carey, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Cuyler, Dodd, Ellis, Fell, Finney, Fulton, Heverin, Horton, Kaine, Knight, Lear, Littleton, Long, M'Camant, Metzger, Mott, Newlin, Pughe, Read, John R., Runk, Smith, William H., Turrell, Wherry, White, Harry, Worrell and Wright—41.

ORDER OF BUSINESS.

Mr. CORSON. I offer the following resolution:

Resolved, That the Convention shall from this day forward proceed to business without regard to the absentees, and no call for a quorum shall be made.

Mr. EWING. That is a change of the rules.

The PRESIDENT. It must lie on the table.

CONSTITUTION OF A QUORUM.

Mr. EWING. I wish to offer a resolution for changing the rule with regard to the number necessary to constitute a quorum and ask that it lie on the table.

The resolution was read as follows:

Resolved, That rule forty-one be amended by striking out, in the third line, the word "majority," and inserting in lieu thereof the words "forty-five members."

The PRESIDENT. The resolution will lie on the table.

Mr. EWING. I wish to give notice that if the resolution is not called up sooner by some other member, I shall call it up on Tuesday next.

LEAVES OF ABSENCE.

Mr. BRODHEAD. I offer the following resolution :

Resolved, That no leave of absence shall be good for more than three days, except the same shall be extended by the Convention.

The question being put, the Convention refused to order the resolution to a second reading.

OATHS OF OFFICE.

Mr. BUCKALEW, from the Committee on Revision and Adjustment, reported Article No. 7 in regard to oaths of office, which was ordered to lie on the table and be printed.

LEGISLATION.

Mr. HAY. I move that we proceed to the further consideration of the article on legislation.

The motion was agreed to, and the Convention resumed the consideration on third reading of Article No. 3, on legislation.

Mr. J. S. BLACK. According to promise I now move to go into committee of the whole for the purpose—

The PRESIDENT. The delegate will withhold his motion for the present. There is a motion now pending, submitted by the delegate from Columbia, (Mr. Buckalew,) to go into committee of the whole for special amendment, in order to strike out, in the nineteenth section, the words, "except for pensions or gratuities for military services," and also the words, "any person or community, nor to," so that the section will read :

"No appropriations shall be made for charitable, educational or benevolent purposes, to any denominational or sectarian institution, corporation or association."

Mr. CURTIN. Mr. President: Before the vote is taken on this amendment, I desire to say a few words. I would have been very glad to vote to strike out this entire section ; but inasmuch as the section cannot be taken out and an amendment to it is offered by the delegate from Columbia, (Mr. Buckalew,) I propose to vote for that amendment.

Mr. President, every time that this subject is mentioned in the Convention, it seems to produce most unwarrantable

and singular excitement, and it throws the usually quiet and conservative corner in which I sit almost into a spasm. My amiable and even tempered friend, the delegate from Montgomery, (Mr. Boyd,) seemed to be thrown into a passion yesterday when an attempt was made to change in any manner this section of the article. He seemed to think that I desired to open the doors of the treasury and let everybody in to take at pleasure. I am quite sure my friend misunderstood me, for the expression of mine to which he alluded was used when we were discussing the subject of opening or closing the door of the treasury to private institutions or corporations supporting the widows and orphans of soldiers, which would have been excluded from any benefits from the public treasury but for the amendment then offered, and I was willing that the doors should be opened wide for such a charity and beneficence now and for all future time.

Now, Mr. President, let us read the words in this section of the article :

"No appropriation shall be made for charitable, educational or benevolent purposes."

Those are solemn words, and to christian people of great significance. "Education," "charity," "benevolence." I do not care to vex this Convention by renewing the discussion. The article this section especially, was fully discussed when on second reading. But those who are opposed to the interpolation in our Constitution of the limitation of the power of the Legislature, cannot let it finally be passed into the organic law, without at least raising some objection. Every time this question is raised we are confronted by the appropriations of money made to the sufferers at Chambersburg and on the borders of this State, ravished by the enemy during the late war ; and it is said that the act of appropriation by the Legislature were passed by improper means. I know of but one appropriation made for that purpose. It paid twenty-seven per cent. of the losses of the people of Chambersburg, and only twenty-seven per cent. It was disbursed by John Briggs, of Harrisburg, now in his grave, and our late colleague, H. M. M'Allister ; and the assessment and the vouchers are filed of record, and I need not say over the graves of such men that that appropriation, at least, was honestly disbursed. But if there should have been wrong in this re-

spect, shall we for all time to come close the door against such appeals? You can find an example in history for almost anything that is bad or good. You can find in the proceedings of the Legislature from gentlemen accustomed to the action of that body, an objection to almost any provision you make for the benefit of the people of the State, and yet I do not know that it would be proper to occlude all power from the Legislature, because at times in the past they have behaved improperly.

Mr. President, if Shreveport was in Pennsylvania, with the angel of death over that community and a degree of suffering which appeals to the heart of every man outside of their affliction, and your Legislature was in session, would you debar that body from taking from the treasury of the people some money for the relief of such a suffering community? I cannot think the people of Pennsylvania desire to do that; and yet this section would preclude you from giving one crust of bread, from sending one christian man or woman to wipe the clammy sweat from the brow of the dying, or to bury the dead in a decent manner! I do not think the people of Pennsylvania desire us to do that. Nor because the Legislature may have behaved improperly at times, and you find examples of bad legislation or of profligate appropriations or expenditures of the public money, I cannot think that the people of Pennsylvania desire that the great central power shall be dried up and chilled into an entire disregard of education, benevolence and charity.

Why, Mr. President, we are a christian people. The very foundation of all our institutions is based upon the christian faith, and the man who desires to find the pure principles of liberty, of equality, of fraternity, will find them there, and on that sure foundation our institutions of government rest. Here it is said that you shall not make appropriations because they are religious sects. I would not have my government foster or protect any particular sect or denomination. We have already declared that it cannot be done. The equality of birth and the great living principle of christian faith, of republican religion, is that each man in the community has an account to settle with his Maker which he may settle for himself, and which he cannot settle by proxy or agency, and I have no fears of the rule or sects in this country. It is not

consistent with our theory of government, with liberty or equality, and men need not fear it. I would not give appropriations of money to any sect or religion; but if a religious community or a church having within it kind, benevolent and charitable people choose to erect outside of their church an institution where the poor are given bread, where the sick are ministered to and cared for, where the twenty thousand children of such a city as Philadelphia may be gathered and given education and training for the future, and if the State, in the abundance, or her means, chooses to supplement the charity and gifts of individuals by adding appropriations, I do not think it will break up our liberties as a government, nor can I understand why it throws gentleman in this Convention into a passion.

It is amazing how little the State has done for her charities in comparison with what individuals have done. The State has not and should not under our social organization, have large institutions where charity is dispensed. That necessarily comes from the action and liberality of individuals; and when individuals choose to put together their means and erect an institution where they dispense charity or benevolence or education, the three words used in this section of the Constitution, and in which the State of Pennsylvania is forever denied from reaching her hand out to the needy citizen of the State, I cannot think that it is a very serious thing to assist them, if they are feeble, by appropriation of public money. It will be better to take the money from the treasury down to its bottom, in my judgment—and I do not mean to be offensive to any gentleman on the floor—and pay it out under the privilege given to your Legislature, than that you should dry up to a frozen chill the benevolence of Pennsylvania at the very heart of the State.

Mr. President, we are a community; we are made up of a division of small communities. Our State is made up of counties and townships, of cities and boroughs. It is made up of churches, benevolent institutions and hospitals. It is made up of communities needing mutual assistance for mutual benefits. And when great calamities fall upon any of the people of this State, I would leave the door of the treasury open so that the representatives of the people may afford that immediate relief which cannot come from the tardiness of individual charity.

THE PRESIDENT. The gentleman's time has expired.

MR. HOWARD. I presume that all the delegates of this Convention are in favor of charity. I have no doubt that those who do not speak so loudly on the subject are just as liberal as those who speak so much upon the subject about drying up the milk of human kindness and so forth. But some may have different notions of what really is the duty of the State, what is properly the province of the government, and what power society should really surrender to the central power of the State.

Now, in the first place, in our Commonwealth, for ordinary charitable purposes, for the support of the poor, whether they are particularly deserving or not, for all the poor of the Commonwealth, we have our city institutions, and we have our county institutions, and there is not a community in the Commonwealth, that has not thoroughly provided by law for the support of all its poor.

What is the object of this Convention so far as the treasury is concerned? It is to leave just as little as possible to the mere discretion of members of the Legislature. We wish to impose upon that body duties that shall be better defined and better understood, and yet by this proposition the entire disposal of the treasure of the Commonwealth is to be left at their discretion, to make appropriations from at any time, wherever the whim of the Legislature can be gratified or their greed approached. Wherever appropriations are left merely discretionary with the Legislature, appropriations that in no manner pertain to the public at large, that moment you open the door to the worst corruption. When a member of the Legislature knows that it is no part of his obligation to guard the treasury, that there is no legal definition of his duty, and an appeal is made to his discretion, then what? Why he can say: "This is committed to my discretion, now divide." And they do divide in such cases, and we know it.

No, Mr. President, it is no true principle of government to leave the treasury, at the discretion of members of the Legislature, as this proposes to do. I say, with all respect to the members who have advocated the other side of this proposition, that their argument is in no sense a correct one, and when they talk about sweeping away the fountains of public charity and drying up the kindness of

the Commonwealth, I say that charity is provided for by every local community in the State; and whenever greater charity than that is demanded, our people have always been equal to the emergency. We have witnessed the appeals that have been made for charitable purposes in great calamities which have fallen upon the people of this country, and everywhere they have been more than met by the responses made voluntarily by our people. And charity should be voluntary. We provide in every way, by this Constitution, for the support of our public institutions. Our institutions are to be public. They must be State institutions, and appropriations will be made to them in the general appropriation bill. Every member in the Legislature will know that to do this is part of his duty, part of his obligation, and no side door can be opened for the purpose of approaching the member's mere discretion as to the amount he will take out of the treasury.

I have no right to question the motives of other persons. They have a right to their own opinion about this matter, as I certainly have to mine, and yet it seems to me this border raid matter is really that which underlies this whole subject. I do not know why the door of the treasury should be kept open for the payment of these claims. These people went before the Legislature and acknowledged that they had no legal claim upon the Commonwealth. They had it so stated explicitly in the act of Assembly that was passed for the purpose of creating a machinery whereby their claims might be liquidated, and in that act of Assembly they pledged themselves that these claims never should be presented for payment to the Treasury of the State. Yet at the very next session they were there by their bummers and their drummers for the purpose of bleeding the treasury that they had agreed solemnly they would never touch.

And how did they do it? It is too true, and members of this Convention should know it, that they approached the Legislature corruptly. They approached it by bargain. They approached it by trying to divide that sum which they claimed for charity between the members of the Legislature and the outside lobby. Mr. President, whenever you leave the disposal of the funds of the State discretionary to the Legislature, to appropriate the public money under the plea and the guise of

charity, depend upon it only part of the money appropriated will reach the purpose of the charity. If you appropriate your money yourself voluntarily, you know where your money goes, but leave it to the discretion of your Legislature, and let it be understood that this appropriation is only discretionary, and depend upon it there will be a "divvy" made upon all such appropriations. No, sir, we do not want the public money appropriated for charity in that way.

Another thing; this section only prevents appropriations for charitable or educational purposes to a person or community, or to denominational or sectarian corporations or associations, which is perfectly right and proper. I say that every city and county in this Commonwealth has provided by law, as far as law can provide, for the protection of the poor and unfortunate. When persons who have been engaged in the public service become unfortunate and need public assistance, we have them provided for in public institutions. And why have we provided for public institutions? It is because we know that in private institutions the charity of the Commonwealth has been notoriously and shamefully abused.

THE PRESIDENT. The gentleman's time has expired.

MR. FUNCK. Mr. President: This question has been fully discussed on first and second reading. I therefore move the previous question.

THE PRESIDENT. The delegate from Lebanon moves the previous question. The call must be sustained by eighteen gentlemen.

MR. NILES. I desire to ask for information what the main question will be, whether on the whole article or on the pending amendment.

THE PRESIDENT. On the pending amendment first. Do eighteen delegates rise to second the call?

Messrs. Van Reed, Reynolds, Mitchell, Carter, Porter, S. A. Purviance, Parsons, Guthrie, MacConnell, T. H. B. Patterson, Landis, Lawrence, J. Price Wetherill, Broomall, Davis, G. W. Palmer, Stanton, Bartholomew, Boyd and Edwards rose to second the call.

THE PRESIDENT. The call for the previous question is seconded. The question before the Convention is: Shall the main question be now put?

MR. CORBETT. On that I ask for the yeas and nays.

MR. HUNSICKER. I second the call.

MR. J. R. READ. I desire to inquire, if the main question is ordered by the House, whether that will carry with it the whole article, or apply only to the section before the Convention?

MR. MACVEAGH. If the main question is ordered, certainly no amendment will be in order to the section to which this amendment is proposed.

THE PRESIDENT. The main question is: Will the Convention go into committee of the whole on the proposed amendment, and it goes no further.

MR. MACCONNELL. I am not aware what would be the result of refusing to order the main question to be put. Would it put it over?

THE PRESIDENT. It would. 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:

YEAS.

Messrs. Achenbach, Armstrong, Baer, Baily, (Perry,) Baker, Barclay, Bartholomew, Black, J. S., Boyd, Broomall, Brown, Calvin, Carey, Carter, Clark, Corbett, Corson, Curry, Davis, Edwards, Funck, Green, Guthrie, Hanna, Hazzard, Landis, Lawrence, Lilly, MacConnell, McCulloch, Mitchell, Mott, Newlin, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Porter, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Rooke, Russell, Simpson, Stanton, Struthers, Van Reed, Wetherill, John Price, White, David N. and Walker, *President*—52.

NAYS.

Messrs. Ainey, Alricks, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Buckalew, Campbell, Cassidy, Curtin, Cuyler, Dallas, Darlington, De France, Dunning, Ewing, Gibson, Gilpin, Hall, Harvey, Hay, Hemphill, Howard, Hunsicker, Lamberton, Lear, MacVeagh, McClean, M'Michael, Mann, Mantor, Minor, Patterson, D. W., Purman, Read, John R., Ross, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Temple, Wetherill, J. M., White, J. W. F. and Woodward—45.

So the main question was ordered to be put.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Bardsley, Beebe, Brodhead, Bullitt, Church, Cochran, Collins, Craig, Cronmiller, Dodd, Elliott, Ellis, Fell, Finney,

Fulton, Heverin, Horton, Kaine, Knight, Littleton, Long, M'Camant, M'Murray, Metzger, Palmer, H. W., Pughe, Runk, Smith, Wm. H., Turrell, Wherry, White, Harry, Worrell and Wright—36.

The PRESIDENT. The Clerk will now read the main question.

The CLERK. The main question is the motion made by Mr. Buckalew to go into committee of the whole for the purpose of striking out in the first and second lines of the nineteenth section the words, "except for pensions or gratuities for military services," and in the third line to strike out the words, "any person or community, nor to." The section, if amended as proposed, will read as follows:

"No appropriation shall be made for charitable, educational or benevolent purposes, to any denominational or sectarian institution, corporation or association.

Mr. M'CLEAN. On that question I ask for the yeas and nays.

Mr. TEMPLE. I second the call.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Achenbach, Armstrong, Baer, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Buckalew, Carey, Clark, Corson, Curtin, Cuyler, Darlington, Dunning, Elliott, Gibson, Gilpin, Harvey, Lamberton, Landis, M'Clean, Niles, Patton, Pughe, Purman, Purviance, John N., Russell, Sharpe, Stanton, Stewart, Wetherill, J. M., Wetherill, John Price, and Woodward—35.

NAYS.

Messrs. Ainey Alricks, Baily, (Perry,) Baker, Bartholomew, Beebe, Black, J. S., Boyd, Broomall, Brown, Calvin, Campbell, Carter, Corbett, Curry, Dallas, Davis, De France, Edwards, Ewing, Funck, Green, Guthrie, Hall, Hanna, Hay, Hazzard, Hemphill, Howard, Hunsicker, Lawrence, Lilly, Littleton, MacConnell, MacVeagh, M'Culloch, M'Michael, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, H. G., Smith, Henry W., Struthers, Temple, Van Reed, White, David N., White, J. W. F. and Walker, *President*—63.

So the motion was not agreed to.

ABSENT—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Brodhead,

Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Dodd, Ellis, Fell, Finney, Fulton, Heverin, Horton, Kaine, Knight, Lear, Long, M'Camant, M'Murray, Metzger, Palmer, H. W., Runk, Smith, Wm. H., Turrell, Wherry, White, Harry, Worrell and Wright—35.

Mr. STEWART. I now renew the motion I made yesterday, to go into committee of the whole for the purpose of amending the article by striking out section nineteen.

The PRESIDENT. The motion is before the Convention.

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

Mr. SHARPE. I second the call.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Biddle, Bigler, Bowman, Clark, Curtin, Cuyler, Darlington, Gibson, Hunsicker, Lamberton, Lear, Littleton, MacVeagh, M'Clean, M'Michael, Purman, Purviance, John N., Russell, Sharpe, Stanton, Stewart Wetherill, John Price and Woodward—26.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Baily, (Perry,) Baker, Bartholomew, Boyd, Broomall, Brown, Buckalew, Calvin, Campbell, Carey, Carter, Corbett, Corson, Curry, Dallas, Davis, DeFrance, Dunning, Edwards, Elliott, Ewing, Funck, Gilpin, Green, Guthrie, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Howard, Landis, Lawrence, Lilly, MacConnell, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Porter, Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, H. G., Smith, Henry W., Struthers, Van Reed, Wetherill, J. M., White, David N., White, J. W. F. and Walker, *President*—67.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Beebe, Black, Charles A., Black, J. S., Brodhead, Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Dodd, Ellis, Fell, Finney, Fulton, Heverin, Horton, Kaine, Knight, Long, M'Camant, M'Culloch, Metzger, Palmer, H. W., Patterson, D. W. Pughe, Runk, Smith, Wm. H., Temple, Turrell, Wherry, White, Harry, Worrell and Wright—40.

Mr. SHARPE. Mr. President: I move to go into committee of the whole to amend section nineteen by adding the following words at the end of the section: "Except by a vote of two-thirds of all the members elected to each House," and on that I call the yeas and nays.

Mr. M'CLEAN. I second the call.

Mr. BIGLER. Mr. President: The proposed amendment is a movement in the right direction, and I desire to support it by a few words. It meets what, to my mind, is the greatest objection to the provision under consideration. The amendment would leave the State with a *status* equal, at least to the giving a cup of cold water, in a case of great need. I am not willing to see this great State so stultified as to be denied the power to come to the aid of humanity in the midst of a sweeping calamity. I care not that it requires a vote of two-thirds of the Legislature to exercise that power, but I should blush to see the State stripped of the power entirely. In case of a wide-spread calamity, if the pending article were adopted, we should see the little State of Delaware on the one hand, and the State of New Jersey on the other, coming to the rescue, whilst this giant State would look on like a chained giant, power less and incapable of extending the slightest aid, no matter how pressing the needs. For one, Mr. President, I am not willing to see my State so humiliated and belittled.

The PRESIDENT. The yeas and nays have been called and the Clerk will proceed with the call.

The yeas and nays, which had been required by Mr. Sharpe and Mr. MacVeagh, were taken, and were as follow, viz:

Y E A S .

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Barelay, Biddle, Bigler, Black, Charles A., Bowman, Carey, Clark, Corson, Curtin, Cuyler, Darlington, De France, Edwards, Elliott, Gibson, Green, Hunsicker, Lamberton, Lear, Littleton, MacVeagh, M'CLean, M'Michael, Niles, Purman, Purviance, John N., Reed, Andrew, Russell, Sharpe, Smith, H. G., Smith Henry W., Stanton, Stewart, Wetherill, Jno. Price and Woodward—38.

N A Y S .

Messrs. Achenbach, Ainey, Alricks, Bailly, (Perry,) Baker, Bartholomew, Beebe, Black, J. S., Boyd, Broomall, Brown, Buckalew, Calvin, Campbell,

Carter, Corbett, Curry, Dallas, Davis, Ewing, Funck, Guthrie, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Howard, Landis, Lawrence, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purviance, Samuel A., Read, John R., Reynolds, Rooke, Ross, Simpson, Struthers, Van Reed, Wetherill, J. M. White, D. N., White, J. W. F. and Walker, *President*—59.

So the motion was rejected.

ABSENT. — Messrs. Addicks, Andrews, Bannan, Bardsley, Brodhead, Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Gilpin, Heverin, Horton, Kaine, Knight, Long, M'Camant, Metzger, Palmer, H. W., Parsons, Runk, Smith, Wm. H., Temple, Turrell, Wherry, White, Harry, Worrell and Wright—36.

Mr. MACVEAGH. I now move to go into committee of the whole for the purpose of amending the nineteenth section, by inserting in the third line after the word "nor," the words "for educational purposes." That will make the section read: "Nor for educational purposes to to any denominational or sectarian institution, corporation or association."

That leaves the section with all its vigor with this single exception —

Mr. HOWARD. I rise to a point of order. The previous question having been called upon an amendment to this section, and the call for the previous question sustained and the amendment rejected, it precludes any further amendment to the section under the ruling of the President. I understand the ruling of the President was that the previous question did not affect the whole article, but did affect the section. The point of order has not been raised under that decision upon this clause, and one or two amendments have since been offered, but I now raise the point of order that where the previous question is sustained on the immediate matter under consideration, which is here this section, the previous question is conclusive. Certainly it must be so held, or we are nowhere and the previous question amounts to nothing.

The PRESIDENT. The Chair cannot sustain the point of order. It is his opinion that when the previous question is called and not sustained it does put the matter over for the session; but where it is sus-

tained it applies to the specific motion pending at the time.

Mr. MANN. I should like to inquire, then, whether there's no means by which a majority of this Convention can stop amendments to this section?

Mr. HUNSTCKER. No, sir.

The PRESIDENT. The previous question amounts to nothing, except to compel the Convention to take a vote upon the particular question upon which the previous question is called.

Mr. MACVEAGH. The amendment proposed leaves the section in undiminished vigor with this exception, that it allows the Legislature to supplement for charitable purposes only, not educational, the voluntary gifts of individuals, although these gifts are administered by one branch of the Christian church. In other words, the church universal has no administrative functions. The Christian church is divided into sects as the American Union is divided into States, for purposes of administration, and that division finds at once its justification and its necessity in the laws of human nature itself, and finds its parallel in every department of human life.

Now, one branch of the church administers one charity. It may be that of nursing the sick; but when called to the plague-stricken bed-side, the nurse of the church does not ask what creed the sufferer entertains, but what is his disease; is it cholera or small-pox or yellow fever?

Your charity is not to be sectarian; the administration of it is only sectarian as to the channel and not as to the objects. A Presbyterian branch of the church universal establishes a home for aged destitute women, the widow's and mothers and sisters and daughters of the men who till your fields and delve in your mines, who create your material prosperity, and who die leaving the women dependent on them destitute. If the Presbyterian church offers them a comfortable home and a safe refuge for the rest of their days, it does not require them to recite the Westminster catechism, but only to show that they are proper objects of assistance. If an Episcopalian hospital is builded and a man is crushed while coupling cars on the railroad, it does not require him to subscribe to the thirty-nine articles, but to tell the surgeon what is his need of surgical relief. A Wesleyan association when endeavoring to rescue a fallen woman from the steps that lead down to hell, does not ask her

what is her religious belief, but endeavors by unsectarian sisterly persuasion to bring her back to light, and life, and glimpses of God. The objects of these charities are not sectarian, but their necessities require sectarian administration; and not only that, but it is a law as well known in pauperism as any law is known in physics, that the deserving objects of public charity will only accept it when it is clothed about with the ministrations of the Christian church.

I appeal to my venerable friend in front of me, (Mr. Carey,) if it is not well known and has not been known for many years in England that every decent poor person fears the work-house of England worse than he does death, and if women or children do not often die in the streets of London rather than live at the expense of the State, unless her charity flows through one of the many channels that the Lord himself has provided, for these charities are but His handmaids. The Sisters of the church who nurse the sick only merit His benediction, "I was sick and ye visited me." The men that minister to the maimed in hospitals only do it to illustrate His parable of the good Samaritan. The women who try to rescue prostitutes from ruin only do it in furtherance of His example to the women taken in adultery. And everywhere, if Christian charity is to be effective, it must be administered through one of the branches of the Christian church, for these charities are her children and not the children of the State. Organized charity for the relief of the unfortunate begins its history with the history of Christian communities, and the aid it has received from time to time from every Christian government, has been given from the religious convictions of Christian statesmen, or extorted by the proof that it was cheaper to cheat the gallows in advance and the prisons in advance than to keep the gallows active and the prisons filled.

And, gentlemen, if voluntary benefactions come to take three-fourths of this burden off you, why should you not allow the Legislature to give the other fourth? It will not corrupt them; it will not take them from the lofty pedestal of their public duty to a lower ground; it will cleanse their hands to pour through them the benefactions of a Christian State; it will elevate their souls to widen them with a charity that knows no sect but suffering humanity; and it is to the di-

rect, immediate, tangible, pecuniary advantage of every citizen of this State that these charities should be rendered to the afflicted. It is not taking a penny from any man. It is the pecuniary interest of Pennsylvania that her sons should be healthy, her women virtuous, her maimed succored, her poor relieved, her vicious reclaimed from vice; and it will bear pecuniary fruits; it will diminish taxes; it will elevate public character; it will prevent crime.

I trust therefore that, not for education, which the State offers through other channels, and not for sectarian advancement, but simply for assistance to charity, though it is administered by one of the branches of the church, the Legislature may be allowed to make contributions. If any great necessity arises, if fire burns, if floods drown, if financial distress ruins, if bankers fail, if contributors die, if private contributions diminish, then allow a possibility of an appeal to the State rather than to turn these old women in the street and these reclaimed boys back to their haunts of vice, and close all these cities of refuge which the church has prepared for the unfortunate and the needy.

The PRESIDENT. The gentleman's time has expired.

Mr. CAMPBELL. Mr. President: I do not intend to deliver a sermon—I leave that to the more appropriate hands of the gentlemen from Dauphin—but I merely rise to appeal to this Convention not to reopen this discussion. We had enough of it in committee of the whole and on second reading, and I wish the Convention would proceed now to vote upon the amendment offered by the gentleman from Dauphin. ["Vote!" "Vote!"]

Mr. LANDIS. Just one word. I know very well, sir, the temper of this Convention to-day is not to indulge in any exuberant debate on this or any other question. We have had this question sufficiently discussed on two different occasions before.

The Convention desires to arrive at a conclusion simply by the process of calm reflection and the dictates of cool reason, and not by excited appeals made to them which have no real basis. Now, sir, I say here, so far as I understand the wants of the Christian church, that church does not demand this so-called provision for benefactions and does not wish it, and I believe to a certain extent I do understand what the Christian church wants in this respect.

I say the very moment you establish a principle like this you do that which is dangerous to the interests of the church, and if gentlemen here who make these loud appeals in behalf of charity, who would make the State an instrument in the hands of the church, if you please, to accomplish this work if they are sincere, I say, in that, they will consent that the church perform her own charities; and left alone and independent of the State, she will be able to accomplish all this work, and she will more effectually accomplish it, and thus, as she should, free from any complications with the State, perform the part of the good shepherd and the kind Samaritan. Let us therefore vote down the motion.

The PRESIDENT. The question is on the motion of the delegate from Dauphin, (Mr. MacVeagh,) to go into committee of the whole, to insert the words "for educational purposes" after the word "nor," in the third line of the nineteenth section.

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

Mr. SHARPE. I second the call.

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

YEAS.

Messrs. Baer, Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Black, Charles A., Bowman, Carey, Clark, Curtin, Cuyler, Hunsicker, Knight, Lambertson, Lear, Littleton, MacVeagh, McClean, Michael, Palmer, H. W., Pughe, Purviance, John N., Sharpe, Stanton and Woodward—25.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Baily, (Perry,) Baker, Bartholomew, Beebe, Black, J. S., Boyd, Broomall, Brown, Buckalew, Calvin, Campbell, Carter, Corbett, Corson, Curry, Dallas, Darlington, Davis, De France, Dunning, Edwards, Elliott, Ewing, Funck, Gibson, Gilpin, Green, Guthrie, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Howard, Landis, Lawrence, Lilly, MacConnell, McCulloch, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Simpson, Smith, H. G., Smith, Henry W., Struthers, Van Reed, Wetherill, J. M., Wetherill, John Price,

White, David N., White, J. W. F. and Walker, *President*—75.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Bannan, Bardsley, Brodhead, Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Dodd, Ellis, Fell, Finney, Fulton, Heverin, Horton, Kaine, Long, M'Camant, Metzger, Runk, Smith, Wm. H., Stewart, Temple, Turrell, Wherry, White, Harry, Worrell and Wright—33.

Mr. J. S. BLACK. I move that the Convention now go into committee of the whole for the purpose of amending the article, by striking out the thirty-first section, and inserting in place of it the following:

"A member of the Legislature shall be guilty of bribery and punished as shall be provided by law who, after his election and during his term of office, shall solicit, demand, accept or consent to receive, directly or indirectly, upon any pretence whatever, for himself or any other person, from any candidate, person, association or corporation having a special or private interest in legislation, any gift or promise of money, property, office, or thing of value or personal advantage, or shall make any contract which gives him a private interest in the legislation of this State, or who after his election and during his term of office shall consent to become the agent, attorney or employee of any person, association, or corporation, knowing that such person, association, or corporation has or expects to have any private or special interest in the legislation of the State.

"All corporations holding franchises by grant from the State or doing business in the State, their officers, agents, attorneys and employees; all contractors or persons having an interest in contracts with the State; all officers, judicial, executive and ministerial, of the State and of the United States; all persons known to engage themselves for hire or reward to oppose or promote the passage of any measure by the Legislature; all candidates for any office in the gift of the Legislature, including candidates for the Senate of the United States, shall be presumed to have a special interest in legislation.

"No person having or presumed to have such interest in legislation shall address to any member of either House any private solicitation, speech or argument, orally or in writing, to influence his vote on any subject whatsoever. Both the

person offering such solicitation and the member who voluntarily and knowingly hears it shall be taken for criminal offenders and punished as the law may prescribe."

The PRESIDENT. The motion is before the Convention.

Mr. J. S. BLACK. Mr. President:—

Mr. DARLINGTON. I rise to a point of order. The gentleman from York has spoken once on this subject.

SEVERAL DELEGATES. No. No. Let him go on.

The PRESIDENT. The gentleman from York spoke yesterday on a proposition that was withdrawn. He has not spoken upon the proposition now submitted.

Mr. J. S. BLACK. Mr. President: One word of explanation is all I mean to say; and I will not be provoked to go beyond that. Some thoughts there are about this matter which struggle for expression, but they must be choked down, for the present at least.

The object of this amendment is manifest to all. I am sure that nobody misunderstands it. It springs solely out of a desire to stop the bribery and corruption which for a long time past has governed and shaped the laws and the elections of the General Assembly. There is no man on this floor so ignorant as not to know that this evil practice prevails there to an extent that disgraces the Commonwealth and shames every honest citizen in it. Is any man here so base as to wish that this may be continued? If any, let him speak, for him have I offended, and him will I continue to offend so long as I have a voice or a vote. But no such man is here; or if he is I do not know him.

I have not said and I do not believe that the section defining bribery was intended to encourage that crime. It was no doubt meant by all who voted for it to repress and punish it. But it is a failure, a manifest, flat, palpable failure. What is bribery? It is the crime that Bacon was guilty of—the offence that Samuel denounced when he was Judge of Israel. It is simply a gift, which blinds the eye and perverts the judgment. It is not a corrupt contract; the offence is consummated by the gift alone, or the promise of it, without any agreement or understanding whatever about the service to be rendered for it. But the receiver must be a public officer, and the giver must be a party who has an interest in his official conduct. A private individual may innocently take whatever is offered to him;

and a gift to a public officer is not a bribe if it comes from one who has no special or particular interest in any public act which the officer has power to perform.

But the section which I propose to amend, instead of defining bribery as it is defined everywhere else by all moralists and all jurists, makes two wide and most mischievous deviations in opposite directions. In the first place it does not require that the giver shall have an interest in the official act of the receiver; and secondly, it does require a contract express or implied. It includes acts that are innocent, and leaves guilt outside of its limits.

That a candidate or party interested in legislation may, under this section as it passed second reading, give or promise money to members of the Legislature with impunity, is too clear for argument. No honest judge or jury can convict him without proof of a compact, agreement, or mutual interest of both parties, that the money was given for the vote of the member. The indictment must aver that fact or else it is bad on demurrer, and the evidence must prove it clearly and fully or else the accused must be acquitted. It is a necessary and most important part of the *allegata* and *probata* in every case under this section.

It may be proved circumstantially, I admit. It may be implied from acts as well as words of the parties. But proved in some way it must be, and strongly proved too; for this provision must be most strictly construed. All possible presumptions in such a case are in favor of innocence.

The gentleman from Lycoming, (Mr. Armstrong,) from whom I expected better things, appears to think that the mere gift of money to a member of the Legislature would of itself imply and ought to imply a corrupt compact. I say no—a thousand times no. When you define a criminal offence you must prove every part of it. If you imply a contract from proof of the gift you make the words requiring a contract nugatory, and this violates a well known and fundamental canon of construction. But if he is right about this, if a jury would and ought to convict a man of bribery who merely gives money without any bargain, why should he make bargaining a part of his definition?

I insist that if this part of the definition were corrected another and most serious defect in it would still be left. A gift to

a member of the Legislature is not wrong if it be made by a person who has no particular personal or special interest in the legislation of the State. Therefore I propose to confine the operation of this penal section to those who have such an interest—corporations to whom legislative favor is as the breath of their nostrils; public officers who are always anxious for salary grabs; contractors who are greedy for more contracts and heavier pay, and all other classes that crowd the capital and plead for public plunder. Of course the paid agents of such people are to be included; when one of them offers money or any other thing of value to a legislator, and he takes it, he knows that he is bribed; and if he does not, the law ought to teach him.

The PRESIDENT. The gentleman's time has expired.

MR. ARMSTRONG. I hope the gentleman's time will be extended. ["Yes."]

MR. DARLINGTON. No, sir.

The PRESIDENT. The time of the gentleman from York has expired.

MR. ARMSTRONG. I move that his time be extended.

MR. DARLINGTON. How long?

SEVERAL DELEGATES. Ten minutes, of course.

The PRESIDENT put the question on the motion to extend Mr. J. S. Black's time, and declared that the ayes largely prevailed.

MR. MANN. How came such a motion as that to be in order?

SEVERAL DELEGATES. You are too late.

The PRESIDENT. No such motion has been heretofore objected to.

MR. MANN. It was objected to.

MR. AINEY and OTHERS. The objection comes too late.

MR. J. S. BLACK. Mr. President—

MR. D. N. WHITE. I rise to a question of order, that one objection is sufficient in this case.

MR. MANN. I raise another point of order, that debate cannot be stopped by interjecting motions for any purpose.

The PRESIDENT. Both the last points of order are sustained.

MR. J. S. BLACK. What is the result? Have I got the floor or am I down? [Laughter.]

The PRESIDENT. In the opinion of the Chair, the delegate from York has exhausted his time. The point of order is called, and I am compelled to rule him out.

Mr. MACVEAGH. I move to suspend the rules so as to extend the gentleman's time for ten minutes for this case only, *pro hac vice*. ["No." "No."]

Mr. MANN. I raise the point of order that no motion is in order at this time.

Mr. BROOMALL. Mr. President: I do not desire to interrupt the gentleman from York if he is to be allowed to go on, and I shall vote in favor of his going on; but if he is not, I desire to say a few words.

The PRESIDENT. The Chair would desire to allow the delegate from York to go on; but the Chair has been appealed to by so many to keep to the exact time that the Chair is determined to do it, no matter who may be affected.

Mr. VACVEAGH. But is not my motion in order?

The PRESIDENT. It is not.

Mr. BROOMALL. Then I desire to say that it was not without good reason that our forefathers separated the judicial and legislative functions. It is very rarely that a man can be truly eminent in the two capacities; and the gentleman from York is a most striking example of the truth of what I am stating. Almost, if not quite, unequalled, certainly not excelled, upon the bench, set him to draft a law, whether constitutional or otherwise, and he will produce a thing the worshipping of which is violating no commandment, because it has no similitude to anything in the earth below, in the waters under the earth, or in the heavens above the earth. [Laughter.]

This whole idea of the gentleman from York is based upon what I have heretofore characterized as a false and monstrous assumption, that our legislators are habitually dishonest. It is not true, and history will say that our wholesale denunciation of public men in this body will be productive of more mischief than will counterbalance all the good we have done, if the people shall adopt our work. The proposition itself is monstrous. Sir, would you live in a State that contained that [holding up the amendment] in its Constitution? Put a provision in your Constitution, if you will, that not all the legislators shall be selected from the penitentiary, but do not put in a proposition that pre-supposes that bad men will be selected even for their badness.

But let us look at the proposition itself, even supposing the object of it had been justifiable, and what is it? Why, the gentleman ought to have let it all be con-

tained in the first line, for it is all there with a single exception, an exception to which I will allude directly. Let him strike out the whole of his provision after the word "punished," in the first line, and he has all of it:

"Every member of the Legislature shall be guilty of bribery and punished."

That is it, because, read it as you may, you will not find a member of the Legislature not superhuman who can avoid bringing himself within this singular provision.

Mr. J. S. BLACK. Mr. President:—

Mr. BROOMALL. My time is limited.

Mr. J. S. BLACK. I hope the gentleman will excuse me. The member of the Legislature who is guilty of the offence —

Mr. BROOMALL. My time is too limited to allow the gentleman any further. I repeat, no member of the Legislature who is not superhuman can avoid bringing himself within its provisions. Why, how can a member of the Legislature prevent a person speaking to him orally in favor of the passage of some bill in which the speaker has some special interest, because we all have special interest in all the legislation of the State; each one his own. How can he prevent an inhabitant of a city from asking him to pass or not to pass a law relating to the taxation of real estate in that city, when that inhabitant is a real estate owner? And go over the whole and you will find—I have not time to do it—that what I say is true, that no member of the Legislature not superhuman can avoid bringing himself within the provisions of this amendment.

I said there was a portion of it that was not contained in the first line declaring that every member of the Legislature "shall be guilty of bribery and punished." There is something else and it is this, "no person"—I am omitting the unnecessary words—

"No person shall address to any member of either House any private argument, orally or in writing, to influence his vote upon any subject whatever, and the person who does that shall be punished as the law may prescribe."

There is that provision. You punish a legislator, necessarily because he is one, and if anybody speaks to him, even so much as to bid him "good morning," you punish him too for bribery! The proposition is a monstrous one. I trust the House will not engraft it on our Constitu-

tion. Do not let us increase the slanders that we are piling on our public men by any supposition as that which this gives rise to. Do not let us say that Pennsylvania legislators all ought to be in the penitentiary, for if there is necessity for this, then they ought to be there.

Mr. ALRICKS. Mr. President: I must confess that I am surprised at the course which has been adopted by certain gentlemen in this House. It is perfectly well understood that a member of a court or a juror in the box can be approached in but one way, and that is by the testimony that is taken in open court. A distinguished member of this Convention has attempted to place a legislator on the same footstool, for doing which he has been openly ridiculed by gentlemen of this House. To my great astonishment my colleague, (Mr. MacVeagh,) who is generally sound on questions of corruption, was the first to open the attack. I was surprised at that and at the distinguished chairman of the Judiciary Committee (Mr. Armstrong) following him in the same line; but most of all that a distinguished gentleman of this House, (Mr. Biddle,) whose praise is in the mouth of each member of it, so far, I think hastily, forgot himself as to tell us that the gentleman from York was laboring under a delirium on the subject of corruption. I wish, Mr. President, that every member of this House was, at least upon that question, equally so far anxious to save our Commonwealth that he would give this question a fair investigation, to make us equally over-zealous in a good cause.

Now, I do not admit perhaps the expediency of the proposition of the gentleman from York. It may be possible that we cannot carry it into effect; but, with regard to the propriety of it, no gentleman for a moment should hesitate. It merely proposes that persons who have business with members of the Legislature on matters of private legislation shall address them publicly, that they shall not importune them privately, but that what they say shall be heard, and an opportunity offered to answer it if their statements are not true. It is very true that in this country it is supposed that every person can speak to a member of the Legislature upon business that is before the House, and this proposition is certainly true if it is public business. But as I understand the proposition now before the Convention it is this, that a member of the Legislature who is guilty

of bribery shall be punished. The crime of bribery is defined, and it is very well defined, in the first division, and the second division says that no party who is interested in any bill before the House shall be permitted to do, what? Why, shall be permitted to support that bill, and I appeal to this Convention to know if they have not already incorporated a provision of this kind in our Constitution as it has been adopted.

Another division of this section is, that no attorney shall be a member of the House to represent the interests of his client. We have already said that no person who is interested in a bill should be permitted to vote upon that bill; and therefore I take it that the several divisions of the first section, as we find them before us, have been acted upon by the members of this Convention already. The second division is that "all corporations holding franchises by grant from the State or doing business in the State, their officers, agents, attorneys, and employees; all contractors or persons having an interest in contracts with the State; all officers, judicial, executive, and ministerial, of the State and of the United States" are to be considered as interested in special legislation. Now, you can very well understand why a railroad company subject to a tonnage tax should not have an attorney in the Legislature. You can understand that, and upon the same principle no other corporation interested in a like question ought ever to be represented by their attorney in the Legislature. You can very well understand why a contractor under the Commonwealth who has done work for it and who trumps up claims for a larger amount than he is entitled to under his contract would be interested in legislation upon that subject, and should not be allowed to participate in legislation.

Now, as I understand the proposition of the gentleman from York, the only purpose of offering this is that if these parties want any special legislation they must ask for it *publicly*. They are not to get it by button-holing the members of the Legislature, but they must ask for it in such a way that they can be replied to, and if they are right, they can have their rights granted, and if they are wrong they should have their claims rejected. They must make their application publicly when they can have an opportunity to be answered.

The first division merely describes the crime of bribery, and the second division defines the persons who are interested in what is called private legislation. Then the third division is, that no person having a private interest in legislation has a right, *privately*, to influence the members of the body in which the legislation is pending. That is all there is of it, but I must confess, after the manner in which the proposition has been received by this House, that I would prefer the gentleman from York should withdraw it instead of taking a vote on it, as it is perfectly evident that it will not receive the approbation of the House. But I do protest against the manner in which it has been received here, and I protest against the charge that the proposition is a slander upon the Legislature. On the other hand, it is an attempt to put the Legislature of the country above the approach of those who are interested in private legislation.

Mr. MACVEAGH. Will my colleague allow me to ask him a question?

Mr. ALRICKS. Certainly.

Mr. MACVEAGH. Does he suppose that the operation of this amendment would put a member of the Legislature upon the same footing as a judge or a juror?

Mr. ALRICKS. It makes a member of the Legislature free from any importunity of interested parties except in open committee or open session.

Mr. MACVEAGH. Does not my colleague know that the section drafted by the late Judge King, one of the authorities on criminal law in this State, giving that protection to court and jurors, is precisely like the section reported by the Committee on Legislation?

Mr. ALRICKS. Yes, sir.

Mr. AINEY. I desire to ask for a division of this proposition.

The PRESIDENT. It cannot be divided.

Mr. AINEY. Then I desire to ask if one part of it can be stricken out. I would like to vote for all but the latter part.

The PRESIDENT. It cannot be divided, it must be voted upon entire.

Mr. AINEY. Then I would ask my friend from York to modify his amendment so as to leave out the latter part. I would like very much to vote for the first part of it.

The PRESIDENT. The question is upon going into committee of the whole upon the amendment proposed by the gentleman from York.

Mr. HAY. On that question I call for the yeas and nays.

Mr. MACVEAGH. I second the call.

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

YEAS.

Messrs. Alricks, Baily, (Perry,) Black, J. S., Brodhead, Ewing, Gibson, Gilpin, Guthrie, Hanna, Hay, Hemphill, M'Clean, M'Culloch, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Russell, Smith, H. G. and Van Reed—20.

NAYS.

Messrs. Ainey, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Bartholomew, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Buckalew, Calvin, Campbell, Carey, Carter, Clark, Corson, Curry, Curtin, Cuyler, Darlington, Davis, De France, Edwards, Elliott, Funck, Green, Hall, Harvey, Hazzard, Howard, Hunsicker, Knight, Lamberton, Landis, Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'Michael, M'Murray, Mann, Mantor, Minor, Mitchell, Newlin, Niles, Patterson, D. W., Porter, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, John Price, White, David N., White, J. W. F. and Walker, *President*—70.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Baker, Bannan, Bardsley, Brown, Bullitt, Cassidy, Church, Cochran, Collins, Corbett, Craig, Cronmiller, Dallas, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Heverin, Horton, Kaine, Littleton, Long, M'Camant, Metzger, Mott, Patton, Pughe, Reed, Andrew, Ross, Runk, Smith, Wm. H., Temple, Turrell, Wherry, White, Harry, Woodward, Worrell and Wright—43.

Mr. ALRICKS. I now move to go into committee of the whole for the purpose of striking out the nineteenth section, and inserting in lieu of it the following:

"No appropriation shall ever be made by way of gratuity to any ecclesiastical, denominational or sectarian institution, corporation or association, nor shall any appropriation (except for pensions or bounties for military service) be made to any person or community whatever."

I will call the attention of the Convention to the fact that the nineteenth section as it stands contains some very offensive words, "charitable, educational or benevolent purposes." It provides that

no appropriations shall be made for such purposes. The Convention will find on the desks of members, in the report of the Board of Public Charities, at page sixteen, the amendment which I have offered as a substitute for section nineteen.

I have been requested by several members of the Convention to offer this as a substitute for the section that we have before us. It commends itself to my attention, and I should be very much pleased if the House would unanimously agree to go into committee of the whole for that purpose. They will find that it embraces all the provisions that are contained in the nineteenth section, without those offensive words, which are really useless as they are found there, because the section would just express the same sense and meaning without those words as it does with them. The only purposes for which appropriations could be made to denominational or sectarian institutions would be for charitable, educational and benevolent purposes, and therefore there is no propriety in using these words. I offer this as a substitute for that section.

Mr. HUNSICKER. Then the only purpose is to conceal our meaning, and to conceal the section itself. It is confessedly so obnoxious and so distasteful that we are afraid to allow our real meaning, and we will therefore sugar-coat it by adopting something else.

Mr. EWING. Mr. President: I do not wish to prolong this debate, and merely wish to call attention to this proposed amendment. It is entitled to attention only because of the honorable gentleman who has submitted it here, and the very respectable gentleman (the president of the Board of Public Charities) who has proposed it in the printed pamphlet; but I think it is offered in entire misapprehension of the meaning of other sections of the Constitution. The first part of the amendment offered forbids appropriations to an ecclesiastical or sectarian institution for religious purposes. That is already prohibited by section three in the "Bill of Rights," and has no proper place here.

What we want to prohibit here, by the section under consideration, is simply those powers which experience, in our own and other States, has shown are likely to be abused in their exercise; and experience shows that appropriations to denominational institutions, under the pretence and form of being for educational or charitable purposes, is the only way in

which any attempt is made to appropriate money to those institutions. We have already put that in. Now, if we adopt the amendment offered by this gentleman, *it would prohibit an appropriation for any purpose whatever*. If, for instance, the State should buy a piece of property from some denominational corporation, this proposed amendment would prohibit the appropriation of any money to pay for it. That was considered carefully in the Committee on Legislation when this section was drawn up, and it was worded so as to avoid a difficulty of that sort, and the gentleman proposing this amendment certainly has not considered the effect of the words and the effect of other sections of the Constitution.

The PRESIDENT. The question is on the motion of the gentleman from Dauphin (Mr. Alricks.)

The motion was not agreed to.

Mr. J. PRICE WETHERILL. I move that the Convention go into committee of the whole for the purpose of amending section eighteen as follows: Strike out in the fourth line all after the word "except," and insert "upon the special recommendation of a board of commissioners appointed by law to visit and inspect such institutions," so as to make the section read:

"No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except upon the special recommendation of a board of commissioners appointed by law to visit and inspect such institutions."

I desire to say a word on this amendment, and in the first place I submit that I offer it at the instance of the president of the Board of Public Charities of this State, and therefore I do not think we should take a vote upon it without some respectful consideration. It has been thought of by that body, and they understand better perhaps than we what are the wants of the State in this respect.

Now, we say in the section, "except by a vote of two-thirds of all the members elected to each House." We admit that there should be legislation, but we cripple all the appropriations for charitable or educational institutions not under the absolute control of the Commonwealth by a vote of two-thirds of the members. Why do we do so? In order that we

may have safety and security in these appropriations; and is not the amendment which I offer a much better way to secure that result?

Here we have a commission appointed by law for this purpose, having charge of the educational and charitable institutions of the State, and do not let us make an appropriation for institutions not under the control of the State except upon a report of this body. Can there be a fairer proposition, and will not a better result be secured if we adopt it?

Now, I ask the members of this Convention to be careful in their action, because they may not be aware of the number of charitable and educational institutions that are under the absolute control of the State. Only four institutions in this State are under its absolute control, and yet the State appropriated last year upwards of \$500,000. Those four are the two penitentiaries and the two lunatic asylums. Now, we throw out the blind and the deaf and the idiotic and all the other charitable institutions of the State and put them, when they ask the Legislature for a just and fair appropriation, before a body where they must get the votes of two-thirds of the members. It is not right to subject them, I think, to such a restriction as that. See how it may work. We have a corrupt Legislature, and these appropriations may be so difficult to secure that the end which we desire may not be obtained.

Now, sir, this is a safe amendment, this is a proper amendment, and I do hope it will receive such consideration at the hands of this Convention as its merits deserve.

Mr. MANN. Mr. President: I hope this amendment will not prevail. It simply proposes to put into the hands of the Board of Public Charities appropriations by the Legislature. That of itself is a reflection upon the Legislature. But the only argument in favor of this proposition is that there are certain great charities which may be endangered by this requirement of a vote of two-thirds. Mr. President, I undertake to say that the institutions for the deaf and dumb and for the other noble and great charities of the State can get a unanimous vote for their appropriations. I never heard of a vote against an appropriation for those charities; and this section is not aimed at such institutions and will not affect them. This is simply to put a stop to the appropriations to private charities which

every Governor for the last twelve years has had to beg the Legislature not to make. That is all this section is intended to cover. It will not affect the great charities referred to by the gentleman from Philadelphia (Mr. J. Price Wetherill.)

The PRESIDENT. The question is on the motion to go into committee of the whole to insert the words "upon the special recommendation of a Board of Commissioners appointed by law to visit and inspect such institutions."

Mr. J. PRICE WETHERILL. I call for the yeas and nays.

Mr. BIDDLE. I second the call.

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

YEAS.

Messrs. Biddle, Bowman, Carey, Darlington, Hunsicker, MacVeagh, M'Michael, Patterson, D. W., Sharpe, Stanton, Stewart, Struthers and Wetherill, J. Price.—13.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Bigler, Boyd, Broomall, Brown, Buckalew, Calvin, Campbell, Carter, Clark, Corbett, Corson, Curry, Cuyler, Dallas, Davis, De France, Edwards, Elliott, Ewing, Funck, Gilpin, Green, Guthrie, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Howard, Knight, Lamberton, Lawrence, Lilly, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Minor, Mitchell, Newlin, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Portex, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Ross, Russell, Simpson, Smith, H. G., Smith, Henry W., Van Reed, White, David N., White, J. W. F., Woodward and Walker, President.—71.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Black, Charles A., Black, J. S., Brodhead, Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curtin, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Gibson, Heverin, Horton, Kaine, Landis, Lear, Littleton, Long, M'Camant, Metzger, Mott, Niles, Palmer, G. W., Pughe, Read, John R., Reed, Andrew, Runk, Smith, Wm. H., Temple, Turrell, Wetherill, J. M., Wherry, White, Harry Worrell and Wright.—49.

MR. PARSONS. I move to go into committee of the whole for the purpose of offering the following amendment as a new section ;

"A member of the Legislature shall be guilty of bribery and punished as shall be provided by law, who, after his election and during his term of office, shall solicit, demand or accept, directly or indirectly, upon any pretensé whatever, for himself or any other person, from any candidate, person, association or corporation having a special or private interest in legislation, any gift or promise of money, property, office or thing of value, or shall make any contract which gives him a private interest, in the legislation of this State, or who after his election and during his term of office, shall consent to become the agent, attorney or employee of any person association or corporation, knowing that such person, association or corporation has any private or special interest in the legislation of the State.

"All corporations holding franchises by grant from the State or doing business in the State, their officers, agents, attorneys and employees ; all contractors or persons having an interest in contracts with the State ; all officers, judicial, executive and ministerial of the State and of the United States ; all persons known to engage themselves for hire or reward, to oppose or promote the passage of any measure by the Legislature ; all candidates for any office in the gift of the Legislature, including candidates for the Senate of the United States shall be presumed to have a special interest in legislation."

MR. DARLINGTON. I wish to inquire whether that is in order. We have just voted that we would not put that in.

THE PRESIDENT. It is not the same proposition. A portion of the former proposition has been stricken out.

MR. PARSONS. The amendment that I propose omits all after the word "legislation," in the printed amendment of the gentleman from York, and also strikes out some meaningless words in the first part of the section.

MR. MANN. I do not desire to make any speech. I simply wish to say that this proposition, if adopted, supplies the place of the thirty-first section, and the motion it seems to me ought to be to strike out the thirty-first section and insert this in lieu of it. I merely make the suggestion.

MR. PARSONS. I have no objection to that ; but it was suggested by several

members that they desired the thirty-first section to remain, and hence I offered this as an additional section. It can do no harm, however, if both are in.

MR. W. H. PALMER. Mr. President : I voted for the original proposition of the gentleman from York (Mr. J. S. Black) and I intend to vote for this which is a portion of it. It seems to me that a very casual consideration of this proposition will satisfy gentlemen that there is nothing in it to be afraid of, but, on the contrary, that its provisions may be very beneficial. It does not, as now offered, conflict in any way with the thirty-first section or with the thirty-second section. It provides for quite a different class of subjects. It provides, first, that no member of the Legislature shall receive a gift from a party who is interested in legislation, during his continuance in office. Is there any objection to that proposition ?

It provides, secondly, that no member of the Legislature shall be personally interested in any bill or legislation on which he is called upon to act. Can there be any objection to that proposition ?

It provides further that no member of the Legislature, shall while in office be the attorney or agent for any corporation that seeks legislation. Can there be any objection to that proposition ? Is it right that the halls of our General Assembly should be crowded with the agents and attorneys of the corporations of the State ? Ought not the men who are sent there to be free to do the thing which is right ? Ought they not hold the same attitude towards the people of this Commonwealth that the judge and the jury hold towards the cause that is on trial before them ? Ought they not to be free and unbiased by any personal interest, or by any interest as agent or attorney for anybody, to legislate upon the great subjects committed to their charge, freely, purely and with an unbiased mind ? These three conditions are all that are made by this amendment.

The thirty-first section goes to the making of corrupt contracts by members of the Legislature. That is well enough ; but in my estimation and in the estimation of the mover of this amendment it is necessary to go further in this direction and to prohibit members of the Legislature from receiving gifts from interested parties. Why should members of the Legislature receive gifts ? Ought they to receive gifts ? Why do interested parties put gifts into the hands of members of the Legislature ? Is it for any good pur-

pose? Is it not that their official action may be influenced thereby? Is it not that the fair judgment of the man who is sent to represent the people shall be turned aside from justice and right? Is not a gift always really a bribe, and ought the member to be allowed to receive a bribe? I think not; and I am sure there is no gentleman here who will advocate the proposition that it is right for members of the Legislature to receive bribes. That is the first branch of this proposed amendment.

The second is that a member shall not be individually and personally interested in matters upon which he is called to legislate. That is already provided for perhaps in other parts of this Constitution. There can be no doubt about the principle. Why, sir, who are these members of the Legislature, and what are they sent there for? To stuff their own pockets with money? To legislate for their own advantage? Not at all; but to represent their constituents, and to enact such laws as shall be necessary for the just and proper government of the State; and in order to be able to do this they must go with pure and unbiassed minds, and be so hedged about by law as to be unapproachable.

One other subject is alluded to in this amendment. It provides that certain classes of persons shall be presumed to have an interest in legislation. This portion of the amendment is based upon the past history and experience of the State. The classes of persons mentioned are corporations, their agents and attorneys, officers of the State, and candidates who are seeking offices in the gift of the Legislature. The experience of the past has taught us that from these classes of persons the great tide of corruption has flown. If there has been bribery and corruption in the Legislature, it has been largely carried on by corporations, their agents or attorneys, and by persons who have sought offices in the gift of the Legislature, and therefore it would seem to be right to single out these classes and say to them: "You do not dare confer gifts on the members of the Legislature, because you are presumed to have an interest in legislation." That is all. Would it be a great calamity if members of the Legislature were debarred from receiving gifts from the rich corporations of the State? Would it be a great calamity to the people if the members of the Legislature were not allowed to receive gifts

from candidates for the United States Senate? It does not seem to me that it should be regarded as such. On the contrary, I believe it would be for the interest of the people of the State and in the interest of purity and good government, to debar the members of the Legislature from receiving gifts from any of these classes of persons.

Now, sir, this is all that is meant by this amendment, and I submit that it does not trench upon the thirty-first section; it is new matter; it is proper matter to be inserted. It is only endeavoring to carry out one petition of that great prayer which I hope, we all offer: "Lead us not into temptation."

Mr. HAZZARD. Mr. President: It seems to me that the section, as now proposed, is eminently right, with one exception. I do not see how it would be possible to retain the provision that no member of the Legislature shall be interested in the acts to be passed by the Legislature. Suppose there is a general provision in regard to banks, then no president of a bank, no cashier, no stockholder, no person interested in that business at all, would be a proper legislator. Suppose a law was about to be passed in regard to railroads; he cannot be a director or a stockholder; he could scarcely be a brakeman or a telegrapher, or be in any way immediately concerned in that business. It seems to me that that provision would prevent a great many persons from holding the office of a member of the Legislature. This thing of being interested in laws in general of course could not apply because we are all interested in the passage of proper and correct laws; but the provision will be too general in its terms. It appears to me, if adopted as printed in this proposed amendment, it would prevent a great many persons exercising that office at all.

If that be stricken out, the other provisions would address themselves to my judgment as very proper, because in this matter of gifts, although they may not directly be considered as a bribe, they are in the nature of a bribe; for the persons making gifts to men acting in this capacity of course expect that the receiver will feel kindly towards the persons bestowing those gifts. And the other provision of interest seems to me almost to put a provision in this Constitution that a person shall not be interested in any way in a question before the House.

The yeas and nays were required by Mr. H. W. Palmer and Mr. Parsons, and were as follow, viz :

Y E A S .

Messrs. Ainey, Alricks, Baer, Baily, (Perry,) Baker, Beebe Black, J. S., Campbell, Ewing, Funck, Gibson, Guthrie, Hay, Hazzard, Hemphill, Heverin, Howard, Knight, M'Cleane, Mitchell, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, Samuel A., Smith, Henry W., Struthers, Van Reed and Woodward—30.

N A Y S .

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Barelay, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Brown, Buckalew, Calvin, Carey, Clark, Corbett, Corson, Curry, Darlington, Davis, De France, Edwards, Elliott, Green, Hall, Harvey, Lamberton, Lawrence, Lilly, MacConnel, M'Michael, Mann, Mantor, Minor, Mott, Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Reynolds, Rooke, Ross, Russell, Sharpe, Simpson, Stanton, Stewart, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, J. W. F. and Walker, *President*—53.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Bardsley, Bartholomew, Brodhead, Bullitt, Carter, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curtin, Cuyler, Dallas, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Gilpin, Hanna, Horton, Hunsicker, Kaine, Landis, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Metzger, Niles, Pughe, Read, John R., Reed, Andrew, Runk, Smith, H. G., Smith, Wm. H., Temple, Turrell, Wherry, White, Harry, Worrell and Wright—50.

Mr. S. A. PURVIANCE. I move to go into committee of the whole for the purpose of striking out sections thirty-one and thirty-two, and substituting therefor the following :

"A member of the General Assembly who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, or their agents, having an interest in legislation, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment or of personal advantage, or promise thereof, during his term of office or thereafter, or any person having an

interest in legislation who shall, directly or indirectly, offer, give, or promise any money or thing of value, testimonial, privilege or personal advantage to a member of the General Assembly during his term of office, or thereafter, shall be guilty of bribery and be punished in such manner as shall be provided by law."

I wish to say, Mr. President, that if we are to have a bribery section of any kind, it seems to me we ought to endeavor to condense it as far as possible. In this proposition I have changed the length of these two sections from two hundred and thirty-six words down to one hundred and twenty-three. Besides it covers contracts as well implied as express ; it covers gifts as well made after as before the services performed. It embodies, to a certain extent, the idea of the distinguished delegate from York, (Mr. J. S. Black,) because certainly there is a loophole in the sections as they stand that allows a party to escape unless there is positive proof of the existence of a contract, express or implied ; and in a trial of a case look at it ; suppose a member of the Legislature is under trial ; a witness is called on the stand, and who is that witness? The party who it is alleged has made the offer of the bribe. That party swears that he never made any contract of any kind, either express or implied, and that he never made use of a single sentence from which an inference could be drawn of a contract. Why, sir, would there not be an acquittal in a case of that kind? Certainly, and hence it is that unless you cover the case of guilt you have nothing in the sections of any validity whatever.

Mr. BAER. I call the attention of the Convention to the fact that the proposition of the gentleman does more than it pretends to do. It also excludes executive and judicial officers. Section thirty-one as it stands provides against bribing executive and judicial officers, and the amendment of the gentleman from Allegheny leaves that out altogether.

Mr. S. A. PURVIANCE. That is purposely left out because we are now passing a section in relation to the Legislature.

Mr. BUCKALEW. Another marked difference between the sections, as we have them before us, and the amendment of the gentleman from Allegheny, is that he has accepted one of the leading features of the amendment of the member from York, which will require, upon a prosecution, proof that the money was paid by a party who had a pecuniary interest in

the legislation; so that if it is paid by an agent, by a man who has, himself, no pecuniary interest in it, and you cannot trace it any further, you will fail to convict him. That portion of it would simply embarrass the prosecution, in certain cases, and enable defendants to escape. It would cast on the Commonwealth an additional burden in making out the offence against the party accused.

Now, sir, my idea is that it makes no difference whether the party who pays the money to corrupt a member has an interest himself or not. If you have the fact of the payment of the money, the corrupt influence is exercised on the member, and the offence should be held to be complete; the Commonwealth should not be compelled to seek out some pecuniary interest in the party that corrupts the member.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. S. A. Purviance.)

Mr. S. A. PURVIANCE. I call for the yeas and nays.

Mr. WOODWARD. I second the call.

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

YEAS.

Messrs. Alricks, Beebe, Black, J. S., Boyd, Brown, Calvin, Carter, Clark, Corson, Edwards, Ewing, Funck, Gibson, Gilpin, Hemphill, Heverin, Howard, Hunsicker, Knight, Lamberton, M'Culloch, Mitchell, Newlin, Palmer, G. W., Parsons, Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Ross, Russell, Smith, Henry W., Struthers, Van Reed, Wetherill, J. M., White, David N. and Woodward—39.

NAYS.

Messrs. Achenbach, Alney, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Bidle, Bigler, Black, Charles A., Buckalew, Campbell, Carey, Corbett, Curry, Darlington, Davis, De France, Dunning, Elliott, Green, Guthrie, Hall, Harvey, Hay, Hazard, Landis, Lilly, MacConnell, M'Clean, M'Michael, Mann, Mantor, Minor, Mott, Niles, Patterson, D. W., Patton, Porter, Purman, Reynolds, Sharpe, Simpson, Smith, H. G., Stanton, Stewart, Wetherill, John Price, White, J. W. F. and Walker, President—51.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Bardsley, Bowman, Brodhead,

Broomall, Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curtin, Cuyler, Dallas, Dodd, Ellis, Fell, Finney, Fulton, Hanna, Horton, Kaine, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Murray, Metzger, Palmer, H. W., Pughe, Runk, Smith, William H., Temple, Turrell, Wherry, White, Harry, Worrell and Wright—43.

Mr. EWING. Mr. President: I move to go into committee of the whole for special amendment by striking out section thirty-six, which is the last section of the article as printed. If the members will turn to it they will see that that section refers to the appointment of inspectors of merchandise, &c. The history of that is about this: The Committee on Legislation in the first place reported a section—twenty-five of their report—prohibiting the Legislature from creating offices for the inspection, weighing, or gauging of any merchandise for commercial purposes, but providing that they might pass laws for the protection of the health and safety of the public, and for weights and measures. After discussion the Convention, in committee of the whole, thought that that was a dangerous restriction and struck it out. Afterwards, at the close of the discussion of the article, in the hurry of the moment the section that is now in was offered and adopted without any debate and without consideration. So I think on second reading it was not discussed. Now it is much more restrictive than the section which was stricken out on full consideration. The first part of it directs that the Legislature shall empower the Secretary of Internal Affairs to provide a system of weights and measures for each municipality. That the Legislature has power to do now and it has already exercised that power, I believe, very satisfactorily.

The next portion of the section provides that each municipality, which I suppose is intended to include each county and each city, and perhaps each borough and township in a county, may provide an officer for sealing weights and measures, and inspecting merchandise and things of that sort. There is no necessity or propriety in that, and it would lead, I think, to great confusion.

The last part of it prohibits the State from appointing any officer for the inspection of any merchandise or live stock. I imagine that that provision will give trouble. For instance, it has been found necessary, to protect the public from dan-

gerous compounds for illuminating purposes, to pass a law authorizing inspectors of carbon oil to be appointed for that purpose. That is a State officer appointed, I believe, for each county, or at least for each county having any considerable manufacture or sale of such things. It would be almost impracticable to carry that out to advantage under this section. For instance, in Allegheny county the State could not appoint an officer for the whole county, but under this section there might be at least twenty, and I think fifty, such officers appointed for the same county. If, for instance, some cattle disease should occur in other States and it should be necessary to prevent the importation into the State of diseased cattle, it certainly would be necessary then that the State should appoint some inspector of cattle. There are a great many such cases that might occur. It strikes me that this is legislation of a bad character, and it should not be in the Constitution.

Mr. DARLINGTON. Allow me to ask the gentleman from Allegheny whether there is not a set of weights and measures, a separate one, in every county of the Commonwealth sent from Harrisburg?

Mr. EWING. I believe I stated that there is, and there is no difficulty on that subject and no necessity for a constitutional provision.

Mr. FUNCK. I desire to ask the gentleman whether the Legislature has not now full control over this matter without any constitutional provision on the subject?

Mr. EWING. Certainly, sir. That is what I say, that the Legislature has full power and has exercised it. Now, it would be entirely right to have a provision that would prevent the Legislature from providing inspectors for merely commercial purposes, who should weigh and gauge, &c., in order that commodities could be bought and sold in the cities.

I would be willing that that restriction should go in, but this section goes much further than that, and in addition provides that each municipality may provide its own officers for all those purposes, and I imagine we should have a much worse state of affairs and many more officers created for the mere purpose of getting fees and emoluments than were created when this power was under the control of the Legislature. I hope the section will be stricken out.

Mr. J. PRICE WETHERILL. I think the delegate from Allegheny (Mr. Ewing) is laboring under a mistake when he says that this section was adopted without full consideration. There was a resolution in regard to this matter offered and referred to a committee, and the proposition was reported favorably by the committee. It was afterwards acted upon in committee of the whole, passed that committee, passed on second reading, and it is now before the Convention on third reading; and each time it received the fullest and fairest discussion that it was possible to afford to it.

Now, sir, what is the condition of things at the present time? In this city we have placed upon us by the Legislature at Harrisburg certain inspectors of merchandise, and I say in my place that the majority of them know nothing whatever about the articles they inspect. We have an inspector of flour, if you please, who knows nothing whatever of the character of flour; we have a grain measurer who knows more about lumber than he does about grain. We have through the entire list of officers men placed upon the mercantile and manufacturing interests of this city who are entirely ignorant of the quality of the articles they are to inspect, and there is no benefit whatever derived from their inspection, and it is simply a tax upon the merchant and a tax upon the consumer. I some time ago could enter certain manufacturing establishments in this city and find brands of the State inspector ready to be placed upon empty barrels before a single pound of the article they were to contain went into them. The whole thing is a farce and a fraud, and for that reason I hope this section will be retained. It is not exactly what we ought to secure, but it does remove the appointment of these officers from the Legislature and places them under the different municipalities throughout the State, thereby bringing the appointing power nearer to the merchants and manufacturers who suffer from this system, and thus they can more readily secure justice at the hands of their own municipal authorities than at the hands of the State authorities, the State Legislature knowing little and caring less about such matters.

Sir, this system is a tax upon the commercial and manufacturing interests of this city and this State. It allows these inspectors, these Tight-Barnacles, these

men who desire to feed upon the commercial interests of the city and of the State, to receive pay without giving any services of value therefor. I need not allude to the instance of a politician from this city going to Harrisburg, when he found that the office he had secured was worthless, when he found that the inspection of salt fish, if you please, was of no account to put money in his pocket, and for no other reason he endeavored to obtain an increase of the tax upon that business so as to make the place of inspector profitable to him. It was a shameful spectacle, and I do hope we shall not have any such scene re-enacted, and if you give us this section I am sure we shall not.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Ewing) to go into committee of the whole for the purpose of specially amending the article by striking out section thirty-six.

Mr. LILLY. There is a part of the section that I think ought to be amended rather than to strike out the whole of it. That part of it which says that a set of weights and measures shall be furnished to each county and municipality of course includes the various townships and boroughs. It is very well understood that the office of sealer of weights and measures in a rural county is an office of very little value; but if you cut it up into a township and borough office no one will take it. I am willing to vote to amend the section, but I do not wish to strike it out altogether.

The PRESIDENT. The question is on the motion of the delegate from Allegheny.

The motion was agreed to, there being on a division, ayes, thirty-seven; noes thirty.

The Convention accordingly resolved itself into committee of the whole, Mr. Boyd in the chair.

The CHAIRMAN. The committee of the whole have had referred to them article number three on legislation, for the purpose of striking out section thirty-six. That section is stricken out and the committee will rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Boyd) reported that the committee of the whole had, according to the order of the House, stricken out the thirty-sixth section of the article.

Mr. FUNCK. Mr. President: I move that the Convention go into committee

of the whole for the purpose of adding to the article as a new section the following:

"That lobbying before either branch of Legislature is hereby declared to be a felony, to be punished as may be prescribed by law; and any person not a member of either branch so continuously engaged in influencing or attempting to influence legislation as to become a professional lobbyist, shall be guilty of the offence aforesaid."

This, Mr. President, may be a novel subject to bring before a Constitutional Convention; but I am free to say that all the corrupt legislation which has disgraced this Commonwealth had its origin in the third House. This proposition is a direct blow at that body; it makes their occupation criminal, and is calculated to free the Legislature from their presence and influence.

I do not desire to make a speech in advocacy of the proposed section, because I am opposed to the consumption of the time of this Convention in needless discussion. The section is brief in itself; I think the idea is clearly expressed; and the members of the Convention can fully form their opinions upon it without any speech from me in support of it. I hope it will be adopted. I believe it will have a salutary influence on the Legislature.

The PRESIDENT. The question is on the motion of the delegate from Lebanon.

The motion was not agreed to.

Mr. DUNNING. I move to go into committee of the whole for the purpose of amending the tenth section by adding at the end of the seventeenth line the words:

"Except in counties containing not less than one hundred and sixty thousand inhabitants and an area of not less than twelve hundred square miles."

I regret, sir, to trouble the Convention again on this question, and I would not do so were it not for the importance that attaches to it, especially with the people of the county which I have the honor to represent. I know the formidable opposition that I have to encounter here and have had to meet from the time this question first came before the Convention up to the present moment.

I want it understood that the proposition I have submitted is one that does not affect any other county in this Commonwealth. I called attention yesterday to the condition of affairs that existed under the section we have passed to second reading, relative to the division of coun-

ties, providing that no county in this Commonwealth shall hereafter be divided so as to leave less than four hundred square miles or less than twenty thousand population in the old county. Now, sir, I propose by this amendment to divide the only county that is susceptible of division under that provision, and I am going to appeal to those who are in favor of other divisions to do justice to this proposition. It does not in any manner affect them under a general law, if a general law shall be passed by the Legislature providing for the division of counties. The adoption of this proposition cannot affect those smaller counties in any manner or in any particular. I call the attention of delegates to the fact, that there is but county in the State of Pennsylvania that exceeds in area of territory twelve hundred square miles, and that is Luzerne county. The next county that approximates to it is Clearfield. Clearfield county has eleven hundred and ninety square miles. I refer gentlemen to Smull's Hand-Book, page one hundred and thirty-five, where they will find the area of every county in this Commonwealth, and I say to delegates on this floor, there is not one other single county that reaches twelve hundred square miles, while Luzerne county has fourteen hundred square miles.

This division of section ten provides that no special law shall be passed for the division of a county. My amendment will not interfere with the regulation of a general law, but it provides that no special law shall be passed for the division of a county that has not at least one hundred and sixty thousand population and one thousand two hundred square miles; and I want to repeat, and I want my friends who are in favor of the division of counties having a smaller territory, to understand that we do not interfere in any manner with the passage of a general law which shall reach their case.

I appeal to the good sense and to the justice of this Convention to give us this proposition. There is no other county in the Commonwealth that stands in the same condition that we do.

Yesterday when it was said to me that we could go to the Legislature and get a general law passed, and when it was said we could go to the courts of the county to fix how our county should be divided, I stated that the county would never be divided under that state of affairs, I repeat

that remark, and every gentleman here is aware that I also said that when you go to the Legislature and ask for a division of any county, you find the Legislature made up very generally, as you find this body made up, of members from counties which are opposed to any division. Hence, members of the Legislature will vote just as members of this Convention did yesterday, against any division, and any general law that may be passed will be framed in such a manner as to preclude the possibility of any division of a county. All we ask for Luzerne is single-handed justice. Other counties have been divided and sub-divided when they had much less territory and much less population and less business interest. We do not propose to touch the business of any other county in this Commonwealth; but I ask in fair even justice to Luzerne county that this Convention will give that county similar privileges to those that have been obtained by other counties. We ask for nothing except what other counties have had and what we would be willing to give to any other county in the State.

MR. PUGH. I would like to make some remarks upon this question. It is not often that I trouble the Convention, and this is a subject upon which I would like the attention of every member present, because it is vital to one of the most important counties in this State. We are not here to divide a county, and I disagree with my colleague in talking about division. We do not want the division, but we do want this, that if the people of this county by a vote determine to divide, they shall have the power to do it; but the way that this section is written now—and it was cunningly devised, and I know how it was done—it will be impossible to divide any county, for this was prepared to prevent any division of the county in contradistinction to the very enactment in the article on new counties that is engrafted on our Constitution, and has passed second reading.

According to the census of 1870, there was invested in mining alone in Luzerne county, capital to the extent of \$26,000,000. The product of these mines for one year was 9,519,298 tons. Valued in dollars delivered in the cars at the mines, \$22,325,591.

Men employed above ground.....	7,772
Boys employed above ground.....	1,670
	9,342

Amount brought forward.....	9,342
Men employed under ground.....	18,589
Boys employed under ground.....	1,985
	<u>18,574</u>
Total.....	<u>27,916</u>

And I can say here, that for intelligence, industry, sobriety and heroism, the miners and laborers of Luzerne county will compare favorably with any other class of laborers in this or any other country.

The amount of wages paid in one year to this vast army of miners and laborers was \$13,269,206.

There are in the United States 152,000 miners of coal, iron and precious metals. Luzerne county contains near one-fifth of the whole mining population of all the States.

Schuylkill county is a grand old mining county, and the development of her vast mineral wealth has had a great influence in building up this magnificent city until she has become one of the greatest manufacturing emporiums of the world. In order to bring the subject-matter of the mining business of Luzerne more forcibly before your minds for mature consideration, allow me to state that the capital invested in the county of Schuylkill, according to the census of 1870, was \$17,151,985; and the products of her mines was 3,860,144 tons, the valuation of which, at the mines, was \$10,289,000:

Men employed above ground.....	3,187
Boys employed above ground.....	2,094
	<u>5,281</u>
Men employed under ground.....	8,611
Boys employed under ground.....	386
	<u>9,497</u>
Total.....	<u>15,778</u>

Wages paid for mining and labor for one year, \$6,039,774.

Luzerne county produced 5,659,154 tons more of coal than Schuylkill in one year; paid more for mining and labor, \$7,229,432; and employed 12,138 more men and boys to do this labor. This comparison between the sister counties will show you at a glance the vast mining interests of Luzerne county. The development of her mineral resources is still increasing in capital and production. I know of one party now that have made recent purchases of valuable coal lands in our county of over ten thousand acres, and have invested or are about to invest in their development over five million of dollars, and intend to send to market east and west over the Erie railroad one million and a half tons annually. These exten-

sive mining operations will, in a great measure, be developed in the northern section of Luzerne. When this new enterprise shall get into full operation it will necessarily increase the industrial interests in population some ten thousand to fifteen thousand, and add to the wealth of the county millions of dollars; where now are barren hill sides covered only with whortleberries, thriving villages, churches and school houses will glisten in the sunlight of industrial progress and christian civilization.

Luzerne county has to-day a population of 175,000; in 1870 she had 161,000. Let us compare her population with that of some of the older counties in the State. We will group them as near as we can contiguously together. On the north-western borders of the State we have:

Erie	65,973
Crawford	63,832
Warren.....	23,897
M'Kean.....	8,825
	<u>162,527</u>
Lawrence.....	27,298
Butler.....	36,510
Venango.....	47,897
Beaver.....	36,148
Forest	4,000
Elk.....	8,438
Cameron.....	4,273
	<u>164,564</u>
Indiana.....	36,000
Clearfield.....	25,741
Cambria.....	36,509
Blair.....	38,000
Clinton.....	23,000
	<u>159,310</u>

Schuylkill.....	116,000
Carbon.....	28,000
Monroe.....	18,000
	<u>162,000</u>

In the southern tier of counties we have:

Greene.....	26,000
Fayette.....	43,000
Somerset.....	28,000
Redford.....	29,000
Fulton.....	9,000
Adams.....	30,000
	<u>165,000</u>
Susquehanna.....	37,000
Bradford.....	53,000
Tioga.....	35,000
Potter.....	11,000
M'Kean.....	8,000

Sullivan.....	6,000	
Wyoming.....	14,000	
	<hr/>	164,000
Lancaster.....	421,340	
Lebanon.....	34,096	
Fulton.....	9,360	
	<hr/>	164,796
Chester.....	77,805	
Montgomery.....	81,612	
	<hr/>	159,417

Eight counties, central of the State:

Columbia.....	28,766	
Montour.....	15,344	
Union.....	15,563	
Snyder.....	15,693	
Juniata.....	17,390	
Mifflin.....	17,508	
Centre.....	34,408	
Clinton.....	23,211	
	<hr/>	167,883

Four counties:

York.....	76,134	
Adams.....	30,315	
Franklin.....	45,365	
Fulton.....	9,360	
	<hr/>	161,174

Four counties:

Dauphin.....	60,740	
Lebanon.....	34,096	
Cumberland.....	43,912	
Perry.....	25,447	
	<hr/>	163,195

If the county of Luzerne was divided, as I think it surely will be even under the arbitrary section passed by this Convention, what would be the status of the old county and the new county, in comparison with other counties of the State? The new county would be equal in population to Bucks, Northampton, Lehigh, Chester, York, Dauphin, Erie, Crawford, Washington, Mercer, Westmoreland, Lycoming or Montgomery, exceeding some of these counties named by 10,000.

The old county of Luzerne would be the fourth county in the State outside Allegheny. 1st. Lancaster; 2d. Schuylkill; 3d. Berks; 4th. Luzerne; and in a few years she would be the first on the list next to Allegheny. Such is the rapid and wonderful progress in the industrial interests of that county that I believe in ten years more, say 1884, there will be a population of 250,000. It cannot be otherwise. The many fine streams adapted for water power to propel machinery and the cheapness of fuel for steam purposes,

with the extraordinary facilities of railway communication with all sections of our country, guarantee to the capitalists a handsome income on their investment in manufactures; *that they will and do now see*, that it is one of the best and most feasible counties in the State to establish manufacturing industrial interests. There is scarcely a month but what some new manufacturing enterprise is started, and I feel happy in stating that they all are doing well and considered successful.

The PRESIDENT. The gentleman's time has expired.

Mr. PUGHE. I should like to say a few words more. ["Go on."]

The PRESIDENT. The gentleman can only proceed by unanimous consent. ["Go on."] The Chair hears no objection, and the gentleman will proceed.

Mr. PUGHE. Mr. President: There is another view of this question which I desire to present to your consideration. It is a question of fact that I think will convince the judgment of every reflecting mind within the sound of my voice. The extent of legal business in the whole of the county of Luzerne during the year 1872 was:

In the common pleas, (cases on the docket)...	6,581
In argument, (court rules and certioraris)....	887
In equity cases.....	40
In quarter sessions.....	639
In oyer and terminer.....	10
	<hr/>
	7,943

There are now pending in the court and unsettled, 2,500 cases. I state this upon the authority of the prothonotary of the county, given to me a few weeks ago. So much for the county court *proper* of Luzerne county. We have still *two* other courts in the county, with equal powers of jurisdiction over all cases except oyer and terminer and orphans' court. They are the mayor's courts of Scranton and Carbondale.

You will remember that on a former occasion, when the subject of new counties was before the Convention on second reading, the gentleman from Lycoming, the distinguished chairman of the Judiciary Committee, stated that these "were merely municipal courts" to try minor offences, inflict fines, and take bail, binding the parties over to a higher court; and I believe such was the impression of the limited jurisdiction of these courts, that nearly all the delegates believed such was the fact. If so, I beg leave to

say that they are greatly in error as to the fact.

These courts, or mayor's courts," as defined by their legal title given by the act of the Legislature, are an anomaly in the history of the jurisprudence of the State, and by some able legal minds considered revolutionary in their character. Be that true or not, such is fact, that these courts exercise all the powers and rights of the courts of common pleas and quarter sessions within their prescribed jurisdictions as any county in this State. *Certioraries* and appeals are taken directly from these courts to the Supreme Court of Pennsylvania.

The mayor's court of the city of Scranton was authorized in the charter incorporating the city of Scranton, approved April 23, 1866.

Section fourteen of that act confers criminal jurisdiction over all forgeries, perjuries, larcenies, assaults and batteries, riots, routs and unlawful assemblies, and all other offences which have been committed, or shall be committed within the said city which would be cognizable in any court of quarter sessions of the peace of this Commonwealth: besides all powers necessary to effectuate and carry out the same.

Section fifteen confers unlimited civil jurisdiction to the same extent as is held by courts of common pleas.

At its organization and for some time after, it was presided over by the president judge of the Eleventh judicial district. On the third of December, 1869, the Attorney General issued a *quo warranto* to test the right of said president judge to act as recorder.

July seventeenth, 1870, the Supreme Court entered judgment for the Commonwealth, ousting the said recorder on the ground that the office of recorder of the city of Scranton is within the meaning of the judiciary elective cause of the amended Constitution of 1850; "that he is a judge of a court of record and ought to be elected. The said office of recorder is an office of profit, and judges of other courts are prohibited from holding it by article five, section two, of the Constitution."

On the 20th of October, 1870, the opinion was filed. (See P. F. Smith's reports, page eighty.) In it, it is decided; "That it is not only a municipal court, but a court of general, civil and criminal jurisdiction; in fact a court of an independent judicial district, and as being within the constitutional category of such other

courts of record as shall be established by law." It has been suggested that the Supreme Court could not very well have done otherwise, with the example of the districts courts of Philadelphia and Allegheny before them. March 30, 1867, a supplement was passed conferring additional powers, civil jurisdiction, &c.

April 5, 1870, a further supplement was passed, among other things conferring additional jurisdiction and providing for the election of a recorder. The same act extends the jurisdiction over the townships of Covington, Jefferson, Madison and Spring Brook, and the borough of Dunmore.

Within a radius of three miles of the centre of the city of Scranton there is a population of at least fifty thousand. Of the territory over which the mayor's court has jurisdiction there is a population of over fifty thousand.

So much I have said to explain the powers and the jurisdiction of this court, so that it is not a petty municipal police court as suggested by prominent lawyers on this floor. I will now give you a few statistics of the business of this Scranton mayor's court. The first writ issued was on August 3, 1836, 'returnable to October term. Since then there has been entered eleven thousand five hundred and five civil cases, being an average of four hundred and eleven cases to a term.

There have been two thousand two hundred and thirty-two criminal cases, an average of about eighty per term. Executions issued, three thousand nine hundred and twenty-two; average, one hundred and forty per term. Whole number of mechanics' liens, five hundred and forty-nine.

The greatest number of civil cases at any one term was September term, 1871, which was seven hundred and ninety-one. The greatest number of criminal cases was December term, 1870, to wit: two hundred and forty-four. The greatest number of executions issued was three hundred and thirty-two, to December term, 1871. The average of civil cases for the last ten terms is six hundred and forty-three; the average number of executions, two hundred and fifty.

Mr. President, please bear in mind that the facts now stated in regard to the business of the mayor's court of Scranton are in addition to the enormous civil and criminal business of the courts of common pleas and quarter sessions of Luzerne county, transacted at the court,

house in Wilkesbarre, it being the county seat. I have a private trial list of the last term of the Scranton mayor's court, in which I find three weeks' court in May last:

No. of cases, first week.....	47
No. of cases, second week.....	44
No. of cases, (special,) third week....	50
Total	141

My object in presenting these facts is to impress upon the Convention the justice and fairness of not inserting any clause in the organic law of the State that would prevent the division of such a county, so extensive in its mining and manufacturing interests, so populous and, from all present indications, liable to increase very rapidly in wealth and all kinds of social development.

The PRESIDENT. The extension of the delegate's time is up.

Mr. H. W. PALMER. Mr. President: It is proper that the Convention should exactly understand the attitude of this question before the vote is taken. The article on the subject of new counties, as passed second reading, provided that:

"No new county shall be established which shall reduce any county to less than four hundred square miles, nor less than twenty thousand inhabitants; nor shall any county be formed of less area, nor containing a less population, nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided."

That section passed the Convention on second reading and is the only section in the Constitution on the subject of new counties. The article on legislation provides that no special act shall be passed on the subject of the erection of new counties; that all the laws on that subject shall be general laws.

The proposition of the gentleman from Luzerne, as I understand it, is to except Luzerne from the operation of this article. His amendment would be a great deal shorter if it said, "excepting Luzerne county;" because that is the only county affected, as he admits.

I apprehend that gentlemen supporting this amendment are mistaken in what they allege to be the effect of this provision of the legislative article. They imagine that Luzerne county can never be divided as long as the Constitution stands as it is. That is a very great mistake. The Legislature will undoubtedly pass

some general law on the subject of the division of counties. I suppose it will be enacted that whenever a majority of the people of a county desire its division and express their desire by a vote such county shall be divided. I apprehend that some such general law will be passed. They must pass some general law on the subject. It is likely that under such a law whenever the people of a county wish to have it divided and a majority of them say so by their votes it will be divided. That would be a very fair law. It would apply to every county in the State alike. It would apply to Luzerne county therefore, and whenever the majority of the people of Luzerne desired to have the county divided they might have it divided. Now, I am perfectly willing that such a provision shall go in, perfectly willing that the amendment shall prevail in that shape.

The old Constitution provided that no county should be divided by a line cutting off over one-tenth of the population, either to form a new county or otherwise, without the express assent of such county by a vote of the electors thereof. I am satisfied with the old Constitution. If the gentlemen will take that as it stands. I am content and they cannot complain. They object that under the Constitution as it would stand the county can never be divided. Then let us restore the provision of the old Constitution, which provides that whenever a majority of the people desire a division they shall have it. It is altogether probable that such will be the character of the general law which the Legislature will pass.

Now, I have no word to say against the statistics which have been so laboriously and faithfully produced here for the edification of the Convention by the gentleman from Luzerne (Mr. Pugh). I agree entirely with everything that can be truthfully said on the subject of the size and population and wealth and business interests of the county of Luzerne. It is a great Commonwealth within itself, and we are proud of it. It has grown great within its present limits. The people have voted on the subject of division and declared that they do not desire it. They are anxious to remain as they are, and they ask you here now not to stultify yourselves to making them an exception to all others in this Constitution, to take them out from the body of the other counties and say that less than a majority of their citizens shall ever strike a line across

her and divide her fair proportions. That is all they ask. We only crave the same justice that you grant to all the rest of the counties of this Commonwealth. Are the gentlemen satisfied to have Luzerne divided when a majority of her people shall say so? Not at all. Such is not their desire; they ask that a special provision shall be injected into this article which will allow them to go to the Legislature by and by, and by the use of such means as they know how to use to procure a special act of Assembly which shall divide Luzerne county in defiance of the majority of her people.

Representing the majority of the people of that great county, I ask you not to make her an exception, but in this article which strikes at special legislation not to legislate specially against her, but give to her the same privilege that you accord to all the rest. They ask nothing more; they will be satisfied with nothing less; and I am sure the gentlemen of this Convention will accord that simple act of justice to me and the majority of the people of Luzerne, whom I most certainly represent.

Mr. DUNNING. Mr. President—

The PRESIDENT. The delegate has spoken on this question.

Mr. DUNNING. I am under the impression there was a mistake made in reference to my time. I was cut off at the end of five minutes, I think, and I was entitled to ten minutes.

The PRESIDENT. You were entitled to ten minutes. How long you spoke I do not know. I was not in the chair at the time.

Mr. CORBETT. I came into the chair when the delegate had been speaking some time, and the Clerk had kept his time, and I was regulated by that. I cannot say whether injustice was done him. It certainly was not over a minute or so after I took the chair that I cut him off.

The PRESIDENT. The Clerk says the gentleman spoke ten minutes.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment suggested by the delegate from Luzerne (Mr. Dunning.)

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

Mr. HEMPHILL. I second the call.

The question being taken by yeas and nays resulted as follow:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baker, Bartholomew, Beebe, Biddle, Bigler, Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Calvin, Carter, Corson, Curry, Curtin, Darlington, Davis, De France, Dunning, Edwards, Ewing, Funck, Green, Hall, Hanna, Harvey, Howard, Knight, Lamberton, Lawrence, Lilly, M'Culloch, M'Michael, M'Murray, Mitchell, Mott, Palmer, G. W., Porter, Pughe, Purman, Purviance, J. N., Purviance, Samuel A., Russell, Sharpe, Stanton, Wetherill, J. M., Wetherill, John Price, White, David N. and White, J. W. F.—53.

NAYS.

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Black, J. S., Clark, Corbett, Gilpin, Guthrie, Hay, Hazzard, Hemphill, Hunsicker, Landis, Lear, MacConnell, MacVeagh, M'CLean, Mann, Minor, Newlin, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Read, John R., Read, Andrew, Reynolds, Ross, Smith, H. G., Smith, Henry W., Struthers, Van Reed, Woodward and Walker, President—35.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Baer, Bannan, Barclay, Bardsley, Bullitt, Campbell, Carey, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Cuyler, Dallas, Dodd, Elliott, Ellis, Fell, Finney, Fulton, Gibson, Heverin, Horton, Kaine, Littleton, Long, M'Camant, Mantor, Metzger, Patton, Rooke, Runk, Simpson, Smith, William H., Stewart, Temple, Turrell, Wherry, White, Harry, Worrell and Wright—45.

The Convention accordingly resolved itself into committee of the whole, Mr. D. N. White in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the tenth section with a view of amending the same in the seventeenth line by adding the words: "Except in counties containing not less than one hundred and sixty thousand inhabitants, and an area of not less than twelve hundred square miles." That amendment will be inserted.

The committee then rose, and the President having resumed the chair, the Chairman (Mr. D. N. White) reported that the committee of the whole had had under consideration the amendment re-

ferred to them, and had inserted it in the article.

Mr. D. N. WHITE. I move to go into committee of the whole for the purpose of adding the following as an additional section:

"No law shall make any discrimination in favor of or against any class of persons. All public institutions, educational or otherwise, places of amusement, modes of travel, and houses of public entertainment shall be equally free to all persons on the same terms and conditions."

Mr. President—

SEVERAL DELEGATES. Question! Question!

The PRESIDENT. The Chair cannot put the question. The delegate from Allegheny desires to be heard.

Mr. D. N. WHITE. I will give way in order to take a vote if gentlemen desire it. I call for the yeas and nays on my motion.

Mr. HAY. I second the call.

Mr. BOYD. I rise to a point of order. Was not that proposition in substance voted upon last week? I understand that it was voted upon last week and was voted down. I raise that point of order.

The PRESIDENT. It has not been offered before as an amendment to this article. It was offered in substance, I think, to the Bill of Rights.

Mr. D. N. WHITE. I was about to say, that while it is the same proposition in substance, it has been so modified as to take away certain objectionable features in the view of some gentlemen at that time.

The question being taken by yeas and nays, resulted as follow:

YEAS.

Messrs. Ainey, Bailly, (Perry,) Baker, Beebe, Bowman, Calvin, Carter, Corson, Darlington, Davis, Edwards, Elliott, Ewing, Hanna, Howard, Lawrence, Lear, Lilly, MacVeagh, McCulloch, Michael, Mann, Mantor, Newlin, Niles, Parsons, Porter, Purviance, John N., Purviance, Samuel A., Russell, Stanton, Wetherill, John Price, White, David N., White, J. W. F. and Walker, *President*—35.

NAYS.

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Bartholomew, Bidle, Bigler, Black, Chas. A., Black, J. S., Boyd, Brodhead, Brown, Buckalew, Clark, Corbett, Curtin, De France, Funck,

Gilpin, Green, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Lamberton, Landis, MacConnell, McClean, M'Murray, Minor, Mitchell, Palmer, H. W., Patterson, T. H. B., Pughe, Furman, Read, John R., Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Struthers, Wetherill, J. M. and Woodward—47.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Bannan, Barclay, Bardsley, Broomall, Bullitt, Campbell, Carey, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curry, Cuyler, Dallas, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Gibson, Heverin, Horton, Kaine, Knight, Littleton, Long, McCamant, Metzger, Mott, Palmer, G. W., Patterson, D. W., Patton, Reed, Andrew, Rooke, Runk, Simpson, Smith, William H., Stewart, Temple, Turrell, Van Reed, Wherry, White, Harry, Worrell and Wright—51.

Mr. EWING. I move to go into committee of the whole for special amendment, the amendment being to strike out sections thirty-one and thirty-two. If the delegates will look at the article they will find that those are the sections in regard to bribery.

It is hardly necessary for me to say here that I have been one of those who, at different stages of the discussion on this article, have favored a stringent provision on the subject. Unfortunately I thought at one time that I was in the minority, but the votes of the Convention satisfy me that a large majority of the Convention do not wish to insert any stringent provision in the Constitution on the subject.

Then comes up a question that is a fair one for discussion and consideration, should there be any provision whatever on the subject in the Constitution? We have here two sections which I think no member of the Convention, certainly no lawyer, supposes or pretends in any way extend what is now the common law and statute law on the subject of bribery. There is nothing in these sections that is not now and has not been for a long time the law of the State. No one is likely to attempt to change that law or to repeal it. A very considerable number of us think, honestly and seriously, that instead of extending or adding in regard to the crime of bribery, these sections really limit what is now the common law on the subject; and in addition to that, for one, I fear that they will hereafter embarrass

the Legislature in passing acts to prevent species of bribery that may arise that we do not now think of. They may also be held to prevent the Legislature from prescribing penalties for bribery that we have not here prescribed.

Now, I can see no use in burdening the Constitution with these sections that are already either common law or statute law, and I think we should do very much better to strike them out entirely. I would, myself, prefer striking out section thirty-three, also, but I have not included it in the proposed amendment, because some gentlemen think that this is an addition to what is now the constitutional law on the subject.

Mr. J. S. BLACK. Mr. President: Undoubtedly the law is not mended but marred greatly by these provisions upon the subject of bribery. They ought to be entirely stricken out, and leaves us at least a blank sheet where, in some future time if we can get an honest Legislature, they may pass an honest law for the punishment of offences like this. In my humble judgment the corruptions at Harrisburg, particularly by the third House, are a very great misfortune to the State. But then that is only my opinion. This Convention is the embodiment of that public wisdom which is made on purpose to correct the errors of private judgment, and I stand corrected thereby. The Convention having decided that a third House is a very desirable institution, has determined to make it as permanent as possible. I, therefore, am not now justified in saying that the malign influence of that body of miscreants ought to be diminished, much less that it ought to be abolished. Let them have something to do; give them free course now to run and be glorified; do not pretend to stop them after this. When you say that you want a third House, let it perform its natural and legitimate function. What is the use of having it, if you supplement it by penalties for doing what it was made to do?

But then remember in the provision which has been offered as a substitute for these sections it would have been declared, if the Convention had adopted it, that a certain form of bribery and corruption, which is much more common than any that is described in the section as it stands, is left out altogether. A party wants the vote of a member of the Legislature, he does not go to him with the money in his hand and say: "This is my pile, and I offer that for your vote." That

is not the way the thing is done in one case out of a hundred. But he says: "I want to employ you as my agent or my attorney. I will give you for this service a certain sum"—which is very much greater than the service is worth. The member becomes the agent, the attorney of the party that is thus interested in legislation, and he becomes after that totally incapable of deciding anything between the giver and the Commonwealth impartially or fairly. There are instances, many of them, which have been exposed of such transactions.

That is excluded; that is not bribery according to the definition contained in these sections, and it cannot be made so hereafter by any legislation that can be put upon the statute book. You legalize that kind of thing by these sections; you not only say that you will not provide for its punishment, but you say it shall not be punished, it shall be considered right and honorable in all time to come. I do therefore most sincerely think that it would be a great deal better to strike these sections entirely out, and let us have nothing in the Constitution upon the subject at all. But if the Convention think otherwise, I presume they will say so; and if they say so, then I am done. Let us have none of this unreal mockery in the Constitution. It is manifestly the intention of this body that the third House shall be permanent. All the votes given to-day indicate that. Every proposition made by a friend of reform is answered by a thundering *no*. Our opponents rush at us and run over us like a herd of buffalo on a western prairie. They crush us down by mere weight of body and hardness of hoof. [Laughter.] The proposal of the gentleman from Allegheny will meet the same fate. Here they come, with horns down and tails up. [Much laughter.] I mean to get out of the way.

Mr. BARTHOLOMEW. Mr. President: In an early part of this discussion I assumed the same ground that has now been occupied by the gentleman from Allegheny (Mr. Ewing) on this subject. I claimed that all the punishments we could inflict either were or had to be provided in a criminal code. At that time I was outvoted and these provisions were inserted and an argument was used which I thought perhaps was good, that we had to pretend to do that which had already been done to satisfy a demand of the public. It was an unworthy motive, but I must confess to the weakness of mankind. I have

thought over it, and I believe now that these provisions as they stand should be incorporated in the Constitution and should not be struck out.

There are two parties in this Convention, one party that think the Legislature of Pennsylvania is wholly corrupt, that its members are beyond redemption, and that the moment a man becomes unfortunate or fortunate enough to be elected to the Legislature of Pennsylvania, he becomes a thief *per se*. I remember well a story that is told of some people in Philadelphia—the stories that militate against the Legislature of Pennsylvania all originate in Philadelphia. [Laughter.] John Jones was accused of stealing a watch, but his friends stood by him; then he was accused of stealing a horse and still his friends stood by him; but after a while Jones was elected a member of the Pennsylvania Legislature, and then they had to give him up they could not stand that. [Laughter.]

Now, this is a proposition that is as true as anything can be. There are certain men in this Convention who believe that the Legislature of Pennsylvania is wholly corrupt; that there is no honesty in it; that whatever is desired, if the desire is backed by money, can be accomplished. There are others who believe that there are honest men in the Legislature, as honest men as stand in this body or in any other, that are not in the market for sale or for purchase. Now, what will suit one class of men in this body will not suit another. It is the same old story over again; a doctor goes to see a Dutchman who is attacked with a fever, and he tells him that he must eat nothing, but must take his medicine; the doctor leaves and the Dutchman creeps out of his bed, goes to the cupboard, gets a big dish of sauer-kraut, eats the whole of it, and gets well. The doctor finds out what has been done, and he writes down in his book "sauer-kraut is good for a fever." [Laughter.] After a while the doctor is called upon to attend an Irishman who has the fever and he says, "Take a dish of sauer-kraut and eat it." The Irishman eat a large dish of sauer-kraut and it killed him as dead as a hammer; and then the doctor took out his book and wrote in it "sauer-kraut is good for a Dutchman with fever, but will kill an Irishman as sure as the devil." [Laughter.] So it is with this or any proposition on this subject you choose to make here. There are the two classes of men, one who believe the Legislature of

Pennsylvania wholly corrupt, and the other who do not. Whatever will suit one party will not suit the other.

My friend from York (Mr. J. S. Black) has peculiar notions on this subject. His ability we all respect, and we have a right to respect it, for he has a reputation that overshadows not Pennsylvania alone, but this Union. He is a man who stands, perhaps, to-day peerless at the bar, and whose judgment we have a right to respect; but there are certain propositions which he has made in this Convention that I consider wholly unsound. I do not believe it a principal of law, neither do I believe it a principle of justice that we should start with the proposition that every man is presumed to be a thief. It is contrary to the presumption of the common law, and it is contrary to the presumption of common sense.

Now, I take it that men who are elected to occupy a public position go to fill that position with an honest desire to discharge their duties, but whilst I concede that I also believe that there has been action on the part of legislative bodies in this State, which has been influenced by undue or corrupt means, I take it that the provisions in this Constitution, as it has passed on second reading, are ample to cover all such grounds. I assert that the proposition of the gentleman from York was unsound, much as he has taken it to heart, because I believe he honestly thinks there is merit in the measure and has honestly advocated it. And I wish to-day he had had more opportunity to ventilate freely and fully his views on this subject. I take it that it was unjust to him, standing as he did upon a platform that in his honest convictions he believed to be right, that he had not an opportunity to give to this Convention his views to their fullest extent, because his views are worthy of consideration on any subject. Still, I say, whilst I believe he was honest in those views, I cannot tear from my mind the idea that his amendment would lead to placing in the Pennsylvania Legislature a set of men lower in calibre than those who to-day occupy those positions; that he would wall them around with a wall as high as that of China to keep out light and enlightenment, that he proposes to keep them in ignorance and darkness, and that he would give to their legislation not intelligence but ignorance. I stamp it as ignorant legislation, and therefore I voted against his proposition.

But, whilst I believe in this view, I say that acts have been committed in the Legislature of Pennsylvania which should be punished, and for which the hand of the law should be placed upon the offender. Now, the penal code has amply provided for all this; but whilst the penal code has provided for this, and it is upon your statute books, yet the people "the dear people" that we have heard so much about in this Convention, would not be satisfied unless we put it also in the Constitution, to show that we meant by earnest means, by constitutional provisions, by organic law, to take a strong hold of the offender and bring him, neck and breeches, to the bar of justice. This is our work, and I claim it to be nothing but "a tub to the whale." It is no more, no less. It must go into the penal code at last. Legislation must be passed to enforce constitutional provisions, and to provide for the punishment of offenders, and to bring them to the bar of justice. Therefore I quit this subject as I started, upon the proposition that, as a question of right, as a question of expediency, as a question of truth, we had better stand upon the proposition that we have passed through second reading, and let this article remain as it is, because I have heard throughout this Commonwealth, from all quarters, that the people are pleased with this proposition. And if they are pleased I, also, am pleased, and let them have it.

Mr. LEAR. Mr. President; I understand from the gentleman's argument that he believes the two sections which this amendment proposes to strike out will be of very little use, of no use, in the Constitution; but he desires them to remain there in order to please the people and get votes in favor of this instrument. I have said from the beginning of my connection with this Convention until this time, and I repeat now, that whenever we have no other reason for putting a section or an article into this Constitution than that it will do no harm, or that it is put here to please the people, it had better be left out. We have already too much of this instrument, and now the gentleman from Schuylkill desires that these two sections shall remain as "a tub to the whale," as he says, in order that we may secure the votes of the people in favor of this Constitution, because the sections contain an idle and harmless denunciation against bribery. Why, sir, the only virtue there is in criminal law is its sanction. The vindicatory branch of the

law is that which gives it force. Here are mere idle declarations that certain acts shall be called bribery without being followed by the penalty which the criminal code of Pennsylvania attaches to these acts, not only when they are committed by members of the Legislature, but when they are committed by any one else in any other official capacity, whatever it may be—we re-assert feebly what is the common law, as well as the statute law, of this State, and leave it to the Legislature to provide the penalty. That penalty has already been provided, and the law well understood. We propose to dilute that which is strong, with the hope and for no better reason than that its apparent exhibition of virtue against a prevalent crime will impress the people favorably, and secure their votes in favor of our work here, although there is nothing really beneficial in the provisions.

The gentleman from York this morning opened his speech by asking "What is bribery?" and answering that it was the crime which was committed by Lord Bacon. Yet Lord Bacon was not a member of the Legislature of Pennsylvania or of any other legislative body when he committed the crime of bribery. Therefore I say when we single out the members of the Legislature of Pennsylvania as those against whom the denunciations, the idle denunciations, the *brutum fulmen* of this Constitution shall be thundered, we are doing injustice to the Legislature of this State and to the members of it who have passed through it without being suspected of the crime of bribery or any other crime; and I say further that it is not because men are members of the Legislature of Pennsylvania, or of any other legislative body, that they are more likely to be tempted or led astray by the crime of bribery. It is not because they are members of that body, or because they are called by the name of legislators. It is on account of the character of the work they have to do that they are tempted to commit the crime of bribery; and whenever we do, as we have endeavored to do in this Convention, take away the work which has been the source of all this corruption in the Legislature of Pennsylvania and put it into the courts, we shall tempt the courts to do that which has brought down the character of the Legislature of Pennsylvania, and we shall have as much need to have the denunciations of the Constitution thundered against the courts as we now have against

the members of the Legislature. We are running into that danger. It is the character of the work that makes the difference in the conduct of the men who compose our Legislature and those who compose our judiciary.

Now, for that reason I object to this going into the Constitution. It was one of the reasons why I opposed it from the start, because it is making an invidious distinction against a branch of the government of the State, and because it is just what the gentleman from Schuylkill says it is—a mere piece of demagoguery, I was going to say, but that was not the term he gave it—it is throwing a tub to the whale to entice the people to vote for this instrument. They ought to know whether this instrument is worth being voted for or not without having any such glittering bait as this thrown to them. They are as competent to judge of such a question as this as we are, and it is an insult to their intelligence to say that we will tempt them to vote for the instrument we submit to them by inserting provisions which look plausible, but which we admit are of no practical use. Our laws provide for the punishment of bribery in all its forms by members of Assembly and all other officials. Then why declare in this Constitution that a man who takes a bribe is guilty of bribery?

That is one reason. Another reason is that this subject has nothing to do with this article. If it goes into the Constitution at all, it ought to go into the article on the Legislature. This is the article on legislation. The article upon the Legislature provides what shall be the qualifications of members, what they may do, who they may be and what they shall not do. But in the article on legislation for some reason or other we have put into the Constitution in these two sections simply a definition of what shall be bribery without following it up by any penalty for the commission of the crime mentioned in the sections. That is another reason why it should not go here. That is no reason probably why it should not be admitted elsewhere, but that is a reason why it should not go in this particular place. Now, I do not care

to change these sections from one article to another.

Mr. LEAR. The Committee on Revision and Adjustment have already reported on this subject, and they have left it where it is; and I suppose it will not go back to them again; they are done with it.

The PRESIDENT. The gentleman's time is up.

Mr. BUCKALEW. Mr. President: I desire in a few words to state the reasons why gentlemen upon this floor intend to vote for this section, as far as I understand their views. In the first place, these sections impose a law upon the Legislature itself in regard to attempts to tamper with their votes. It is therefore proper to place them in the Constitution, although other penal enactments might be improper for insertion. The next point I desire to make is that the construction given to these sections, thirty-one and thirty-two, by the gentleman from York is utterly repudiated by those of us who vote for them. We do not understand that these sections will prevent the Legislature from creating other criminal offences. They exclude in that respect nothing of legislative power. The language with which the thirty-first section concludes is this: Persons guilty of committing the particular things enumerated, "shall be held guilty of bribery *within the meaning of this Constitution.*" That is all their is of it. The Legislature can define other acts of bribery and provide for their punishment as they please. There are no words of prohibition here; no prohibition is intimated. It is merely a definition of what shall be bribery within the meaning of this Constitution, and for what purposes? For the purposes declared in the article itself.

Gentlemen will observe by looking at thirty-third section (which it is not proposed to strike out) that it is connected with the thirty-first and thirty-second. That thirty-third section declares a life-long disqualification for holding office in this State upon any person found guilty of the offences described in the thirty-first and thirty-second sections. That section also provides that no person shall stand with his mouth closed as a witness in an investigation into this constitutional offence, but shall be compelled to testify. In short, sir, without elaborating these points, these sections, thirty-one, thirty-two and thirty-three, all go together, and if you strike out the first you are to strike out the two last.

Mr. BARTHOLOMEW. Will the gentleman from Bucks allow me to interrupt him?

Mr. LEAR. Yes, sir.

Mr. BARTHOLOMEW. The Committee on Revision and Adjustment have a right

From what I have said the gentleman from Bucks will perceive that he is entirely mistaken if he thinks there is no punishment provided here for the offences which we have defined. He will find that one of the highest forms of punishment is stated in the thirty-third section, to wit, disqualification for one's natural life time from holding any place of honor, trust or profit in or under the government of this State.

Mr. J. S. BLACK. Do I understand the gentleman to say that the definition of bribery as contained in the Constitution may be changed by the Legislature after the Constitution is adopted?

Mr. BUCKALEW. No, sir. What I mean to say is that that offence as defined in the Constitution does not exclude the Legislature. The Legislature may add to it new and distinct forms of offence.

Mr. BIDDLE. Certainly.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Ewing.)

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

Mr. HEMPHILL. I second the call.

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

YEAS.

Messrs. Beebe, Black, J. S., Boyd, Corson, Ewing, Gibson, Gilpin, Hemphill, Howard, Hunsicker, Lear, M'CLean, Minor, Patterson, T. H. B., Reed, Andrew and Ross—16.

NAYS.

Messrs. Achenbach, Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bartholomew, Biddle, Bigler, Black, Charles A., Bowman, Brown, Buckalew, Carter, Cassidy, Clark, Corbett, Darlington, De France, Edwards, Elliott, Funck, Guthrie, Hall, Hanna, Harvey, Hay, Hazard, Knight, Lamberton, Lawrence, Lilly, MacConnell, MacVeagh, M'Culloch, M'Michael, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, G. W.,

Parsons, Patterson, D. W., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Struthers, Wetherill, J. M., Wetherill, John Price, White, David N., White, J. W. F., Woodward, Worrell and Walker, President—62.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Armstrong, Bannan, Barclay, Bardsley, Brodhead, Broomall, Bullitt, Calvin, Campbell, Carey, Church, Cochran, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Green, Heverin, Horton, Kaine, Landis, Littleton, Long, M'Camant, Metzger, Newlin, Palmer, H. W., Patton, Porter, Rooke, Runk, Russell, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Wherry, White, Harry and Wright—55.

Mr. J. PRICE WETHERILL. I move to go into committee of the whole for the purpose of inserting a new section to take the place of section thirty-six, which was stricken out on the motion of the gentleman from Allegheny, (Mr. Ewing,) on account of some informality or some objection in regard to the system of weights and measures. I desire to introduce the following, which I think will meet with the approval of the Convention, and to which I hope there will be no objection:

"No State office shall be continued or created for the inspection or measurement of any merchandise, manufacture or commodity, except for the purpose of protection to the public safety; but any county or municipality may appoint such officers when authorized by law."

I hope I may be pardoned for a word on this subject—

The PRESIDENT. The delegate has but one minute till the adjournment.

Mr. T. H. B. PATTERSON. I move that the Convention do now adjourn.

The motion was agreed to, and (at two o'clock and fifty-nine minutes P. M.) the Convention adjourned.

ONE HUNDRED AND FIFTY-SIXTH DAY.

THURSDAY, October 2, 1873.

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday's proceedings was read.

Mr. BOWMAN. Mr. President: I rise to a privileged question.

The PRESIDENT. The gentleman will state his question.

Mr. BOWMAN. I see by looking over the proceedings yesterday on the vote taken on the motion made by the gentleman from Allegheny, (Mr. D. N. White,) that my name is omitted. I voted on that question, not here in my seat but near the door, and it may be that in consequence of the noise the clerks did not hear the response. I ask that my name be put upon the record on the question. The question is this:

"Mr. D. N. White, of Allegheny, renewed, with an immaterial change of language, the equal rights proposition of Mr. White, as follows:"

Then comes the proposition. I wish that my name may be recorded as having voted in the affirmative, which I did do.

The PRESIDENT. Does that change the result?

Mr. BOWMAN. No, sir.

The PRESIDENT. Then it is in the power of the House. Will the House allow the gentleman's name to be recorded in the affirmative on that proposition? ["Aye!" "Aye."] Leave is granted to have the gentleman's vote recorded.

LEAVES OF ABSENCE.

Mr. LAMBERTON. I ask leave of absence for Mr. Harvey for to-day, and possibly for to-morrow. He was called home yesterday evening.

Leave was granted.

Mr. DALLAS. I ask leave of absence for Mr. Corbett for a few days from to-morrow.

Leave was granted.

Mr. EDWARDS. I ask leave of absence for myself for to-morrow.

Leave was granted.

ORDER OF BUSINESS.

The PRESIDENT. Resolutions are now in order.

Mr. CORSON. Is it not now in order to call up the resolution I offered yesterday? Does not that come up under the head of resolutions?

The PRESIDENT. Not now. Reports of committees are next in order.

REVISION COMMITTEE REPORTS.

Mr. KNIGHT, from the Committee on Revision and Adjustment, reported back article number eight, on suffrage, election and representation, with amendments.

The report was ordered to be printed and laid on the table.

ORDER OF BUSINESS.

The PRESIDENT. Resolutions on second reading are now in order.

Mr. CORSON. I do not desire to call up my resolution this morning. I shall call it up to-morrow morning.

Mr. MANN. I ask the President if he did not overlook the fourth order of business, which precedes reports and resolutions.

The PRESIDENT. Articles on third reading?

Mr. MANN. Yes, sir. That takes precedence of reports.

The PRESIDENT. Articles on third reading are in order. The article on third reading now is article No. 3, on legislation. Is it the pleasure of the Convention to resume the consideration of that article? ["Yes."]

LEGISLATION.

The Convention resumed the consideration on third reading of the article (No. 3) on legislation, the pending question being on the motion of Mr. J. Price Wetherill, to go into committee of the whole for special amendment, by adding to the article the following as a new section:

"No State office shall be continued or created for the inspection or measurement of any merchandise, manufacture or commodity, except for the purpose of protection to the public safety; but any county or municipality may appoint such officers when authorized by law."

Mr. J. PRICE WETHERILL. I offered this amendment as a new section in place of section thirty-six, which was stricken out on the motion of the delegate from Allegheny. That delegate stated that although there were some objectionable features in section thirty-six as it passed second reading, that at the same time there were features in that section which should be retained because they were valuable. I regret that the gentleman did not amend the section to suit himself, so that we could have retained what good there was in the section, and have excluded that which was objectionable; but he did not so act, and made a motion to throw out the entire section, which this Convention agreed to, and by its vote, lost the good that was contained in the section, and which I, by this new section, seek to re-insert: that is, that there shall be no State inspectors, but that each county or city may appoint inspectors as may suit their wants and their convenience. That, it seems to me, is a very plain proposition, and one which should be acceptable to this Convention. We suffer in this city a great deal from State inspectors. We have some five of them, although the merchants of the city of Philadelphia are a unit in the opinion that they are unnecessary. No one can suffer by the adoption of this new section, because if those inspectors are necessary, the city authorities can select them, and those that are unnecessary the city authorities can reject.

Now, to show the desirableness of such a proposition as this, I would remind the delegate from Allegheny that they have in his county no State inspectors and inspectors appointed by the municipality. If that is right, if that is correct, why should that county, by special law, have this advantage when other counties are deprived of it by a general law?

It may be said that this is a matter of legislation, but we all know the difficulty of securing proper legislation in this regard. We have eight or nine inspectors to be appointed by the Governor for the city of Philadelphia, and it would be very difficult for the members of the Legislature to take from the Governor that amount of patronage, and for that reason it is an exceedingly difficult thing to secure the result which we in Philadelphia desire to reach.

In Philadelphia we have a bark inspector. That position was filled for years by a very eminent physician of this city, and

if I am correctly informed, the profits of that office were given to some charitable institution. After the office was vacated that position was filled by a very distinguished member of the Philadelphia bar, and at the present time I do not know who holds it.

In regard to the flour inspector of the city of Philadelphia the consumer is not affected thereby, because the consumer is not bound to have his flour inspected. The inspection is only required in cases where flour is required for export; and when a Philadelphia merchant comes to export his flour side by side with a merchant from New York, who exports his flour without inspection, the Philadelphia merchant has to pay that additional cost for inspection, and therefore cannot furnish flour on the same terms with the New York exporter. In the New York Constitution they have no provision for State inspectors. Here we have, and they are a burden upon the merchandise of Philadelphia over that of New York, and in that respect the merchants of New York have that advantage as against the merchants of Philadelphia. Now, I had the honor to present a communication representing the merchants of Philadelphia asking for this change. The Commercial Exchange of the city of Philadelphia, knowing very well the mercantile wants of the city, have asked this matter at the hands of this Convention. And inasmuch as all the objections will be answered by allowing the counties and municipalities to appoint their own inspectors, I do hope that the section which I have offered will be adopted.

Objections have been made because the Governor cannot appoint inspectors of mines or inspectors of oil, and cannot thereby protect the safety of the citizens. In reply I will state that each county can appoint its own inspector of mines and its own inspector of oil, and take care of the safety of its own people, knowing very well what their wants and what their requirements are, very much better than a State Legislature.

For these reasons, inasmuch as it is asked for by so many and no plausible objection can be urged to it, I do hope that we shall go into committee of the whole and adopt the section.

Mr. HAZZARD. Mr. President: I was somewhat surprised, yesterday, that the very valuable provision in section thirty-six was stricken out, on the motion of the delegate from Allegheny. I do not know

the abuses in the cities with regard to this thing, but I know that such a section ought to be somewhere in this Constitution, for the protection of the country people. In our town, I know to my certain knowledge that there are probably not more than two or three weights and measures that agree at all. We go to our grocers and we do not know whether we are getting full measure or not; we do not know that it is correct. It is true the Legislature may pass a bill authorizing the sealing of weights and measures. It has been so; but persons interested in business in our county have imposed on the people, and we have all sorts of weights and measures. But it is said, "Go to the Legislature and get the thing fixed." Would not the city members oppose a thing of that sort, and with thirty members opposed to it from this city of Philadelphia, and a great many more, perhaps, from the city of Pittsburg, we could not get the matter regulated by the Legislature.

I am very much in favor of the proposition of the gentleman from Philadelphia if the vote on section thirty-six cannot be reconsidered. There ought to be some way to assure us that our weights and measures are correct, and we have applied to the Legislature, and one stingy old fellow in our place slipped up to Harrisburg and got the law repealed because they would not let him pinch perhaps half a dozen grains of coffee in every half a pound or so. And while it is in such danger of being repealed, because some stingy old fellow wants to be dishonest, I think we ought to put it in here in some shape, and I hope the amendment will be made. If you do not want these things in the city, leave us alone; we do want some regulation and ought to have it.

Mr. EWING. The proposed amendment would not affect at all the object the gentleman from Washington seems to desire. I say to him if they have not correct weights and measures in his city of Monongahela, it is the fault of the citizens. There is an officer to attend to it, if they would call on him.

In regard to the amendment of the gentleman from Philadelphia, I regret very much that he has not offered a proposition that would remove the grievances of which he complains. I would be glad to vote for that; but the proposition which he offers here, I think, instead of removing them, would aggravate them. The grievance complained of by merchants in

cities, and by the people who come in from the country into cities and towns to sell their merchandise, is that the officers appointed to inspect that merchandise, in order to determine whether you or I or any other man shall buy or sell it, the officers appointed to weigh, gauge and measure for merely commercial purposes, are of no use except to make fees for themselves. Now, I prefer that they shall exist as State officers appointed by the Governor, rather than they shall exist, in every municipality appointed by the city council or the borough council, or by the county commissioners, or whatever the local authority may be.

Now, if delegates will notice this proposition, it does not propose to prevent inspection of these articles for commercial purposes. It proposes to allow the city authorities, the county authorities, the borough authorities, and, as I think, even the township authorities, to appoint as many local inspectors of merchandise of all sorts and kinds and classes as they may see fit; and this would merely aggravate the difficulty that is complained of.

I beg to say to the gentleman from Philadelphia that if we have a different law in Pittsburg from that of Philadelphia in regard to the appointment of inspectors, and it may be true because I know some are appointed by the city councils, I have heard ten complaints there of officers appointed by the city councils for one that I have heard made in regard to those appointed by the Governor; and I do not think this amendment would improve the matter at all.

The New York provision that the gentleman speaks of does not authorize the cities to appoint these inspectors, but it prohibits the appointment of officers to inspect merchandise or to weigh or gauge it for merely commercial purposes; but as a saving clause, it is provided that they may be appointed where it is necessary for the public health or the public safety. I should like to vote for a proposition of that sort. This is nothing of the kind. I think it is necessary to retain some provision allowing the State authorities to appoint such inspectors to preserve the public health or the public safety. For instance, in the matter of carbon oils; take our county; as I said yesterday, it is essentially necessary that there should be some special officer, a State officer to make these inspection of oils that go east or west or are consumed in the county.

We would have at least a dozen local inspectors under this proposition; some elected by the city councils of Pittsburgh, some by the city councils of Allegheny, some by the borough authorities that exist in the county, and it would very greatly aggravate the grievance.

Mr. KNIGHT. Mr. President: I favor the section proposed by my colleague or something similar to it. You had a great deal better be without inspectors if they are not proper, well-qualified parties who understand their business. A shipment of flour to a foreign country improperly inspected does more to injure the reputation of the port than though it had not been inspected at all, because if it is passed when it is not up to the standard the effect is to condemn not only the article and the brand, but to injure future shipment of the article from the same port. This thing has occurred many times. We have here now, under the law of the State, inspectors in many cases who are not at all qualified for the work. We have a fish inspector who does not see a barrel of fish or a package of fish, perhaps, once in six months; and it is a useless appointment. I think we should either do away with the inspection laws entirely, or else allow the inspectors to be appointed as is suggested by my colleague.

The PRESIDENT. The question is on the motion to go into committee of the whole for the purpose indicated.

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

Mr. J. M. WETHERILL. I second the call.

YEAS.

Messrs. Alricks, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bardsley, Biddle, Bigler, Bowman, Boyd, Brodhead, Broomall, Buckalew, Calvin, Campbell, Carter, Clark, Cochran, Curry, Curtin, Darlington, Davis, De France, Dunning, Fulton, Funck, Green, Hanna, Hazzard, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Lawrence, Lilly, Littleton, MacVeagh, M'Clean, M'Culloch, M'Michael, M'Murray, Minor, Niles, Palmer, G. W., Patterson, D. W., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stewart, Struthers, Wetherill, J. M., Wetherill, John Price and Walker, President—65.

NAYS.

Messrs. Ainey, Bartholomew, Beebe, Black, Charles A., Corbett, Corson, Dallas, Edwards, Elliott, Ewing, Gibson, Gilpin, Guthrie, Hall, Kaine, Lear, Long, MacConnel, Mann, Mantor, Mitchell, Newlin, Parsons, Patterson, T. H. B., Porter, Ross, Stanton, Van Reed, White, David N., White, J. W. F. and Woodward—31.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bannan, Barclay, Black, J. S., Brown, Bullitt, Carey, Cassidy, Church, Collins, Craig, Cronmiller, Cuyler, Dodd, Ellis, Fell, Finney, Harvey, Hay, Heverin, Landis, M'Camant, Metzger, Mott, Palmer, H. W., Patton, Read, John R., Runk, Smith, Wm. H., Temple, Turrell, Wherry, White, Harry, Worrell and Wright—37.

So the motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Lamberton in the chair.

The CHAIRMAN. The committee of the whole has been instructed to insert the following as section thirty-six:

"No State office shall be continued or created for the inspection or measurement of any merchandise, manufacture or commodity, except for the purpose of protection to the public safety; but any county or municipality may appoint such officers when authorized by law."

The section will be inserted.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Lamberton) reported that the committee of the whole had been instructed to report that the additional section had been inserted.

Mr. CALVIN. I move to go into committee of the whole for the purpose of amending section fifteen, by adding these words:

"Except judges, whose salaries may be increased."

Mr. President, under the present Constitution there is a provision that the salaries or compensations of judges shall be fixed by law and shall not be diminished during their continuance in office. We have inserted the same provision in the eighteenth section of the judiciary article as it has passed second reading. By the practice under the old Constitution the salaries of the judges have been increased from time to time as the exigencies of the times required. Indeed in the country I believe within the last twenty years

the salaries of the judges have been more than doubled. They have been at least very largely increased all over the State at different times, and very properly. Now, the judges of the Supreme Court, under this Constitution which we are proposing to adopt, are elected for twenty-one years, and according to the provisions of this section no law shall extend the term of any public officer or increase or diminish his salary or emoluments after his election or appointment.

The general principle is correct, that during the continuance in office of any incumbent his salary ought not to be increased. An exception, however, ought to be made in the case of judges; and this section by its terms would prevent any increase of salary of judges under any circumstances. Now, it is perfectly manifest that whilst in the eighteenth section of the article on the judiciary, as passed second reading, it is provided that the compensation of judges shall not be diminished during their continuance in office, it is implied that they may be increased; but under this fifteenth section I take it for granted, unless there is a qualification added to it, the salaries of judges could not hereafter be increased. As a judge of the Supreme Court under this Constitution will be elected for twenty-one years it is highly probable that it may be necessary to increase the salaries of those judges as well as those of the common pleas before the expiration of their terms, and therefore I hope that this amendment will be adopted.

Mr. ARMSTRONG. I am very glad that the gentleman from Blair has made this suggestion. I had myself noted the same thing. The provision in the eighteenth section of the article on the judiciary is that the salaries of the judges shall not be diminished, but it does not prevent them from being increased. It is to be remembered that the Convention considered this matter at that time very fully, and after very full debate concluded to leave this question as to the judges in the condition in which it stands in the eighteenth section, which will be found on the fifth page of the re-print of the articles. The term of the judges is so long that you cannot reasonably anticipate the exigencies which may require an increase of salary. As to officers of shorter continuance, they may be reasonably anticipated, and therefore the fifteenth section of the article on legislation would seem to be right as to them. But the exception suggested

by the delegate from Blair harmonizes the article on the judiciary with the article now under consideration, and I trust the amendment will be agreed to.

Mr. KAINE. Mr. President: I opposed this proposition when it was before the House on a former occasion, and I am opposed to it now. So far as the length of the terms of the judges is concerned, I hope the gentleman from Blair (Mr. Calvin) and the gentleman from Lycoming (Mr. Armstrong) will go back to the old rule, and in place of having judges of the Supreme Court elected for the term of twenty-one years will reduce the term of office to fifteen years, as it is under the existing Constitution. I intend to offer a proposition to that effect when we reach the article on the judiciary, in order to bring it back to the rule that we have now and which I contend we have no cause for changing. I think this term is long enough, and I do not think we ought to make it any longer. If no change is made in the length of the judicial term, then I apprehend that there will be no necessity for changing the provision of this section now under consideration.

I desire to prevent all log-rolling upon the subject of salaries of all officers, judges included. I have seen as much log-rolling in the Legislature in regard to increasing the salaries of judges as I have seen with regard to the increase of the compensation of any other officer. We all know how it is done. Some member of the bar from some portion of the State who is a member of the Legislature moves to insert an amendment in the appropriation bill to increase the salary of his judge five hundred dollars. "He has got a large amount of business to do. Oh! he is worked to death, and therefore his salary should be increased." The Legislature in their good nature, because there are several others standing back who have axes to grind, vote it in. Then a member from another district gets up and moves to insert the judge of his district. A member from another county gets up and makes the same motion as to his judge, and in that way three or four others are inserted, until some member who has been previously posted rises and says: "Mr. Speaker, I move to make this thing unanimous and to extend it to the whole State," and it is always carried in that way. The salaries of our judges were formerly \$2,000 or \$2,500 a year, have been increased until some of them are \$4,000

some receive \$4,500, and some of them receive even \$5,000.

So far as I am concerned, I shall vote to put the judges of the courts, in this respect, upon the same footing with all other officers in the Commonwealth, and I hope the proposition of the gentleman from Blair will not prevail.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment suggested by the gentleman from Blair.

Mr. KATNE. Upon that motion I call for the yeas and nays.

Mr. H. W. SMITH. I second the call.

Mr. MACCONNELL. We have a provision in the fourth section of this article which reads as follows:

"Every bill shall be read at length on three different days in each House; all amendments made thereto shall be printed *for the use of the members* before the final vote is taken on the bill."

That I suppose indicates an opinion on the part of this Convention that no vote shall be taken on any amendment, no matter how trivial, no matter how unimportant, until it shall have been printed and submitted to the Legislature. We have provided that there shall be that due care and caution preserved on the part of the Legislature in both Houses that they shall not act finally on any amendment until it has been printed and laid on the tables of the members for their use, so that they can see what the effect of it is to be, that they may be able to judge intelligently of it before it is passed upon. Now, we are not engaged in making laws that may be repealed next year. We are not engaged in adopting acts of Assembly, but we are engaged upon the fundamental law of the State which may last a century, and may not be repealed except by the process of a new Constitutional Convention.

And what are we doing, sir? Are we getting our amendments printed and laid on the table for the use of the members that we may see what they are, that we may understand them; that we may see what the effect of them is going to be? Not at all. A gentleman jumps up, may be he writes out his amendment on the spur of the moment in pencil and sends it up, may be he does not write it at all, and we are asked here to vote upon it without having it before us and without having the opportunity to examine it so as to know what it is and what its effect is going to be; and we are to put it into

the fundamental law of the State in that way. Now, I protest against the whole thing.

In regard to this amendment, I am opposed to it, *toto cælo*. It is said that the terms of the judges are so long that there ought to be an opportunity to raise their salaries. If there is any hardship on judges on that account there is a very effective remedy, and that is, let them resign. If they do not like the pay let them send in their resignation, and somebody else quite as good, I will venture, will take their place.

Now, sir, I have seen a good deal of this thing, and the process, as it is, just works in this way: Every winter a petition is got up to the Legislature to raise the salary of the judges. It is laid on the counsel table in the court, and the counsel that do not sign it are held to be inimical to the judges. That is the uniform practice. I protest against that. I say it is wrong. I am in favor of putting judges on the same footing with every other officer in the State. The idea that when you make a man a judge you make a kind of angel out of him, is to me an absurdity. A judge is subject to the infirmities of human nature just as much as any officer is, and I would hold him to the same accountability, and give him no more privileges than I would give to a member of the Legislature.

The PRESIDENT. The Clerk will call the names of delegates.

Mr. HOWARD. Before the vote is taken

SEVERAL DELEGATES. I object to debate. The yeas and nays have been ordered.

The PRESIDENT. If the gentleman desires to speak, the order for the yeas and nays will be withdrawn.

Mr. HOWARD. I want to know specifically what the amendment is. I did not hear it.

The PRESIDENT. The amendment is to add to the fifteenth section these words, "except judges, whose salaries may be increased."

Mr. HOWARD. I hope that will not pass. They are the most importunate beggars to have their salaries increased that we ever had in this Commonwealth. They hardly ever get on the bench that they do not want their salaries raised.

The PRESIDENT. The Clerk will call the roll.

The yeas and nays were taken and resulted as follow:

YEAS.

Messrs. Armstrong, Bailey, (Huntingdon,) Baker, Bartholomew, Biddle, Bowman, Calvin, Corson, Curry, Dallas, Gibson, Green, Hay, Hunsicker, Lamberton, Landis, Lilly, Littleton, MacVeagh, M'Clean, M'Michael, Newlin, Parsons, Patterson, D. W., Porter, Purviance, Samuel A., Reynolds, Ross, Sharpe, Simpson, Smith, H. G., Stewart, Struthers, Wetherill, J. M., White, J. W. F. and Woodward—36.

NAYS.

Messrs. Alricks, Baer, Bailly, (Perry,) Bardsley, Beebe, Bigler, Black, Charles A., Brodhead, Broomall, Buckalew, Carey, Carter, Cochran, Corbett, Darlington, Davis, De France, Dunning, Edwards, Elliott, Ewing, Fulton, Funck, Gilpin, Guthrie, Hanna, Hazzard, Hemphill, Horton, Howard, Kaine, Knight, Lawrence, Lear, Long, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purman, Purviance, John N., Reed, Andrew, Rooke, Russell, Smith, Henry W., Van Reed, White, David N., and Walker, President—55.

So the motion was not agreed to.

ABSENT—Messrs. Achenbach, Addicks, Ainey Andrews, Bannan, Barclay, Black, J. S., Boyd, Brown, Bullitt, Campbell, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curtin, Cuyler, Dodd, Ellis, Fell, Finney, Hall, Harvey, Heverin, M'Camant, Metzger, Mott, Patton, Pughe, Read, John R., Runk, Smith, Wm. H., Stanton, Temple, Turrell, Wetherill, John Price, Wherry, White, Harry, Worrell and Wright—42.

Mr. MANTOR. I move to go into committee of the whole, for the purpose of adding the following as an additional section:

"No law shall make any discrimination in favor of or against any class of persons. All public institutions, educational or otherwise, shall be equally free to all persons on the same terms and conditions."

Mr. CORBETT. I rise to a point of order. Was not that proposition voted on yesterday?

The PRESIDENT. There seems to be some of it stricken out, but substantially it is the same.

Mr. MANTOR. I offer this section not for the purpose of making any extended

remarks. I concurred most heartily in the proposition that was offered by the gentleman from Indiana, (Mr. Harry White,) as well as the amended proposition submitted by the gentleman from Allegheny (Mr. D. N. White.) This section differs from all the former ones, inasmuch as it strikes out the words "modes of travel, places of amusement and public houses of entertainment." The rest of the section carries with it its own argument. I have nothing more to say. I ask for the yeas and nays upon it.

Mr. ALRICKS. Mr. President: We have already declared that all men are equal before the law. I hope that the Constitution we frame shall not have the stain of politics on it. The section now offered has the flavor of politics, and therefore I shall not vote for it.

The PRESIDENT. On this question the delegate from Crawford (Mr. Mantor) calls for the yeas and nays.

Mr. HEMPHILL. Mr. Ainey and Mr. Newlin seconded the call.

Mr. CORSON. Mr. President—

The PRESIDENT. The yeas and nays are ordered.

Mr. CORSON. I was just going to make a point of order. I voted upon this question yesterday, although the reporters of the daily papers did get me down "Corson" instead of "Corson;" but I think it does not belong to this article. I ask the Chair, does it belong to this article?

The PRESIDENT. The Chair has ordered the yeas and nays. The gentleman can explain himself on some other article.

Mr. CORSON. I want to know if it is in order.

The PRESIDENT. It belongs to this article.

The question being taken by yeas and nays, resulted as follow:

YEAS.

Messrs. Ainey, Armstrong, Bailly, (Perry,) Baker, Bardsley, Beebe, Bowman, Broomall, Calvin, Carey, Carter, Cochran, Corson, Curry, Darlington, Davis, Edwards, Ewing, Fulton, Green, Hazzard, Horton, Howard, Knight, Lawrence, Lear, Lilly, Littleton, MacVeagh, M'Michael, Mann, Mantor, Newlin, Niles, Palmer, H. W., Parsons, Porter, Purviance, John N., Purviance, Samuel A., Rooke, Russell, Simpson, Stewart, White, David N., and White, J. W. F.—45.

N A Y S.

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Buckalew, Clark, Corbett, Dallas, De France, Dunning, Elliott, Funck, Gibson, Gilpin, Guthrie, Hall, Hanna, Hay, Hemp-hill, Hunsicker, Kaine, Lamberton, Landis, Long, MacConnell, M'Clellan, M'Culloch, M'Murray, Minor, Mitchell, Palmer, G. W., Patterson, T. H. B., Pughe, Purman, Reed, Andrew, Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Struthers, Woodward and Walker, *President*—48.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bartholomew, Black, J. S., Brown, Bullitt, Campbell, Cassidy, Church, Collins, Craig, Cronmiller, Curtin, Cuyler, Dodd, Ellis, Fell, Finney, Harrey, Heverin, M'Camant, Metzger, Mott, Patterson, D. W., Patton, Read, John R., Runk, Smith, Wm. H., Stanton, Temple, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry, Worrell and Wright—40.

Mr. BEEBE. I rise, sir, to an inquiry. What is the question pending?

The PRESIDENT. The question is, shall this article pass?

Mr. BEEBE. On that, believing that all that can be accomplished by a further consideration of it has been accomplished, I move the previous question.

Mr. BUCKALEW. I will state to the gentleman that I have been on the floor eleven times to offer an amendment in my hand this morning, and I insist that I have a right to offer it. I hope the gentleman will not insist on his call now.

Mr. DARLINGTON. The article is very imperfect yet.

SEVERAL DELEGATES. Let the call be withdrawn.

Mr. BEEBE. I observe that there are some forty propositions to be offered, and I do not believe they are entitled to the consideration of the House. I will withdraw the call for the present, however.

Mr. BUCKALEW. I move to go into committee of the whole for the purpose of inserting the following section after the thirty-third, and I will say that I am willing to have the vote taken without debate:

"The offence of boring shall be defined and punished by law, and shall include any corrupt solicitation of members of the

General Assembly, or of public officers of the State, or of any municipal division thereof, and any occupation or practice as a common borer for or against the passage or approval of laws. The punishment for the offence shall be by fine and imprisonment."

I ask for the yeas and nays.

Mr. LILLY. I do not want to make a speech; all I want to say is that I hope the proposed section will pass.

Mr. MACVEAGH. I wish to ask the gentleman from Columbia whether the words "lobbyist" and "lobbying" are not better understood and would not be preferable to the words "borer" and "boring?"

Mr. DARLINGTON. I desire that the gentleman from Columbia will define "boring." Otherwise I fear it will not be understood. ["No." "No."]

The PRESIDENT. The question is on the motion of the gentleman from Columbia to go into committee of the whole for the purpose of making the amendment indicated.

Mr. CARTER. I move to strike out the words "borer" and "boring," and insert "lobbying" and "lobbyist."

The PRESIDENT. No such motion is in order. The question is on the motion of the delegate from Columbia, on which he called for the yeas and nays.

Mr. HUNSICKER. I second the call.

The question being taken by yeas and nays, resulted as follow:

Y E A S.

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Brodhead, Broomall, Brown, Buckalew, Calvin, Carey, Carter, Clark, Cochran, Corbett, Corson, Dallas, Davis, De France, Dunning, Edwards, Elliott, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hall, Hay, Hazzard, Hemphill, Howard, Kaine, Knight, Lamberton, Lawrence, Lilly, Long, MacConnell, MacVeagh, M'Clellan, M'Culloch, M'Michael, M'Murray, Mantor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Purviance, John N., Purviance, Sam'l A., Rooke, Ross, Russell, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Struthers, Van Reed, Wetherill, J. M., White, J. W. F. and Woodward—75.

N A Y S.

Messrs. Baker, Biddle, Bowman, Boyd, Curry, Darlington, Ewing, Hanna, Horton, Hunsicker, Landis, Lear, Littleton, Mann, Minor, Niles, Patterson, D. W., Porter, Read, John R., Reed, Andrew, Reynolds, Simpson, White, David N. and Walker, *President*—24.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Black, J. S., Bullitt, Campbell, Cassidy, Church, Collins, Craig, Cronmiller, Curtin, Cuyler, Dodd, Ellis, Fell, Finney, Harvey, Heverin, M'Camant, Metzger, Patton, Pughe, Runk, Smith, Wm. H., Stanton, Temple, Turrell, Wetherill, John Price, Wherry, White, Harry, Worrell and Wright—34.

The Convention accordingly resolved itself into committee of the whole, Mr. Mann in the chair.

The CHAIRMAN. The committee of the whole has had referred to it a special amendment which will be read by the Clerk.

The CLERK. It is proposed to insert after section thirty-three the following new section:

"The offence of boring shall be defined and punished by law, and shall include any corrupt solicitation of members of the General Assembly or of public officers of the State, or of any municipal division thereof, and any occupation or practice as a common borer for or against the passage or approval of laws. The punishment for the offence shall be by fine and imprisonment."

The CHAIRMAN. The amendment is made in accordance with the instructions of the Convention, and the committee of the whole will rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Mann) reported that the committee of the whole had made the amendment ordered by the Convention.

Mr. MACVEAGH. I now move that the Convention go into committee of the whole for the purpose of amending the section which has just been adopted, and I indicate the amendment by defining the word "lobbying," precisely as the word "boring" is defined, to include every corrupt solicitation of members, and providing just as the section does, to give a constitutional definition to the word "lobbying" so broad, that it will include just what the word "boring" includes in that provision, and to insert the words "any

lobbyist" afterward, instead of "any borer."

The PRESIDENT. Will the delegate forward what he proposes?

Mr. MACVEAGH. It is simply a question as to the preference of words, but I will indicate how I desire the section as amended to read.

The PRESIDENT. The Clerk will read the section as proposed to be amended.

The CLERK read as follows:

"The offence of lobbying shall include any corrupt solicitation whatever of members of the General Assembly or of public officers of the State, or of any municipal division thereof, and shall be further defined by law, and punished by fine and imprisonment, as well as any occupation or practice as a common lobbyist for or against the passage or approval of laws."

Mr. BROOMALL. I do not think the gentleman from Dauphin has helped the phraseology. The word he suggests is about as low as the other. [Laughter.] I had thought of an amendment that would avoid the use of either word. Why not say: "That the Legislature shall define and punish the offence of private solicitation of members," &c. That will cover the same ground, and leave out both of these very low words.

Now, I would desire that the Constitution should be held up to your and my great-great-grand-children as a sample of the best English of the present day; and I am sure that the words "lobbying" and "lobbyist," as well as the words "borer" and "boring," would be very questionable English.

Mr. MACVEAGH. The word is of course a question of taste for the Convention to decide; but I believe in applying to any system or practice the words which common usage has taken to signify it. If you have a vice at which you desire to strike in the Constitution, if the vice has assumed proportions that justify you in striking at it, as this vice notoriously has, of the private and corrupt solicitation of the members of the General Assembly and other public officers, then I believe in striking at it by the approved word used to designate it, and if any doubt exists, I believe in giving a constitutional definition of the word that shall make it broad enough to include every species of the offence. I accept the suggestion, and will follow the step of the gentleman from Philadelphia, behind me, (Mr. Woodward,) who agrees with me in holding that this is not a word capable of two con-

structions, as I think the word used by the delegate from Columbia is. I do not see how slurs or innuendoes, or what the French call *double entendre*, can be possible upon the word "lobbyist," whereas I do see the possibility of such slurs upon the use of the other expression, and I can see no possible disadvantage in substituting this for that. But, as I say, it is a question of taste for the Convention.

Mr. BUCKALEW. I must reply in a few words to what has been said by the gentleman from Dauphin. As a matter of course, I am for the substance of things rather than for the form, and shall be entirely willing before our work is completed to put this section in a form which will be more acceptable to the members of the Convention. For my part, I prefer it in the plain rugged language in which it was drawn. I think it is well enough to call a spade a spade, and I do not think any difficulty or doubt can be predicated upon the language that has been used in the amendment.

But I meant to suggest that this section, as well as all other new sections we have voted in in various articles, will of course be considered by the Committee on Revision yet. I contemplate that that committee shall consider the phraseology of this section.

Mr. MACCONNELL. I wish to ask the gentleman a question. After we have gone through the second and third readings, is our work to go back to the Committee on Revision and Adjustment to be approved by them and brought before the Convention again? I ask him whether we should not be in danger of having no end to our work.

Mr. BUCKALEW. All those articles must be put in form. What I meant to say was that the amendment which the gentleman from Dauphin has proposed is imperfect. The term "lobbyist" applies only to those who attend the capital of the State in the outer part of the halls of the House and of the Senate; whereas the object of my amendment is to strike at all persons who follow the business of soliciting public officers of the State, or officers of any county or city, to do wrong, as well as members of the Legislature; and, therefore, the term "lobbyist" would not accurately apply to them. It would be a strained application of the word to say in the Constitution that it should. I submit then to the Convention that the amendment as at present offered by the member from Dauphin shall be rejected,

and that the section shall be retained as we have inserted it.

Mr. J. W. F. WHITE. Mr. President: I would suggest that by unanimous consent we substitute the word "lobbying" for the word "boring," in the amendment of the delegate from Columbia. I find from Webster's dictionary before me that there is no definition of the word "boring" to suit this case, but the word "lobbying" does exactly suit the case; and the delegate from Columbia is a little mistaken in his meaning of the word "lobbying." I will quote from Webster: "LOBBYING: To solicit members of a Legislature in the lobby or elsewhere with a view to influence their votes."

Mr. BUCKALEW. I rise to explain—

Mr. BOYD. Will the gentleman state what "boring" is defined to be, or whether there is such a word in the dictionary?

Mr. BUCKALEW. This section is not confined to the Legislature, but applies to all public officers of the State and of cities and counties.

Mr. MACVEAGH. And that constitutional definition is given in my amendment.

Mr. CORSON. Mr. President: I desire to correct the gentleman from Pittsburg (Mr. J. W. F. White.) There is no such word as "lobbying" in Webster's unabridged dictionary, [laughter,] but there is such a word as "boring," and "bore" is defined to be "to weary by tedious iteration," and that is exactly the right word. It is "to weary by tedious iteration." That is in Webster's unabridged dictionary.

Mr. DARLINGTON. Is that the only definition "boring" has?

Mr. CORSON. Now, if the gentlemen of the Convention are so ignorant as not to know that there is a difference between the way this "boring" is spelled and the other "boaring," which they think is a low word, perhaps they had better be informed now that there is nothing low about this expression. It is the most expressive word that can be used; and if there be an idea in the minds of some gentlemen, as there seems to be in the mind of the gentleman from Greene, that this word is spelled with an *a*, then perhaps we had better use the term which was employed by the distinguished gentleman from York, and say that these porcine scoundrels—meaning borers—shall be checked. That would be a polite word, [laughter,] but this has nothing to do with the porcine race. We want to stop the tedious and painful iter-

ation which these men who hang about the State Legislature employ in order to procure their work to be done. Now, if we come to consider this carefully we shall find that the distinguished gentleman from Columbia has used the most expressive word that there is in the English language. It is exactly the proper term, and I hope it will not be disturbed, it having been adopted.

Mr. BOYD. Mr. President: I read from the same dictionary with my colleague, and Webster defines it at large. He says it is "to pierce, or transfix. Also to pass over, in which sense it coincides with *ferry*. The Celtic *ber*, *bear*, a spit, *L. veru*, from thrusting or piercing, coincide in elements with this root." That is the technical definition of boring. [Laughter.]

Mr. HAZZARD. I ask if it be in order to go into committee of the whole for the purpose of revising the dictionary? [Laughter.]

The PRESIDENT. The question is on the motion of the delegate from Dauphin.

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

Mr. BOYD. I second the call.

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

Y E A S .

Messrs. Alricks, Baker, Beebe, Black, Charles A., Bowman, Boyd, Carey, Carter, Clark, Corbett, Curry, Cuyler, Darlington, Edwards, Ewing, Green, Hanna, Hunsicker, Knight, Landis, Lawrence, MacVeagh, M'Clellan, M'Michael, Mann, Minor, Niles, Patterson, D. W., Purviance, John N., Read, John R., Sharpe, Simpson, White, David N., Woodward and Walker, *President*—35.

N A Y S .

Messrs. Achenbach, Armstrong, Baer, Baily, (Perry,) Bartholomew, Biddle, Bigler, Brodhead, Broomall, Brown, Buckalew, Calvin, Corson, Dallas, Davis, De France, Dunning, Elliott, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Hay, Hazzard, Hemphill, Horton, Howard, Kaine, Lambertson, Lear, Lilly, Long, MacConnell, M'Murray, Mantor, Mitchell, Mott, Newlin, Palmer, G. W., Parsons, Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Stewart, Van Reed, Wetherill, J. M. and White, J. W. F.—57.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Black, J. S., Bullitt, Campbell, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curtin, Dodd, Ellis, Fell, Finney, Harvey, Heverin, Littleton, M'Camant, M'Culloch, Metzger, Palmer, H. W., Patton, Pughe, Runk, Smith, Wm. H., Stanton, Struthers, Temple, Turrell, Wetherill, Jno. Price Wherry, White, Harry, Worrell and Wright—41.

Mr. ARMSTRONG. I move to go into committee of the whole for the purpose of inserting the following in lieu of section thirty-four:

"The offence of corrupt solicitation of members of the General Assembly or of public officers of the State or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers for or against the passage or approval of any law or municipal ordinance shall be defined by law, and such offence shall be punished by fine and imprisonment."

Mr. BUCKALEW. I have no objection to having that substituted for the other section. Probably it can be done by unanimous consent.

The PRESIDENT. It is moved to go into committee of the whole for the purpose of striking out the section on "boring," and inserting what has been read.

Mr. JOSEPH BAILY and OTHERS. Let it be done by unanimous consent.

The PRESIDENT. Will the Convention agree to the amendment? ["Yes!" "Yes!"] The amendment is made by unanimous consent.

Mr. EWING. I rise to a privileged question. Yesterday a motion to go into committee of the whole to amend section ten in the seventeenth line was made and carried. I voted with the majority on that subject. There is some complaint that parties were not heard in regard to it. I do not expect to change my own views, but I am willing that they shall be heard. I move to reconsider the vote by which we went into committee of the whole on that subject.

Mr. DARLINGTON. I second the motion. I voted with the majority.

Mr. MACVEAGH. Let the words that were inserted be read.

The CLERK. At the end of the seventeenth line of the tenth section these words were added: "Except in counties containing not less than 160,000 inhabi-

tants and an area of not less than 1,200 square miles."

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

Mr. DARLINGTON. I second the call.

The question being taken by yeas and nays, resulted as follow :

YEAS.

Messrs. Armstrong, Bailey, (Huntingdon,) Clark, Corbett, Darlington, De France, Ewing, Fulton, Gibson, Gilpin, Guthrie, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Landis, Lear, MacConnell, MacVeagh, M'Michael, Mann, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Smith, H. G., Smith, Henry W., Stewart, Struthers, Van Reed, Woodward and Walker, *President*—39.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Baer, Baily, (Perry,) Baker, Bartholomew, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Calvin, Corson, Curry, Cuyler, Dallas, Davis, Dunning, Edwards, Funck, Green, Hall, Hanna, Hazard, Knight, Lamberton, Lawrence, Lilly, Long, M'Clean, M'Culloch, M'Murray, Mantor, Minor, Mitchell, Mott, Newlin, Porter, Pughe, Purman, Purviance, John N., Rooke, Ross, Russell, Sharpe, Simpson, Wetherill, J. M. and White, J. W. F.—53.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Beebe, Black, J. S., Bullitt, Campbell, Carey, Carter, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curtin, Dodd, Elliott, Ellis, Fell, Finney, Harvey, Heverlin, Littleton, M'Camant, Metzger, Palmer, G. W., Patton, Runk, Smith, William H., Stanton, Temple, Turrell, Wetherill, John Price, Wherry, White, David N., White, Harry, Worrell and Wright—41.

Mr. H. W. PALMER. I move to go into committee of the whole for the purpose of further amending the tenth section of the article on legislation, by adding at the end of the amendment which was adopted yesterday, at the end of the seventeenth line, the following words:

"But no county included in this exception shall be divided without the express assent of such county by a vote of the electors thereof."

These are the words of the old Constitution, and if adopted the section will then read as follows:

"The General Assembly shall not pass any local or special law locating or changing county seats, erecting new counties, or changing county lines, except in counties containing not less than one hundred and sixty thousand inhabitants and an area of not less than twelve hundred square miles; but no county included in this exception shall be divided without the express assent of such county by a vote of the electors thereof."

I most respectfully crave the attention of this Convention. I had hoped that this question of the division of Luzerne county would not again trouble the Convention; but, like Banquo's ghost, it will not down, and before final action is taken upon it and this section put beyond our reach, I only ask the delegates here to understand the situation in which they have left that county. If after understanding it they are willing to put this blot upon the face of the Constitution, and this great wrong upon a county of the Commonwealth, I shall bow with respectful submission to their will.

This tenth section was inserted in the Constitution for the purpose of prohibiting special legislation. I have always understood that to prohibit special legislation was one of the great objects for which this Convention was called. The amendment already made provides substantially that the Legislature shall not be allowed to legislate specially upon the subject of changing county lines, erecting new counties, or removing county seats, except in the county of Luzerne, that county being the only one which comes within the exception. The restriction upon special legislation which existed in the old Constitution for the protection of that county and all other counties in the State is stricken out, and no protection is afforded to Luzerne in the new Constitution.

Let me call the attention of the Convention to the results of this proposition. It transfers the disposition of the question of a division of the county from the citizens of the county to the halls of the General Assembly, and makes it possible for that body to dismember her and cut her up into no less than four small counties by a special act, without submitting the question of division to a vote of the people and without in any manner asking their consent. I can scarcely imagine

a worse condition of things than would result should this amendment be adopted. From this time on every two years the county of Luzerne will be thrown into terrible commotion; local politics will be shaped on the new county issue; Senators and members of the House of Representatives, sheriffs, and other county officers will be elected on it. Persons favorable to a new county will repair to the Legislature and take with them the means and appliances necessary to procure an act to divide. Persons who are opposed to the erection of a new county will also be there with their friends and adherents. They will also convey thither the appliances needed to successfully oppose such a measure, and the state of things existing in the Pennsylvania Legislature before the amendment to the Constitution of 1857 will again exist. Prior to 1857 the Legislature had the power to divide counties by special acts; and any person who is familiar with the course of legislation before that period upon that subject knows what turmoil and confusion and corruption were prevalent at Harrisburg every winter, and every such person knows what infamies were wrought by virtue of that power. This is the entertainment to which the Convention proposes to invite the good people of the county of Luzerne alone. They are to be singled out from all the rest.

What, I ask, have the people of that great county done that they should thus be singled out? They are as honest, industrious, thrifty and intelligent as average Pennsylvanians and have done nothing worthy of this bad distinction. I am told gentlemen voted for this exception because Luzerne ought to be divided. That proposition I deny in general and in particular, and as I have never fully adduced the argument in this behalf on this floor, I crave the attention of the Convention while I endeavor to demonstrate to every fair-minded man that Luzerne not only does not need to be divided, but that her people are opposed to a division.

In the northern end of that county is the city of Carbondale, a city containing perhaps ten thousand inhabitants. They have a court which has jurisdiction not only over the city limits, but over several adjoining townships. That court has common pleas jurisdiction. It affords all the facilities for litigation that the people in that end of the county require. They

are satisfied with it. They do not desire to have it disturbed. They are not in favor of a new county. They have memorialized this body during its session on this subject, and they have said through their memorials and in their public speeches and resolutions that they do not desire any interference with their court; they are satisfied with their law judge and their court of record, which has all the machinery that pertains to every court of common pleas.

Travel down the valley of the Lackawanna eighteen miles further and we reach the enterprising and growing city of Scranton, claiming here to have 50,000; probably 30,000 would be nearer the mark, but no matter about that. It is a young giant of the wilderness, with a busy, thriving people. It spreads over a great territory, and if report is true the sportive bear has been slaughtered within the city limits, and in the sequestered dells and nooks of the same corporate precincts the red deer loves to linger. She has spread herself over a great territory and therefore contains a great population. She also has her court. A court with common pleas jurisdiction, with a judge learned in the law, with a clerk and with records, and that court has jurisdiction over the city limits and over several surrounding townships, and with it the people are satisfied. The leading lawyers of that bar have said to me, "we desire no new county."

Travel eighteen miles further down the valley of the Lackawanna and Susquehanna rivers, meeting on the road no natural division of this county because you go all the way from Carbondale down the valleys of these rivers until you reach Wilkesbarre. There also is a city of 20,000 inhabitants, and if spread over the territory Scranton covers she might claim as many people, but we are not ambitious. There is located a county court having jurisdiction over the whole county of Luzerne and affording abundant court facilities for all the rest of the people of that county.

We are told by the gentleman from Luzerne (Mr. Pugh) that there are twenty-two hundred *remnants* at issue on the dockets there. Very likely it is true. He has gone back six years and picked up every appeal from justices of the peace and every slander suit and every suit that has been settled and not discontinued, and brought the record here to swell the number. As a better test of the business

of the county I point you to the trial lists for the October term of 1871, which I have here present, and I exhibit the fact that there are causes on that list brought to the October term of 1872, so that the business of Luzerne county is up within one year. Now, where is there a county in this Commonwealth with a better record or where business is more promptly done. We have there two most excellent judges learned in the law, and their industry and ability are equal to the task before them.

Again, this county is bisected and quartered by railroads so that no citizen within its limits is more than four hours from the county seat. There is no man in Luzerne county who cannot put his foot in the court house at Wilkesbarre within four hours from the time he leaves his home. Does Luzerne county need a division? The time was when she may have needed division, but that time has passed. When her citizens were obliged to tackle up their teams and start on Sunday afternoon to reach Wilkesbarre by Monday at two o'clock, then it was that the county needed division; but now the iron-horse whirls them along with almost lightning speed and in less than half a day any citizen can journey from his home to the county seat.

Do the people desire a division of the county? It does seem to me that the gentlemen of this Convention might let the people of Luzerne attend to their own affairs. It does seem to me that the electors and citizens of that county have a better right to say whether their county should be divided than the delegates in this Convention. How do they feel about it? The question has been submitted to a vote of the people. They passed upon it at a solemn election and there was more majority returned against the new county than votes for it, and I appeal to the record of that election for the truth of my statement. In the proposed new county territory one-third of all the electors voting there declared against the new county.

Now then, for the sake of this small fraction of the citizens of that end of the county will this Convention make us an exception to the general rule and send us into the halls of the General Assembly to be torn by dissensions and fueds, to be obliged to meet a corruption fund there with a like corruption fund? Will you put upon the face of your Constitution this glaring inconsistency in the very

front of your article prohibiting special legislation? Will you put there a most obnoxious provision specially legislating for one county?

The PRESIDENT. The delegate's time has expired.

Mr. DUNNING. Mr. President: I do not think I shall take ten minutes of the time of this Convention; but I want to say a few words upon this question in reply to the distinguished gentleman who has just taken his seat. He made some very airy flights, and must have convinced every one that he is a perfect Nimrod to hunt up bears and deer in a city with a population which he concedes may be thirty thousand. He is a hunter of the first order. He has hunted further and deeper to find the argument that he has presented here than any gentleman I ever knew. He says to you the people of Luzerne, in no respectable number, ask for a division. He says that the county should not be divided, and he is the only gentleman here from that county who is opposed to the division. He further said that there had been a time when division was necessary. Why, then, has he stood opposed to any division for the past thirty years?

What is the situation? We come to you with a county that has a territory, as has been well said, large enough to make three or four counties, each of which would compare favorably with many of the present populous counties of the Commonwealth. But we ask for no such division. We simply asked yesterday for the incorporation of an amendment in this article that would make it possible for Luzerne county to be divided whenever her people, considering her great population, territory and interests, believe that the division should be made; that is all we ask.

I do not wonder that the gentleman is opposed to any division. He lives at the county seat and he is a leading lawyer at the place where all must go for the transaction of the vast legal business of the county. But what is the position of the other gentleman representing that great county in the Hall of this Convention? He is the only gentleman from the county in all our delegation who is opposed to the division. It was well understood in the selection and election of the delegates to this Convention that the question of county division was a leading element; and yet this gentleman, representing the county seat, is the only member here from

Luzerne who, by his voice, is opposed to a division. The people of the county demand relief.

What extraordinary measure do we ask that all this opposition and eloquence should be invoked here? We only ask to be placed in such position that the county may be divided on the same terms and by the same means which govern other counties in this Commonwealth. Is that extraordinary? A few years ago there was an amendment put into the Constitution that prohibited the division of counties.

Mr. MACVEAGH. Will the delegate allow me to ask a question for information?

Mr. DUNNING. Certainly.

Mr. MACVEAGH. I really desire information. What is the special objection to allowing the people of Luzerne county to decide this question for themselves?

Mr. DUNNING. I ask why should the people of Luzerne be subjected to that which no other county has ever been subjected to? Other counties where division has been desired, have procured legislative enactment to allow the division. Why should Luzerne be singled out and made an exception to the rule? Why should it not have been always kept in the position it occupied forty or fifty years ago, before the eight or nine large counties were taken from it, if it was never proposed to have division carried further? Why not have left it undivided when it had Northampton, Susquehanna, Bradford, Wyoming and others within its limits? Why not have left it as it was?

The gentleman tells us it is a Commonwealth, and it is. It is a State, and in a mighty bad state, and appeals loudly to the Convention for relief. I want the Convention to look this matter squarely in the face and say if there is any reason why Luzerne county should be made an exception to every other county in the Commonwealth. I know that propositions for new counties have become unpopular, from the fact that efforts have been made to divide counties when it was not desired and the division could not carry; when the counties interested had not the territory nor the population, nor the wealth, nor the interests, to require any division. All we now ask is that gentlemen attend to their own affairs and leave us in Luzerne to attend to ours, giving us the privilege to divide the county whenever we in Luzerne believe it ought to be divided.

But my colleague has referred to the vote taken in 1863, to show that the people of the county themselves are opposed to this division. I desire to look a little into that portion of his argument and to show how utterly unfounded it is upon fact. What was that vote? There was an enabling act passed by the Legislature to allow the citizens of Luzerne county to vote upon the question of dividing its territorial limits. But, sir, nobody went to that election; there was no vote polled except in the county seat and its immediate neighborhood, where, of course, opposition to a division would be expected. The election occurred in a time of war, when the burdens of war were upon the people, and elections were not thought of. There were districts in which not a single vote was polled at that election. The people of the county were looking to matters of greater importance and of greater interest, and they were so great that they entirely overshadowed the question of county division. That, I believe, settles conclusively the argument that the gentleman has raised in reference to the vote in 1863.

We in Luzerne ask of this Convention simply this one thing, that the county may be left to take care of itself and to provide for dividing its county lines just in the same manner that the other counties in the Commonwealth have been enabled to do in the past. We ask nothing that other counties have not had. In other counties, whenever a division was desired, they went to the Legislature and got a law passed enabling them to divide their counties. We ask for Luzerne nothing more than that privilege.

Mr. WOODWARD. I said nothing upon this subject yesterday when it was up, because I did not anticipate the extraordinary decision to which the statements of the gentleman from Scranton (Mr. Pughe) brought the Convention; and I would not say anything now in support of this amendment of the gentleman from Luzerne, if I do not perceive from that vote and from conversation with members of this House that there is a misunderstanding here in regard to the geography and topography and population and interests of Luzerne county. Having spent most of my life in that county and knowing it, sir, from A to Z—and I used to know all the people in it—I do know that some of the statements that have been made on this floor and which were very persuasive in their presentation are

calculated to mislead the body rather than to guide it aright.

Mr. President, Luzerne county is a large county geographically to be sure, but is of no such dimensions as I heard gentlemen say yesterday, one hundred and fifty miles from the Columbia county line to the Wayne county line, which is the longest way of the county. That is not true. From Berwick, in Columbia county, to Wilkesbarre, is twenty-eight miles, and from Wilkesbarre to Carbondale, is thirty-three miles, and although you have not exactly attained the county line at Carbondale, you have attained the boundaries of population, because all beyond is Moosic mountain, and has almost nobody in it. Now put twenty-eight and thirty-three together, and what gentleman will make one hundred and fifty, as I was told yesterday was the length of that line.

Mr. DUNNING. May I interrupt you?

Mr. WOODWARD. Yes, sir.

Mr. DUNNING. Let me inquire by whom you were told? Who made that statement?

Mr. WOODWARD. I heard it upon the floor of this body, from some gentleman; I do not recollect now who it was. It was not said in debate, but was assigned as a reason for the vote that was given.

Mr. DUNNING. I beg pardon of the gentleman. I thought he meant that it was something said on the floor of this Convention in debate.

Mr. WOODWARD. I mention it as one of the misapprehensions of this case. Now, there are railroads up and down this entire valley; two or three railroads between Scranton and Wilkesbarre, with hourly trains, and it takes less than an hour to travel that distance. All that the gentleman said about the population of Luzerne county is true both for the present and future. It is the largest county in the Commonwealth outside of Philadelphia and Allegheny counties, and it is going to rival Allegheny very soon in point of population. It is like a section of the best part of Great Britain; and how, sir, has it grown to this immense population and business? By virtue of the boundaries which it has now it has grown to be what it is and as it is, and these railroads have come to supply this population with that kind of intercourse which they must have with the county seat and with each other. And they are better supplied to-day, a thousand fold better supplied to-day, than they were in

1825 when I settled in Wilkesbarre. The county of Wyoming, the northern end of the county of Luzerne, was taken off, and a very stupid Legislature called it the county of Wyoming while there is not an inch of Wyoming territory in it, and a poor little feeble county it has been ever since, as you would make Luzerne now if you were to divide it.

Well, the question of dividing her and mutilating her fair proportions has been submitted to the people and they have voted it down by immense majorities.

Mr. DUNNING. Never but once.

Mr. WOODWARD. Well, never but once. What the gentleman from Luzerne (Mr. H. W. Palmer) says is true, that the majority against the division of that county was greater than the whole vote polled for it in the whole county; and one-third of the voters of the proposed new county voted against it also.

These are the facts in the case. The gentleman speaks of the number of cases standing on the list. Why, if he were to go into the prothonotary's office of this county he would probably find a much greater number. You go into the prothonotary's office of Allegheny county and doubtless you will find a greater number. The gentleman says he is not a lawyer. If he were a lawyer he would know that there are a vast number of causes that are brought without any intention of trying them, and that a considerable proportion of cases that are brought are better never tried. Why, the common law would encourage the settlement of cases among parties, desiring that they should meet and settle their differences out of court, actual trial being the last resort when all other means of settlement and compromise have failed. Where a case is brought and left to stand until the passions of the parties have cooled and their interests have perhaps changed, the case is very apt to be neglected and left over and the gentleman has gone to the fullest possible extent of his arithmetic in counting up the number of cases of this sort that are left untried in the courts of Luzerne county. There is nothing in that argument. The judicial business of Luzerne county is done with reasonable promptitude, and what the gentleman from Luzerne states in regard to the present trial list proves that.

Years ago when the county of Montour was seeking to be detached from the county of Columbia, I happened to be at Harrisburg on other business, and I never

witnessed a more angry fight in my life than I then saw there. Gentlemen had their passions and their interests involved. They called each other by the harshest names. It was a quarrel all around, it was buying up members of the Legislature according to the ability of the parties. It was a disgraceful scene. This amendment of 1857, for which we are indebted to the gentleman from Columbia, (Mr. Buckalew,) put an end to such disgraceful proceedings at Harrisburg. Your vote yesterday is to re-open them. It is to transfer this question in regard to Luzerne county to the halls of legislation, and my word for it, if this is done, this question will occupy those halls during the entire session.

Let me tell you, sir, that the parties that will fight that fight are of a different temper and ability from those that contended for Montour county. There are millions of capital invested in and about Scranton. There are men of first rate ability there. There are men there who were poor enough when Scranton was "Slocum Hollow," and who are millionaires to-day, and who made their wealth out of the corner lots of Scranton. You invite these men to go to Harrisburg to discuss this question of dividing Luzerne county.

Well then, sir, in Wilkesbarre and the lower end of the county there are not lacking men of equal wealth and equal power and equal disposition to fight. Now, then, you have got these two powerful interests, Scranton and Wilkesbarre, arrayed at Harrisburg on the question of cutting up and dividing that county. The people of Scranton will never submit it to a vote of the people of the whole county, because they know a majority of the people will be against it. They want this Convention to authorize the Legislature to divide it without a vote of the people. What will be the consequence? You will give the speculators of Scranton that advantage that they can go before the Legislature. You will require the speculators of Wilkesbarre to meet the speculators of Scranton in that field, and what then becomes of all this attempt that we have apparently been making to restrain special legislation and vicious legislation? What becomes of it? Why, sir, it is a rope of sand; it is a withe of tow. We have been wasting our time and stultifying ourselves in attempting to purify the legislative halls when we have provided for one of the grandest fights, and that for

all winter, that you have ever witnessed in legislative halls.

Mr. MACVEAGH. And winter after winter.

Mr. WOODWARD. Mr. President: I do not wish to see this state of things. I have no interest in Luzerne county. I do not own any land there. I have no corner lots in Wilkesbarre or in Scranton; but I do know what are the interests of that people. I know they are not suffering for a want of access to the county seat, which as Mr. Palmer has said, the remotest man can reach in four hours, by railroad, from any part of the county. I know there is no occasion to complain of delay of justice. Why, sir, at Scranton and Carbondale they have municipal courts to try the question who struck first, these assaults and batteries which were enumerated yesterday as showing a great amount of legal business. If you investigate those cases, and find what they are composed of, they would not be so formidable as their numbers indicate. The county is not suffering for want of facilities in the administration of justice. The people of the county are opposed to a division of it. The moment you undertake to set up Scranton as a county seat you have got to set up Hazleton at the other end, and the gentleman from Carbondale the other day made a motion in that direction. You pass this section as it stands, and without the amendment which I have risen to advocate, and next winter Luzerne county will be torn limb from limb; Hazleton must be a county seat, Scranton must be a county seat, Carbondale must be a county seat, and a little village called Dunning will have to be a county seat, (laughter,) and corner lots will go up, and what will become of Luzerne? Why, old Luzerne, now an honor to the Commonwealth, and known worldwide, will dwindle down to the proportions of Northumberland county, which used to be a glorious old county and now looks like a pair of saddle-bags. [Laughter.]

When has there been a county divided in our mother country? Look at those glorious counties of Great Britain. If anybody should propose to divide them, the very stones would cry out in mutiny against such desecration. In some of our western States, in Kentucky particularly, where I spent part of the summer, they have gone upon the policy that gentlemen advocate in this Convention, of small counties, and I observe one mem-

ber of Congress had, I think, fifteen counties in his district. Others have eleven and twelve counties in a Congressional district. They have no court-houses worth mentioning. They have no facilities for the administration of justice. The counties are small; they have no townships; they have no roads except such as the county builds; and when the county builds them an incorporation calling themselves a turnpike company put up a toll-gate every three or four miles and charge you five cents for traveling on a road which the county has built. That is Kentucky's mode of dividing her territory.

The PRESIDENT. The gentleman's time has expired.

Mr. WOODWARD. I hope the amendment will be agreed to.

Mr. LILLY. Mr. President: I do not desire to make a speech, but only to say a few words. I attempted the other day to make a motion to have the Convention strike out this paragraph of the section, which I think ought to be stricken out. As I said then, it builds a wall around each county and its limits are not to be touched, let the State grow as much as it pleases. My idea was specially directed to Luzerne, for I am free to say, as far as my knowledge of the geography of Pennsylvania is concerned, that I do not know another county in the Commonwealth that I would vote to divide if I were in the Legislature, because the very things that my friend on the right has said this morning. The very fact of their being obliged to have a court of record at Carbondale and another at Scranton, shows that there is a necessity in that end of the county for more judicial power, and it can be governed and carried on better within new county limits than it can as it is now by providing special courts. There is a great deal of mix-up in their courts, and a great deal of trouble about them.

That is one reason why I am in favor of dividing Luzerne. The gentleman on my right said that the people of the county can reach the court house in four hours. I say that one-third of the people of Luzerne can get to the court house of Philadelphia in four hours, but must cross five counties and into the sixth in doing it; hence that is no reason why it should be held together.

What governs me in this matter as much as anything else is this: There are five representatives on this floor from the county of Luzerne; there are seven mem-

bers on this floor from that senatorial district, and five of them are in favor of the proposition to divide Luzerne and barely two of them against it, and those two live in the city of Wilkesbarre, within a stone's throw of each other, and under the dripings of the court house, and they are both lawyers who expect tribute from the rest of the county.

That is one reason why I shall vote against this. The Convention ought to make it possible to divide Luzerne. I would like to leave the Constitution so as to make it possible to divide any county in the Commonwealth when necessity requires it. As I said before, if I were in the Legislature, knowing as much as I do of the geography of the State, I think I would vote for a division of Luzerne county. There may be other counties which I would also vote to divide, if I were a member of the Legislature. The gentleman from Luzerne made his beautiful speech here this morning to bring up these questions, and if you adopt his proposition, you prevent a division of Luzerne county, you re-erect that barrier around it which by our vote yesterday we pulled down, and you will make it impossible to divide it.

Mr. PUGH. Mr. President: I did not intend to say another word on this question. This Luzerne county question is like the ghost of Banquo; it appears here so often that I am actually sick of it. The amendment presented by my colleague (Mr. Dunning) yesterday would not have been offered had not the gentlemen who feel such an interest on the other side gone around and harangued and coaxed, and told men that we could not do anything because no special legislation can ever divide a county. I would like to know how you will make a general law except that which is incorporated in the article on third reading now. If you had left it alone and not put up these barriers, there would have been nothing more heard of this Luzerne county question.

But what I was surprised at was this: That my distinguished friend from Philadelphia (Mr. Woodward) has taken upon himself to read us a lecture. He speaks of having known the county longer than the rest of us; but in later years he has not known so much about it, for his description of the upper end of the county is not exactly right. But be that as it may, I will recall to that gentleman's memory, that after this section was adopted on this floor the first time

he said in the presence of eight or ten gentlemen "that the statements which Mr. Pughe made before the Convention were true," and, said he, "I am converted; I believe the county ought to be divided." He has fallen from grace pretty badly. [Laughter.]

I appeal to the gentleman that of all the facts I have brought forward here, not one has been contradicted. I should feel it dishonorable to make any statement before this Convention that was not true and based upon right. He said I was not a lawyer, and I do not know how to state things about legal business. Well, if I am not a lawyer, I have inquired from the president judge and other lawyers exactly how they do the work. He said he could go into any county and find as many suits brought probably as in Luzerne. I happen to have some facts on that point, and I got these facts from the reports of the several prothonotaries of this State, made in reply to a circular issued by order of this Convention by the Chief Clerk of this House. And what are some of these facts in regard to the other counties, compared with Luzerne?

This is the number of civil cases pending in the courts of common pleas unsettled in the year 1872: Franklin county, 194; Tioga, 90; Chester, 117; Erie, your own county, sir, 327; Dauphin, only 24; Cambria, 104; Bradford, 118; Fayette, 286; and Westmoreland had 1,300 cases pending from 1862 to 1872; Adams, 101; Schuylkill, 803; Mercer, 193; Huntingdon, 139; Luzerne county common pleas, 2,300 cases pending.

There is another fact which ought to be stated, that the two courts in the upper end of the county that I spoke of yesterday, which have equal jurisdiction with the common pleas, have a marshal who has the same powers as a sheriff. He advertises sales of property, and they come very often upon the same day with the sheriff's sales in Wilkesbarre, at Scranton and Carbondale; and here is a lawyer employed in cases where parties are interested in the three places at once. This is a perfect outrage on the legal profession there, and upon the business community.

Talk about the railroad interests. You can take a ride through Luzerne in the twinkling of your eye, and see the beautiful scenery, we are told. I say that, geographically, God destined Luzerne to be divided. The Lackawanna valley is entirely independent and distinct from the Wyoming.

The gentleman says that the reason Luzerne has grown is, because of the boundary line. If it was cut up into four counties, it would grow just the same. It is the development of the mineral resources there that has made the county, not the county lines.

The gentleman says he has no personal interest in the corner lots in Wilkesbarre or in Scranton. If he has not, it is only a short time since he had, and he has sons and daughters, and they are all interested in real estate there, all of them better off, ten times, than I am. Still he says he has no interest. If I had a child that owned a hundred thousand dollar house, I would be proud of him!

Gentlemen, I want you to look to this thing fairly and squarely, and do let us have the privilege of dividing that county. If the gentleman had voted to strike out that whole line, there would have been no necessity for this, but he voted to retain it, and there is where we are, and we are willing to abide by your decision. I do not think I can add anything more.

The PRESIDENT. The question is on the motion of the delegate from Luzerne, (Mr. H. W. Palmer.)

Mr. H. W. PALMER. I call for the yeas and nays.

Mr. DUNNING. I second the call.

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

YEAS.

Messrs. Achenbach, Alricks, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Boyd, Brown, Buckalew, Calvin, Carey, Carter, Clark, Corbett, Corson, Cuyler, Darlington, Fulton, Gibson, Gilpin, Guthrie, Hanna, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, MacConnell, MacVeagh, M'Clean, M'Culloch, M'Michael, M'Murray, Mann, Mantor, Mitchell, Newlin, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Wetherill, John Price, White, D. N., Woodward and Walker, President—55.

NAYS.

Messrs. Ainey, Baily, (Perry,) Baker, Beebe, Bowman, Brodhead, Broomall, Curry, Davis, De France, Dunning, Edwards, Ewing, Funck, Hall, Lamberton, Lawrence, Lilly, Long, Minor, Mott, Palmer, G. W., Patterson, D. W., Pughe,

Rooke, Simpson, Struthers, Wetherill, J. M. and White, J. W. F.—29.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Baer, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bullitt, Campbell, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curtin, Dallas, Dodd, Elliott, Ellis, Fell, Finney, Green, Harvey, Hazzard, Heverin, Knight, Landis, Lear, Littleton, M'Camant, Metzger, Patton, Porter, Purviance, John N., Reed, Andrew, Runk, Russell, Smith, Wm. H., Stanton, Temple, Turrell, Van Reed, Wherry, White, Harry, Worrell and Wright—49.

The Convention accordingly resolved itself into committee of the whole, Mr. Brodhead in the chair.

The **CHAIRMAN**. The committee of the whole have had referred to them section ten for the purpose of adding at the end of the seventeenth line these words: "But no county included in this exception shall be divided without the express assent of such county by a vote of the electors thereof." The amendment will be accordingly inserted.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Brodhead) reported that the committee of the whole had had under consideration the amendment referred to them and had inserted it in the article.

Mr. **DARLINGTON**. I ask the unanimous consent of the Convention to make one or two changes which will strike every one as obvious. In section eleven, line one, the word "bill" is used and it should be "law," so as to read: "No local or special law shall be passed." ["No," "No."]

Mr. **C. A. BLACK**. It is a bill that passes, not a law.

Mr. **DARLINGTON**. In the same section, line seven, the word "act" is used and it should be "law." I ask unanimous consent to make this change, but if it is objected to, I move that we go into committee of the whole for the purpose of making that amendment.

Mr. **BIGLER**. I think my friend from Chester is mistaken. "Bill" is the proper word. The matter is characterized as a "bill until it goes through the forms of law. Surely it would not do to submit the question of passing a law to the Legislature. The matter remains as a bill until it has received the Governor's signature, and then it becomes a law. The term is right therefore as it is.

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Mr. **CORBETT**. I hope the Convention will not further amend this article without due consideration. We have made several changes already which instead of making the article better have only made it worse. I hope the Convention will vote this motion down. "Bill" is the proper word.

The **PRESIDENT**. The question is on the motion of the delegate from Chester to go into committee of the whole for the purpose indicated.

The motion was not agreed to.

Mr. **KAINE**. I move that the Convention go into committee of the whole for the purpose of amending the twelfth section by adding to the end thereof the following words: "And all laws passed and signed shall be published entire."

Now, Mr. President, I merely desire to state to the Convention in two minutes the purpose of this amendment. The section will then read:

"The presiding officer in each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the General Assembly, after their titles have been publicly read immediately before signing, and the fact of signing shall be entered on the Journal, and all laws passed and signed shall be published entire."

Some gentleman in the Legislature last winter having more wisdom than any body who had gone before him, introduced and had passed a little joint resolution providing that laws should only be published by leaving off the names of the Speakers of the Senate and House, and also leaving off the title, partly.

Mr. **NILES**. Not the title; the enacting clause.

Mr. **KAINE**. Well, the enacting clause. That act is to be found in acts of Assembly of the last session, page 894:

"That hereafter in the pamphlet laws of this Commonwealth the State Printer be and he is hereby directed to substitute for the enacting clause the words, "Be it enacted, &c.," and to set as solidly as circumstances will permit the various acts of Assembly and joint resolutions required to be inserted.

"In the publication of the said pamphlet laws the names of the Speakers of the respective Houses shall be omitted, and the date of approval by the Governor shall be inserted in figures: *Provided*, That this act shall not be construed to affect any existing contract for printing."

Now, sir, here are the acts of the last session [exhibiting a copy of the laws] and there is their publication. Are they not beautifully set close together? One more could have been put on each of those pages. If that kind of thing is to be permitted the Legislature may pass a law directly that the acts shall not be published at all. Therefore, to keep the acts of the Assembly as they have been for a hundred years, I hope this Convention will add the few words I have suggested at the end of this section, which will prevent any act of the kind being passed in the future.

Mr. LAWRENCE. I hope the delegate will ask unanimous consent to make that amendment. It is right.

Mr. KAINE. Then I will ask unanimous consent.

Mr. NILES. I object.

Mr. PARSONS. I understand that that act saves the State one-fourth the cost of printing. The laws of the State of New York are published in the same way. It is wholly unnecessary that the whole enacting clause and the signatures should be published.

The PRESIDENT. The question is on the motion of the delegate from Fayette, to go into committee of the whole for the purpose indicated.

The motion was not agreed to.

Mr. NILES. Mr. President: We have been for three or four days upon this article, and I agree entirely with the remark of the delegate from Clarion, (Mr. Corbett,) instead of making it better, we are making it considerably worse. I therefore move the previous question upon this article.

Mr. HOWARD. I second it.

Mr. ARMSTRONG. I desire to make a statement to the Convention before that motion is put.

Mr. HOWARD. The previous question has been called. I rose to second it. Let us stick to it.

Mr. ARMSTRONG. Mr. President:—

The PRESIDENT. The previous question has been called by the delegate from Tioga. Is it seconded? ["Yes." "Yes."]

Mr. ARMSTRONG. I desire to make a statement to the Convention before that is put.

Mr. ROYD. Is that in order?

Mr. HOWARD. It is not in order now.

The PRESIDENT. The Clerk will take down the names of delegates seconding the call for the previous question.

Mr. ARMSTRONG. I appeal to the gentleman from Tioga to withdraw the call for a moment.

Mr. NILES. Can I withdraw it for a statement, and then renew it?

Mr. ARMSTRONG. Certainly. I will state the purpose I have in view. We have just adopted a section of great importance. That section renders it necessary to make some verbal alterations in the succeeding sections, and I propose to do it for the purpose of making a complete article on the subject.

Mr. ROYD. Cannot that be done by the Committee on Revision?

Mr. ARMSTRONG. The article cannot go to the Committee on Revision after it has passed third reading.

Mr. MACVEAGH. Let the delegate indicate what is proposed to be offered.

Mr. ARMSTRONG. I will do so. I think it can be passed by unanimous consent. I do not propose to enter into a discussion of the question.

Mr. NILES. I withdraw the call, for that purpose only.

Mr. ARMSTRONG. I propose first that the section which was added as section thirty-four shall come in as section thirty-three, in order that the next section shall follow it in appropriate order and be applicable to it. I have also revised the section so as to reduce the number of words that are in it and preserve the sense, and with the consent of the Convention I will read it:

"The offence of corrupt solicitation of members of the General Assembly or of public officers of the State, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment."

SEVERAL DELEGATES. That is right.

The PRESIDENT. No objection being made, that amendment will be made by unanimous consent.

Mr. ARMSTRONG. Then in order to render the thirty-third section more effective, I propose to change it, and if gentlemen will turn to their printed copies they will see the alteration. I will read it as it will stand if amended as I propose. My amendment strikes out some words which I think are unnecessary, and in this I may state the gentleman from Columbia and others with whom I have consulted, concur. I propose to make the section read thus:

"Any person may be compelled to testify in any legal investigation or judicial proceeding against any person who may be charged with having committed the offence of bribery or corrupt solicitation."

And then I add, because it is in another section, and this ought to be consistent with it:

"And shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony; and any person convicted of either of the offences aforesaid, shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust or profit in this Commonwealth."

Mr. BUCKALEW. I hope unanimous consent will be given to make that change.

The PRESIDENT. That amendment will be made by unanimous consent, no objection being made.

Mr. NILES. I now renew the call for the previous question.

The PRESIDENT. The Clerk will take down the names of the gentlemen seconding the call.

Mr. DARLINGTON. I hope gentlemen will not get impatient. Let us spend a few more minutes on this article. There are several propositions yet to be offered.

Mr. HOWARD. Debate is not in order.

The PRESIDENT. The names of those seconding the call will be read.

The Clerk read the names as follow: Messrs. Boyd, Howard, Corbett, S. A. Purviance, Beebe, Baker, D. N. White, De France, Porter, Curry, T. H. B. Patterson, John Price Wetherill, MacConnell, Mott, Clark, Ewing, Edwards and Lilly.

Mr. DUNNING. Are we now under the previous question?

The PRESIDENT. The call for the previous question is seconded by the requisite number.

Mr. DUNNING. Before that is gone into, I ask unanimous consent to strike out some words.

The PRESIDENT. The delegate from Luzerne asks unanimous consent to strike out what?

Mr. DUNNING. All the amendments made to the sixteenth and seventeenth lines of section ten.

Mr. BEEBE. Both parties signify their willingness.

The PRESIDENT. Shall unanimous consent be given to the withdrawal of all the amendments that have been made to the section relative to the division of Luzerne?

Mr. H. W. PALMER. On one condition, that this whole subject shall not be brought up again. If when the new county clause comes up we are to go over the whole thing again, I object.

Mr. LILLY. I object to any condition.

The PRESIDENT. Will the Convention agree? ["Aye." "Aye." "No."] It is not agreed to; objection is made.

Mr. HEMPHILL. I ask unanimous consent to make two verbal changes, merely for the sake of brevity. ["No." "No."]

The PRESIDENT. The gentleman will indicate the change.

Mr. HEMPHILL. In section eleven I propose to strike out, in the fifth and sixth lines, "notice having been published," and insert "publication."

Mr. CORBETT. I object to an alteration of that section.

Mr. HEMPHILL. In section thirty-four I wish to strike out the words "or bill proposed or pending," and the words "to the House of which he is a member," and make it read:

"A member who has a personal or private interest in any measure before the General Assembly shall disclose the fact and shall not vote thereon."

Mr. CORBETT. I object to this alteration.

The PRESIDENT. Objection is made, and the alteration cannot be made. The question is, shall the main question be now put?

Mr. BROOMALL. I desire to ask a question of the Chair, whether there is any way of getting at mere verbal amendments if the previous question is sustained and the article adopted?

Mr. MACVEAGH. By unanimous consent now, suggest anything that is acceptable, and the Convention will take it.

THE PRESIDENT. The Chair cannot answer, because he does not know what amendments may be proposed or what alterations.

Mr. BROOMALL. Shall I suggest the one that I allude to? ["Yes."] I find in the twelfth section, this language:

"The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the General As-

sembly after their titles have been publicly read immediately before signing."

Instead of "immediately after their titles have been publicly read" or "their titles having been publicly read immediately before," or some other language rather than the repetition of the word "before" after the word "after."

Mr. MANN. What is the Committee on Revision for, if we are to revise again?

The PRESIDENT. Will the Convention unanimously agree to the alteration? ["Yes."] It is agreed to. The question is, shall the main question be put? on which the Clerk will call the names of the delegates.

Mr. DARLINGTON. I hope that will be voted down so that we may amend the article.

Mr. LAWRENCE. The main question will be on the article itself.

The PRESIDENT. That will be the main question.

Mr. MACVEAGH. The yeas and nays are not called for on that.

Mr. BUCKALEW and Mr. HEMPHILL. I call for them.

The yeas and nays were taken, with the following result:

YEAS.

Messrs. Achenbach, Baer, Bailly, (Perry,) Baker, Bartholomew, Beebe, Bowman, Boyd, Brown, Calvin, Campbell, Carey, Carter, Clark, Cochran, Corbett, Corson, Curry, Davis, De France, Edwards, Elliott, Ewing, Fulton, Funck, Green, Guthrie, Hall, Hanna, Horton, Howard, Kaine, Landis, Lawrence, Lilly, Long, MacConnell, MacVeagh, M'Culloch, M'Michael, Mann, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purviance, John N., Purviance, Samuel A., Reynolds, Simpson, Stanton, Wetherill, J. M., Wetherill, John Price, White, David N., Woodward and Walker, *President*—61.

NAYS.

Messrs. Ainey, Alricks, Armstrong, Bailey, (Huntingdon,) Biddle, Bigler, Black, Chas. A., Broomall, Buckalew, Curtin, Cuyler, Darlington, Dunning, Gibson, Gilpin, Hemphill, Hunsicker, Lamberton, Lear, M'CLean, Mantor, Minor, Purman, Read, John R., Reed, Andrew, Rooke, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Struthers and White, J. W. F.—33.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Black, J. S., Brodhead, Bullitt, Cassidy, Church, Collins, Craig, Cronmiller, Dallas, Dodd, Ellis, Fell, Finney, Harvey, Hay, Hazzard, Heverin, Knight, Littleton, M'Camant, M'Murray, Metzger, Newlin, Patton, Runk, Russell, Smith, William H., Temple, Turrell, Van Reed, Wherry, White, Harry, Worrell and Wright—39.

The PRESIDENT. The question now is on the passage of the article.

The article was passed.

RESIGNATION OF JUDGE BLACK.

Mr. WOODWARD. Mr. President: I rise to a question of privilege. I have here a letter of resignation from Judge Black, and I wish to accompany it with some explanation.

The CLERK read as follows:

PHILADELPHIA, Oct. 2, 1873.

To the President of the Constitutional Convention:

I hereby resign my seat in the Convention, to which I was elected as a delegate at large.

J. S. BLACK.

Mr. WOODWARD. Mr. President: Along with that resignation, I received this morning from Judge Black a letter which is addressed to me personally, and which I would lay before the Convention, except for the fact that he intimates that he desires it not to go upon the Journals of the Convention. He has no objection, he says, to its being printed some time in the future, but he does not care about its being spread before the Convention now. I therefore do not present his letter; and because I do not present it, it is necessary for me to state in justice to him the reasons of this resignation.

It is probably known to every gentleman on this floor that Judge Black conceived that the Legislature had no right to turn over a sum of money to be disposed of by this Convention for the salary of members. Acting upon his own personal conviction, he has declined to receive any compensation whatever, and has not received a dollar of compensation for his services in this body; nor does he propose to do so unless the Legislature shall hereafter make an appropriation in the forms of the Constitution, which appropriation he does not expect the Legislature to make. Then he has been serving in this body, and will be, if he should continue, without compensation entirely.

He is largely interested in legal business before the Supreme Court of the United States, which is about to assemble, and much of it has been already sacrificed by his attention to the duties of this body so far as he has attended to them. In the future it is absolutely necessary for him to be at Washington, and therefore he cannot attend this body.

These are, in general, the reasons which he assigns to me for asking that this resignation be accepted. In his view the delegates at large who have to fill his vacancy, alone have jurisdiction over this question. In that I differ with him. I think it is a question for the House whether his resignation should be accepted. His opinion was that he had accomplished his resignation by sending it to the chairman of the delegates at large who were elected on the same ticket with him. We probably all differ from him in that respect, and therefore I lay his resignation before the House through the Chair.

Mr. President, in the note, which I do not propose to read, Judge Black adds these words, which I will quote:

"Please to assure my brethren of the sincere respect I entertain for them all. Their personal treatment of me has been so much better than I deserved, that I owe them many thanks. All of them, so far as I know, have over-valued my little good and pardoned my much ill."

I move you, sir, that the resignation of Judge Black be referred to the delegates at large who were elected by the same constituency that elected him.

Mr. BROOMALL. I trust, Mr. President, that motion will not prevail. I see no use in such a reference. I very much regret that Judge Black should have resigned just at the close of our business. I very much desire that his name, with the rest of our names, should be to the document, he having taken such an active part in its construction, and in the business of the Convention now being done.

I move to amend the motion by moving to lay the resignation on the table for the present. No man put into Judge Black's place now could do us any good. We are through, comparatively. It is of some importance to this Convention that a man of Judge Black's eminence should be uniting with us to the end, and should append his name to the Constitution.

Mr. MACVEAGH. He can have leave of absence granted him.

Mr. BROOMALL. Exactly. I am perfectly willing to vote with the rest of the

members of the Convention for a leave of absence for Judge Black.

SEVERAL DELEGATES. For what time? Mr. BROOMALL. A month, if you choose; any time.

Mr. MACVEAGH. Say leave of absence for the present.

Mr. BROOMALL. I am perfectly willing to put it in that form.

The PRESIDENT. It is moved to lay the motion of the gentleman from Philadelphia on the table.

Mr. BUCKALEW. The gentleman makes a speech and then a motion which precludes an answer to him.

Mr. BROOMALL. I withdraw the motion to allow an answer to be made.

Mr. BUCKALEW. I object strongly to laying this motion on the table, when both Judge Black and his particular representative here agree as to what shall be done. His friends and those associated with him expected that this body would all agree. I do not see any particular reason why any gentleman, particularly the gentleman from Delaware, occupying the position he does, should desire to keep a seat in this Hall vacant, whether for one week or three weeks. In the first place, the present desire of the Judge is that his seat shall be filled. In the second place, he is absolutely certain that he will not be back here for an hour or a moment, and he is not of that make that he changes his mind on a question of this kind. In the next place, it is a plain duty which we have to perform under the act of Assembly to fill this seat or any seat when a vacancy occurs. A leave of absence granted in this case is no substitute. It is no leave of absence that Judge Black asks for. He sends in his resignation.

Mr. WOODWARD. Leave of absence implies an intention to return. Judge Black has no intention to return to this body, and return he will not.

Mr. MACVEAGH. You do not know that.

Mr. WOODWARD. I do know that. On a former occasion a resignation was treated in that way, and whilst I have no reason to complain of it because it was done in a spirit of kindness, yet nevertheless that resignation meant exactly what was said, and if this Convention had not adjourned over until the sixteenth of September, the leave of absence which was granted in that particular case would never have been accepted. The reason why leave of absence was not asked in

that case was because there was no intention to return. Judge Black has no intention to return. He cannot return; his professional engagements make it impossible; and I agree with the gentleman from Columbia that his resignation ought to be accepted.

Mr. J. N. PURVIANCE. I regret very much the resignation of Judge Black. I believe that his signature to the Constitution would have great weight all over the State. And for the purpose of bringing the question squarely before the Convention, I move as an amendment that the resignation be not accepted, or if it be deemed that the proper motion is to lay the resignation on the table, I will so move, that Judge Black may reconsider.

Mr. COCHRAN. I do not know that a motion to lay on the table is debatable. If it is not, I do not desire to detain the Convention for a moment, but if it may in this case be discussed, I would like to say a word or two.

Mr. CURTIN. Express your views.

MANY DELEGATES. Go on! Go on!

The PRESIDENT. The Chair would prefer hearing what the colleague of Judge Black has to say.

Mr. COCHRAN. What I wish to say is this, and it will govern my vote. I believe that every member of this body has a right to resign, and that when he has resigned, we have no further control over his action.

Mr. C. A. BLACK. Not a bit.

Mr. COCHRAN. I believe that is the personal right of every member. I believe that that right is fully recognized in the act of Assembly, under which provision is made for filling a vacancy, and therefore I do not think we have any control over the matter of the filling of a vacancy, that we must proceed in the regular, orderly, legal way, and refer this resignation, as the act of Assembly prescribes, to the committee who has charge of that matter under the statute.

The PRESIDENT. The Chair would like to have the opinion of the delegates whether on the presentation of a resignation the proper motion would not be on its acceptance. When resignations were made heretofore, there were efforts made which succeeded to get a vote on the acceptance of the resignation.

Mr. COCHRAN. I do not think this Convention has any right to take that action. I think a member has an absolute, unqualified right to resign, and that when he has resigned it is his act, and the Con-

vention is bound to abide by it, and after that the Convention cannot hold him to the performance of any duty.

Mr. J. N. PURVIANCE. Under that construction Judge Woodward is not a member of this body to-day, because he resigned.

Mr. MANN. The Convention heretofore has not acted upon that idea. There have been three or four resignations, and the Convention has pursued in those cases precisely the action here proposed and has laid the motion to accept the resignation on the table, and three of these gentlemen have got back here.

The PRESIDENT. The Chair desires to state that he believes there has been no motion made to accept the resignation of Judge Black. He understood the motion of the gentleman from Philadelphia to be to refer his resignation to the delegates at large who were elected upon the same ticket.

Mr. BOYD. Then I move that the resignation be accepted, and on that I call for the yeas and nays.

Mr. J. R. READ. I second the call.

Mr. J. N. PURVIANCE. I believe that my motion to lay on the table would apply also to the motion to accept.

Mr. BOYD. I desire to say that I make this motion for the reason that Judge Black is certainly not a man to first resign and then reconsider. I trust the Convention will accept the resignation because we are certainly entitled to have somebody here representing the constituents that he has been representing.

The PRESIDENT. Does the gentleman from Philadelphia change his motion so that it will simply be to accept the resignation of Judge Black?

Mr. WOODWARD. If that is a better form, I will so modify, but I do not think it is a better form myself. However, I will accept the modification, and I move that Judge Black's resignation be accepted and referred to the delegates at large who were elected upon the same ticket with him.

Mr. BOYD. Then if that is the way the motion is to be put, I will call for the yeas and nays on that.

Mr. BROOMALL. What becomes of the motion to lay on the table?

The PRESIDENT. A motion is made by the delegate from Delaware to lay the motion to accept the resignation on the table.

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

Mr. D. N. WHITE. We will agree to it; do not call the yeas and nays.

Mr. BOYD. Anything to please the Convention. I withdraw the call.

Mr. J. R. READ. I renew it.

Mr. HEMPHILL. Yes; let us have the yeas and nays.

The PRESIDENT. The yeas and nays are called for on the motion to lay the motion to accept on the table. The Clerk will call the names of members.

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

YEAS.

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baer, Bailly, (Perry,) Baker, Biddle, Bowman, Broomall, Brown, Calvin, Carter, Clark, Curry, Cuyler, Davis, Ewing, Fulton, Guthrie, Horton, Howard, Landis, Lilly, MacConnell, MacVeagh, M'Culloch, M'Michael, Mann, Mantor, Mitchell, Niles, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Simpson, Stewart, Struthers, White, David N. and White, J. W. F.—45.

NAYS.

Messrs. Bailey, (Huntingdon,) Beebe, Bigler, Boyd, Brodhead, Buckalew, Campbell, Cochran, Curtin, Dallas, Darlington, De France, Edwards, Elliott, Gibson, Gilpin, Green, Hall, Hemphill, Hunsicker, Kaine, Lamberton, Lawrence, Lear, Long, M'CLean, Minor, Parsons, Purman, Read, John R., Ross, Sharpe, Smith, Henry W., Stanton, Van Reed, Woodward and Walker, *President*—37.

So the motion to accept the resignation was laid on the table.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Black, Charles A., Black, J. S., Bullitt, Carey, Cassidy, Church, Collins, Corbett, Corson, Craig, Cronmiller, Dodd, Dunning, Ellis, Fell, Finney, Funck, Hanna, Harvey, Hay, Hazzard, Heverin, Knight, Littleton, M'Camant, M'Murray, Metzger, Mott, Newlin, Palmer, G. W., Patton, Pughe, Rooke, Runk, Russell, Smith, H. G., Smith, Wm. H., Temple, Turrell, Wetherill, J. M., Wetherill, John, Price, Wherry, White, Harry, Worrell and Wright—51.

THE EXECUTIVE DEPARTMENT.

Mr. D. W. PATTERSON. I move that we proceed to consider the article on the Executive Department.

The motion was agreed to, and the article was read the third time, as follows:

ARTICLE IV.

THE EXECUTIVE.

SECTION 1. The Executive Department of this Commonwealth shall consist of a Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, Auditor General, State Treasurer, Secretary of Internal Affairs, and a Superintendent of Public Instruction.

SECTION 2. The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed; he shall be chosen on the day of the general election by the qualified electors of the Commonwealth, at the places where they shall vote for Representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the president of the Senate, who shall open and publish them in the presence of the members of both Houses of the General Assembly. The person having the highest number of votes shall be Governor, but if two or more be equal and highest in votes, one of them shall be chosen Governor, by the joint vote of the members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law.

SECTION 3. The Governor shall hold his office during four years from the third Tuesday of January next ensuing his election, and shall not be eligible to the office for the next succeeding term.

SECTION 4. A Lieutenant Governor shall be chosen in the same manner as the Governor, and at the same time, and for the same term, and subject to the same provisions; he shall be president of the Senate, but shall have no vote unless they be equally divided.

SECTION 5. No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States, who shall have attained the age of thirty years, and have been seven years next preceding his election an inhabitant of the State, unless he shall have been absent on the public business of the United States or of this State.

SECTION 6. No member of Congress, or person holding any office under the United States or of this State, shall exercise the office of Governor or Lieutenant Governor.

SECTION 7. The Governor and Lieutenant Governor shall, at stated times, receive for their services a compensation, which shall be neither increased nor diminished after their election.

SECTION 8. The Governor shall be commander-in-chief of the army and navy of the Commonwealth, and of the militia, except when they shall be called into the actual service of the United States.

SECTION 9. He shall nominate, and by and with the advice and consent of two-thirds of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General, during pleasure, a Superintendent of public Instruction for four years, and such other officers of the Commonwealth as he is or may be authorized by the Constitution or law to appoint; he shall have power to fill all vacancies that may happen in offices to which he may appoint, during the recess of the Senate, by granting commissions which shall expire at the end of their next session; he shall have power to fill any vacancy that may happen during the recess of the Senate, in the office of Auditor General, State Treasurer, Secretary of Internal Affairs, Superintendent of Public Instruction, in a judicial office, or in any other elective office which he is or may be authorized to fill; if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before their final adjournment, a proper person to fill said vacancy; but in any such case of vacancy in an elective office, a person shall be chosen to said office at the next general election, unless the vacancy shall happen within three calendar months immediately preceding such annual election, in which case the election for said office shall be held at the second succeeding general election; in acting on executive nominations, the Senate shall sit with open doors, and in confirming or rejecting the nominations of the Governor, the vote shall be taken by yeas and nays, and shall be entered on the Journal.

SECTION 10. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, and

such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth.

SECTION 11. He may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

SECTION 12. He shall from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may judge expedient.

SECTION 13. He may, on extraordinary occasions, convene the General Assembly, and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

SECTION 14. In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the Governor, the powers, duties and emoluments of the office, for the remainder of the term, or until the disability be removed, shall devolve upon the Lieutenant Governor.

SECTION 15. In case of a vacancy in the office of Lieutenant Governor, or when the Lieutenant Governor shall be impeached by the House of Representatives, or shall be unable to exercise the duties of his office, the powers, duties and emoluments thereof for the remainder of the term, or until the disability be removed, shall devolve upon the President *pro tempore* of the Senate, and he shall in like manner become Governor if a vacancy or disability shall occur in the gubernatorial office; his office of Senator shall become vacant when he becomes Lieutenant Governor, and shall be filled by election as any other vacancy in the Senate.

SECTION 16. Every bill which shall have passed both Houses shall be presented to the Governor; if he approve he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their Journal, and proceed to reconsider it. If, after such consideration, two-thirds of all the members elected to that House shall agree to pass the bill, it shall be sent with the objection to the other House, by which likewise it shall be reconsidered, and if approved by two-thirds of all the members

elected to that House, it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the Journals of each House, respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law unless he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment.

SECTION 17. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

SECTION 18. The Chief Justice of the Supreme Court shall preside upon the trial of any contested election of Governor or Lieutenant Governor, and shall decide questions regarding the admissibility of evidence, and shall, upon request of the committee, pronounce his opinion upon other questions of law involved in the trial. The Governor and Lieutenant Governor shall exercise the duties of their respective offices until their successors shall be duly qualified.

SECTION 19. The Secretary of the Commonwealth shall keep a record of all official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relating thereto, before either branch of the General Assembly, and shall perform such other duties as shall be enjoined upon him by law.

SECTION 20. The Secretary of Internal Affairs shall exercise all the powers and duties of the Surveyor General, subject to such change as shall be made by law, and the office of Surveyor General shall cease when the Secretary of Internal Affairs shall be duly qualified. His department shall embrace a bureau of industrial statistics, and such duties relating to the charitable institutions, the agricultural, manufacturing, mining, mineral,

timber and other material or business interests of the State as may be by law assigned thereto. He shall annually, and at such other times as may be required by law, make report to the General Assembly.

SECTION 21. The Superintendent of Public Instruction shall exercise all the powers and perform all the duties of the Superintendent of Common Schools, subject to such changes 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.

SECTION 22. The term of the Secretary of Internal Affairs shall be four years; of the Auditor General three years; and of the State Treasurer two years.

These officers shall be chosen by the qualified electors of the State at the general election. No person elected to the office of Auditor General or State Treasurer shall be capable of holding the same office for two consecutive terms.

Mr. MANN. Mr. President: The seventh section of this article is supplied by the provision of the fifteenth section of the article on legislation. I therefore move to go into committee of the whole for the purpose of striking it out. If delegates will turn to the fifteenth section of the article on legislation they will find these words:

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

It is hardly worth while to have it in both articles.

Mr. BUCKALEW. There is an important provision in this section which is not contained in the other place and which is peculiar to this article. That accounts for the fact that it was allowed to remain by the Committee on Revision. This provision is that the salary of the Governor and Lieutenant Governor shall not be increased after their election, whereas the other provision is of a different character; it only relates to their continuance in office. If the Convention do not care to retain that provision, very well.

Mr. MANN. Can we not amend the fifteenth section of the article on legislation with three words better than keep this in this article? But the gentleman is mistaken; the fifteenth section of that article does say "after his election and appointment." Its language is: "No law shall extend the term of any public officer or

increase or diminish his salary or emoluments after his election or appointment," the precise words of this section.

Mr. BUCKALEW. I believe I was mistaken.

Mr. MANN. I ask unanimous consent to make this amendment.

Mr. CURTIN. It ought to be done.

The PRESIDENT. Unanimous consent is asked to make the indicated amendment. Is there objection? ["None."] Unanimous consent is given; the seventh section of this article is stricken out.

Mr. HEMPHILL. I move that the Convention resolve itself into committee of the whole for the purpose of amending the fifteenth section of this article, by striking out in the second line the words, "by the House of Representatives." These words are unnecessary because the article on Impeachment and Removal from Office, article six, section one, says: "The House of Representatives shall have the sole power of impeachment."

Mr. BROOMALL. Let unanimous consent be given to strike out the words.

Mr. CURTIN. The gentleman from Chester is right.

Mr. BUCKALEW. I am not certain but that those words perform a useful office. We speak of an officer being impeached frequently, in ordinary language, when he is convicted. Now, the meaning here is that as soon as the House of Representatives prefer charges against the Lieutenant Governor his seat shall be vacated, and I think the words should be retained in order to make that meaning perfectly clear.

The PRESIDENT. The question is on the motion of the delegate from Chester (Mr. Hemphill.)

The motion was not agreed to.

Mr. STRUTHERS. I do not think the sixteenth section can be applied. It reads: "Shall be entered on the Journal of each House respectively;" in the eleventh line I would make it read, "of the Houses respectively."

Mr. CURTIN. It is better to say "each"—"of each House."

Mr. STRUTHERS. It appears to me the expression I have suggested would be better. I ask unanimous consent to strike out "each House," and insert "the Houses," so as to read, "on the Journals of the Houses respectively."

Mr. PANSONS. I suggest to the gentleman to strike out the word "respectively," so as to read: "The Journal of each House."

The PRESIDENT. Is unanimous consent given to make the proposed amendment? ["No." "No."]

Mr. BUCKALEW. The word "respectively" is unnecessary.

Mr. STRUTHERS. I move to go into committee of the whole for the purpose of making the amendment I have indicated.

Mr. KAINE. I submit, if that word is stricken out, whether it will not imply that the names of the members both of the Senate and of the House shall be entered on the Journal of each House. The language is, "entered upon the Journals of each House respectively." That means that the names of the members of the Senate shall be entered upon the Journal of the Senate, and the names of the members of the House shall be entered upon the Journal of the House. But if you strike out the word "respectively," it implies that the names of the members of both Houses shall be entered on the Journals of both Houses.

The PRESIDENT. The question is on the motion to go into committee of the whole for the amendment indicated.

The motion was not agreed to.

Mr. WOODWARD. I move to go into committee of the whole for the purpose of making the following amendment:

Strike out of section one the words, "Secretary of Internal Affairs," and substitute the words "a Superintendent of Corporations."

The Governor of the Commonwealth, the Secretary of the Commonwealth, the Attorney General, the Auditor General and State Treasurer are all State officers of internal affairs. We have no external affairs; our affairs are all internal; and when you add an officer to be called a Secretary of Internal Affairs you have no antithesis to that expression because you have no external affairs. The General Government has a Secretary of the Interior, very properly; and it has ample external affairs. We have not. All the officers we have at Harrisburg, or can have under this Constitution, are officers of internal affairs.

But, sir, we lack an officer which the Legislature undertook to supply by an act of Assembly last winter; that is, a man to supervise the corporations of the State, of which we have a great many. But their act went no further than insurance companies, and they provided for the appointment of a man to supervise the insurance companies of the State.

The insurance companies of the State are certainly worthy of being watched, but we have other corporations that need to be watched as much as they. Now, I would supersede that legislative officer, and provide a State officer whose special duty it shall be to supervise the corporations of this Commonwealth and see that they move in the orbit appointed for them. Corporations are always crowding on popular rights; they need a restraining hand, and the people of Pennsylvania need somebody in Harrisburg whom they recognize as the accredited agent for the purpose of watching, guarding and restraining the corporations. We have got nobody. It is true that the Secretary of Internal Affairs, as is suggested to me, is to take the place of Surveyor General, which is an old office in the Commonwealth, but there is no reason for calling him Secretary of Internal Affairs. People all over Pennsylvania understand him to be Surveyor General. But, sir, the thing we want is a representative of the people to watch the corporations of this Commonwealth. You may remember that as chairman of the Committee on Corporations I reported a section for this very purpose. It got no consideration whatever in this body; it was voted down because the fashion of the time was to vote down everything. I have renewed the motion now to substitute a Supervisor of Corporations for this Secretary of Internal Affairs, because I believe that it will be more congruous and germane, rational and intelligible, and because I believe the time demands just such an officer as I have suggested.

I hope the Convention will put in the amendment. I do not provide for a new officer, but substitute a Superintendent of Corporations for the Secretary of Internal Affairs, a title which I do not like and which is not applicable.

MR. D. W. PATTERSON. Allow me to make a suggestion to the gentleman from Philadelphia. In the twentieth section defining the duties of Secretary of Internal Affairs is included a power over corporations.

MR. WOODWARD. Of course, if the motion should prevail, the subsequent section would require some modification, and the duties now charged on the Secretary of Internal Affairs would be charged on the Superintendent of Corporations. That would be done as a matter of course if the Convention think favorably of my

suggestion. If they do not, however, I must submit.

MR. CUYLER. I quite agree with the gentleman as to the importance of the supervision of corporations; but I want it to be real, actual, intelligent. I think it comports with the interests of the people that it should be so, but the plan proposes to substitute one watchman for all the people of the Commonwealth. It may be possible to corrupt one man; it may be possible, as the popular expression is, "to shut his eye up" or control him; but it is not possible to control the vigilance of the whole people of a Commonwealth. I am opposed to that. We may lull them to sleep, by putting one who may be a fancied protector in their place, and who may turn out to be nobody at all as a practical result. I do not think it an improvement; on the contrary, I think that its operation will be largely to the advantage of corporations and to the disadvantage of the people.

THE PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Woodward.)

The motion was not agreed to.

MR. DARLINGTON. Mr. President: I move to amend in the ninth section, second line, by striking out the words "two-thirds" and inserting "a majority." I ask the attention of the Convention for a moment only. The Convention have already in former stages decided this question both ways. They have, as to some of the officers to be appointed by the Governor, provided that they should be confirmed by a vote of two-thirds of all the members elected to the Senate, and in another instance by only a majority. If gentlemen will turn to that provision of the article on education which provides for the Superintendent of Public Instruction, they will find that it passed committee of the whole and also second reading in this form:

"The Superintendent of Public Instruction shall be appointed by the Governor by and with the advice and consent of the Senate."

While as to the other officers, Secretary of the Commonwealth and Attorney General, they provided that the appointment should have the assent of two-thirds of all the members elected to the Senate. Now, I want this uniform, but not in the manner in which the committee have reported it. They have transferred the majority principle from the article on education by inserting the same office in this article.

Now, what I say is this, and I submit it to the candid judgment of the Convention, that when we provide that the Governor's appointments shall receive the consent of a majority of all the members elected to the Senate, we place around him all the guards that are necessary. To do more is to embarrass the Executive, for a factious minority of one-third of the Senate, or a trifle over one-third, can at any time prevent a confirmation and dictate to the Governor whom he shall appoint.

I do not think that is wise in a Constitution, especially as regards the Secretary of the Commonwealth and the Attorney General, as to whom it has never yet been required that he should ask the consent of the Senate at all. They are his confidential officers. The Governor is entitled to select from all the people in the Commonwealth the gentlemen whom he thinks best calculated and best qualified to serve him in the exercise of the duties of his office to aid him; and I submit that if he makes that choice with an ordinary degree of care, he ought not to be controlled by a factious minority of the Senate, whether it be Republican or Democratic, no matter of what politics. Let him have the consent, if you please of a majority of the Senate, and you insure all that can be expected from a careful choice. It is not to be supposed that the Governor will select anybody that would not ordinarily receive the sanction and acceptance of a majority of the Senate. I think it would be unwise to say that he must have two-thirds of all the members elected to the Senate, for I suppose there is hardly a gentleman within this Hall but what has known cases in which that majority of two-thirds of the Senate were not with the Governor, and many cases in which a bare majority only could be found to go with him, and some in which there was not a majority.

Now, to require that he should have the consent of two-thirds of all the members elected to the Senate to the appointment of his confidential officers, is to say that he shall not appoint those whom he thinks will best advise him and best serve the public, but must appoint others whom that factious minority may choose to say shall be appointed. It places the power in the minority of the Senate instead of the Governor and the majority. I hope, therefore, the amendment will be made.

The PRESIDENT. The question is on the motion of the gentleman from Chester.

The motion was not agreed to.

Mr. HEMPHILL. I move that the Convention go into committee of the whole for the purpose of amending section six by striking out of the first line the words, "member of Congress or," and the word "any;" so that it will read:

"No person holding office under the United States or this State shall exercise the office of Governor or Lieutenant Governor."

These words which I move to strike out are mere surplusage.

Mr. CURTIN. A member of Congress is not an officer of the United States.

Mr. HEMPHILL. Very well; I withdraw the amendment.

Mr. M'MURRAY. I wish to call attention to the clause referred to by the delegate from Warren, (Mr. Struthers,) section sixteen, lines nine, ten and eleven: "The names of the members voting for and against the bill shall be entered on the Journals of each House respectively." Now the criticism I wish to make is this, that if you retain the word "Journals" it indicates that each House has a plurality of Journals.

Mr. BUCKALEW. It should be, "the Journal of each House respectively."

The CLERK. The "s" is stricken out.

Mr. M'MURRAY. Very well.

Mr. KAINE. I desire to inquire of the Secretary as to the word "consideration" in the fifth line of the sixteenth section. It reads, "if after such consideration." It ought to be "reconsideration."

SEVERAL DELEGATES. That is right.

The PRESIDENT. That correction will be made, no objection being interposed.

Mr. KAINE. I move to go into committee of the whole for the purpose of inserting the following as a new section after section nineteen, to take the place of section twenty-two:

"The Secretary of Internal Affairs shall be chosen by the qualified electors of the State for the term of four years; the Auditor General for the term of three years; and the State Treasurer for two years; but no person elected to the office of Auditor General or State Treasurer shall be capable of holding the same office for two consecutive terms."

I have retained the language of the section as reported, but I think it is not in the right place nor exactly in the right shape. Section twenty-two reads thus:

"The term of the Secretary of Internal Affairs shall be four years; of the Auditor General, three years; and of the

State Treasurer, two years. These officers shall be chosen by the qualified electors of the State, at the general election. No person elected to the office of Auditor General or State Treasurer shall be capable of holding the same office for two consecutive terms."

In the first section we have provided for an Auditor General, a State Treasurer, and a Secretary of Internal Affairs, and also for Governor and Lieutenant Governor. We have provided for the election of the latter two and their duties as we go along, but we have not provided for the election of these other officers, and in section twenty, without any reference whatever to the election of an officer, it is provided that the Secretary of Internal Affairs shall exercise the powers and duties devolved on the Surveyor General. I think it would be better to have the election of those officers provided for before we impose upon them any duties. I think we had better put the section where I propose in place of where it is. I submit to the gentleman from Columbia, who is upon the Committee on Revision and Adjustment, whether this is not the better place for it. Before we give the officer anything to do we should provide for his election in the right place.

The PRESIDENT. The question is on the motion of the delegate from Fayette (Mr. Kaine.)

The motion was not agreed to.

Mr. BUCKALEW. On the bottom of page two the word "law" ought to be plural. It is in line five of section nine. It should read: "or may be authorized by the Constitution or laws."

The PRESIDENT. Will the Convention unanimously agree to that change? ["Aye!"]

Mr. BUCKALEW. There is another question I will raise while on the floor, as the committee had some question about it. In constructing the fifteenth section, a new section, we left it as we found it in the article before.

Mr. ARMSTRONG. I think it would be better instead of making the word read "laws," to insert the word "by" before "law," so as to make it read, "by the Constitution or by law."

Mr. BUCKALEW. Very well, one way or the other. I ask unanimous consent to amend that clause by inserting the word "by" before "law."

The PRESIDENT. Is there objection? ["No objection."] That change will be made.

Mr. BUCKALEW. On page four is the fifteenth section, a new section. The last clause reads:

"And he"—

That is, the President *pro tempore* of the Senate—

—"Shall in like manner become Governor if a vacancy or disability shall occur in the gubernatorial office."

It seems to be imperfect, but perhaps it may answer. Then follows this clause; "His office of Senator shall become vacant when he becomes Lieutenant Governor, and shall be filled by election as any other vacancy in the Senate."

Now, the question is whether it is necessary to vacate his office as a member of the Senate when he is placed in the chair as presiding officer. Observe, he will always have a vote when his vote is of any account, when the Senate is equally divided, and the question will be whether we had not better omit the word "lieutenant" before "Governor," so that it shall simply provide that his office shall be vacated in case he shall be called upon to exercise the duties of the gubernatorial office. I state this point without caring much which way the Convention decide it; but to raise the point I will move to strike out the word "lieutenant" before "Governor," in the seventh line.

Mr. D. W. PATTERSON. I think unanimous consent will be given to make that change.

The PRESIDENT. It is moved to go into committee of the whole—

Mr. D. W. PATTERSON. I ask unanimous consent to make that change. Then a Senator will not vacate his office if he is acting as Lieutenant Governor merely, but in case both the Governor and Lieutenant Governor should die or resign, and he assumes the gubernatorial functions, then, only, will his office of Senator become vacated.

Mr. LILLY. I think that ought to be so.

The PRESIDENT. Will the Convention give unanimous consent to make that amendment? ["Aye!" "Aye!"] It is agreed to.

Mr. BRODHEAD. The committee who drew this article, or the Committee on Revision, have used two forms of expression to express the same idea in the twentieth and twenty-first sections. For instance, in the twentieth section they say: "The Secretary of Internal Affairs shall exercise all the powers and duties of the Surveyor General." In speaking of a similar change in the twenty-first section

they say: "The Superintendent of Public Instruction shall exercise all the powers and perform all the duties of the Superintendent of Common Schools." I think the better way would be to alter both those sections so as to make them read, "shall exercise all the powers," which I presume includes the performance of all the duties. I, therefore, move to go into committee of the whole for the purpose of striking out in section twenty, line two, the words "and duties."

Mr. CURTIN. Performing duties and exercising power are very different things.

Mr. BRODHEAD. But the committee have used two different expressions, as you will notice by reading the twenty-first section.

The PRESIDENT. The motion of the delegate from Northampton (Mr. Brodhead) is before the Convention.

The motion was not agreed to.

Mr. BRODHEAD. I simply wished to call the attention of the Convention to the fact that two different expressions were used to convey the same idea.

Mr. BUCKALEW. I suggest to the gentleman to move to insert the words "perform all the" before the word "duties" in the second line of the twentieth section. That will make them read alike.

Mr. CURTIN. That will accomplish all that the delegate from Northampton desires.

Mr. BRODHEAD. Then you have got a redundancy of words, some of the old words that conveyancers use, piling up words upon words and obscuring the sense.

The PRESIDENT. What are the words proposed to be inserted?

Mr. BRODHEAD. I proposed to insert some words, but there was no vote in favor of them. I therefore decline to move any more.

Mr. BUCKALEW. I move to insert after the word "and" at the commencement of the second line of the twentieth section, the words "perform all the."

Mr. T. H. B. PATTERSON. Before the vote is taken I should like to suggest to the gentleman from Columbia to strike out the corresponding words in the other section, so that both sections shall read, "shall exercise all the powers and duties."

Mr. BUCKALEW. It will be exactly the same. They exercise the duties.

The PRESIDENT. Will the Convention unanimously agree to this amendment? ["Yes."] The amendment will be made.

Mr. J. M. BAILEY. I move to go into committee of the whole for the purpose of striking out in the third and fourth lines, of the twentieth section, these words: "And the office of Surveyor General shall cease when the Secretary of Internal Affairs shall be duly qualified." I will ask unanimous consent to have that change made, and also a corresponding change in the twenty-first section. These provisions have a mere temporary operation and should properly go into the schedule.

The PRESIDENT. Will the Convention unanimously agree to that amendment? ["Yes."] It is agreed to.

Mr. J. M. BAILEY. Now, I ask unanimous consent to make a similar change in the twenty-first section by striking out the words: "And the office of Superintendent of Common Schools shall cease when the Superintendent of Public Instruction shall be duly qualified."

The PRESIDENT. If there be no objection, that amendment will be made.

Mr. DARLINGTON. I move to go into committee of the whole for the purpose of inserting the following as a new section at the end of the article—

Mr. CURTIN. If the delegate will withhold his new section for a moment, there is one change that I desire to propose.

Mr. DARLINGTON. I have no objection. I withdraw my amendment for the present.

Mr. CURTIN. I ask unanimous consent to amend section ten by striking out the words "Superintendent of Public Instruction" and inserting "Lieutenant Governor."

Mr. DARLINGTON. I should like to understand the effect of that change before unanimous consent is given.

Mr. CURTIN. I will give the reason in one word. When this section was reported by the committee we connected with the Governor in the exercise of the pardoning power two officers elected by the people and two appointed by himself, and we provided then that the Superintendent of Public Instruction should be elected by the people. Since that time this Convention has made that office an appointment by the Governor; and now I propose to take that officer out and put in the Lieutenant Governor, so that still two of these persons will be elected and two appointed by the Governor.

Mr. LILLY. The only objection to that is this: The Lieutenant Governor may not reside at the seat of government; he

may be off in the far north-eastern corner of the State.

Mr. DARLINGTON. I only desire to say with regard to this proposed amendment that my only objection to it is precisely that of the gentleman from Carbon.

The PRESIDENT. Does the gentleman object?

Mr. DARLINGTON. Of course I object to unanimous consent.

The PRESIDENT. Then the motion is to go into committee of the whole for the purpose of making the amendment indicated by the delegate from Centre (Mr. Curtin.)

Mr. DARLINGTON. Mr. President: My objection to this proposition is the very objection which has struck the minds of all the members of the Convention in the earlier stages of it; that is, the difficulty of having any council of pardon if it is not located at Harrisburg. My own idea was to have gentlemen of character, half a dozen or ten, appointed to go to Harrisburg for this purpose; but that was objected to, and owing to the necessity of their being frequently together, and indeed I was told that there were then fourteen hundred applications for pardon pending before the Governor—I was induced to yield my opposition, and to consent to its being formed of those who could be called together on any day. It is very manifest that a Lieutenant Governor, President of the Senate, except during the sessions of the Legislature, will be as likely, and a great deal more likely, to be in other parts of the State as at Harrisburg. I submit, therefore, that it will be simply to reduce the number of the pardoning council one, to take off the Superintendent of Public Instruction and put on the Lieutenant Governor. You will not have him there. Instead of a council of four, you will have council of three.

The PRESIDENT. The question is on the motion of the delegate from Centre (Mr. Curtin.)

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Bigler in the chair.

The CHAIRMAN. The committee of the whole have had referred to them section ten, with instructions to insert in the fourth line the words, "Lieutenant Governor" before "Secretary of the Commonwealth," and in the fifth line, to strike out the words "Superintendent of Public

Instruction," That amendment will be inserted accordingly.

The committee rose, and the President having resumed the chair, the Chairman, Mr. Bigler, reported that the committee of the whole had had under consideration the amendment referred to them and had inserted it.

Mr. DARLINGTON. I now renew my motion to go into committee of the whole for the purpose of inserting the following as a new section, to be numbered twenty-three.

"The State Treasurer shall receive and keep all moneys and securities belonging to the Commonwealth in such manner as may be provided by law. He shall pay no warrant or order for the disbursement of public money unless it be registered and countersigned by the Auditor General. The moneys of the Commonwealth shall never be used for any purpose except the payment of the debts and expenses of the Commonwealth. Any violation of this provision by the State Treasurer shall be punished by his removal from office, imprisonment not exceeding ten years, a fine of ten thousand dollars and disqualification thereafter to hold any office of trust or profit in this Commonwealth.

Mr. CURTIN. Will the delegate allow me to make a suggestion, that his amendment be printed so that we can get to see it in the morning? It is very long.

Mr. DARLINGTON. That will delay us.

Mr. CURTIN. It is a very grave question.

Mr. DARLINGTON. The management of the public moneys of the Commonwealth has attracted the attention of the people of the Commonwealth, I suppose, as much as almost any other thing. If there be any one thing in the government of the State which has been denounced from all quarters, it is the abuse of the office of State Treasurer; it is the loaning out of the public money to favorite banks, to favorite bankers, and to favorite individuals, thus making large amounts out of public money for the benefit of the Treasurer. I think I may say that all the honest men of all parties in and out of this body will sanction the adoption of any measure which shall put an end to this abuse. Whether it will be within our power to do so, I know not; but I do know that if we fulminate our voice against it and provide that there shall be for any violation of this trust,

disqualification for office thereafter, fine and imprisonment to a long and large extent, at all events a man who takes the office hereafter will understand that he does it expected by the public to be honest and to take care of the public money and not use it for his private advantage.

I do not say that the abuse of this place has been by any party; it has been by men of all parties. It has grown up of late years. No man's party is exempt from the crime of abuse of the public money in that office. Now let us all join hands and say that no dishonest man of any party shall ever enter that office again or be permitted to misuse the public funds.

I have provided, you will perceive by this amendment, that no money shall be paid out of the treasury, except for the discharge of public obligations, payment of the public debt, and the ordinary expenses of the government. I provide further, that it shall not be paid out except upon warrants, countersigned and registered in the office of the Auditor General, and it shall not be in the power of the Treasurer to draw money at will from the treasury for any purpose; it must come out according to law, and under the sanction of more than one of the public officers. Whether this will accomplish it as I have said, I do not know, but I am willing to try this if nothing better can be offered.

I am opposed, unalterably opposed, to loaning out the public money to anybody. I think no such spectacle can be found in the civilized world in any civilized community as an authorized loaning of the public funds to individuals, such as seemed to be contemplated by the report of the Committee on Revenue and Taxation, which has passed this body. I want to put my veto, and I hope the Convention will put their veto upon any such idea as loaning the public money under any pretence to anybody, no matter what the security may be. The business of the money officers of the Commonwealth is to collect the revenue and take care of it until it is wanted, and then apply it to public uses and nothing else.

I want to cut off by one blow all danger, all possibility, of temptation to do wrong by loaning out the public money. I propose that there should be severe penalties attached to it. Make it in your Constitution a penal offence of the highest grade, and woe be to the man who dis-

bays. He will understand when he takes his office that a violation of his duties as thus prescribed entails upon him perpetual disability to hold any office of trust or profit, a fine of ten thousand dollars—which is not too much—imprisonment in the penitentiary for not less than ten years—which is not too much—

Mr. H. W. SMITH. He ought to be hung.

Mr. DARLINGTON. And says a member near (and I am not sure that he is not right) he ought to be hung by the neck until he be dead.

Now, the Convention will understand the reason I have for offering this amendment. I ask members to pause and consider whether there is any better way to guard the public Treasury. If there is, I am ready to go with any man of any party to do it. If any better plan can be devised, let us have it. If no better plan can be devised, then I beg of you to accept this. I am willing to go for the best, the most stringent, that which will do the most good and will insure forever hereafter the faithful keeping and faithful application of the public moneys.

Mr. BROOMALL. Mr. President: The proposition of my colleague may be the right one; but it has been offered by him at a time when we are considering an article to which it does not particularly belong. The same subject is covered in the report of the Committee on Revenue, Taxation and Finance, which will be up in the course of a little while, and at that time his proposition should be offered and considered. I would suggest to him that he have it printed, so that we can read it and see what it is. Some portions of it, as well as some portions of my amiable colleague's remarks, strike me as not very consistent with professions that he and I have several times made on this floor, and I am afraid if he goes into hanging men for committing offences of this kind, I shall have to call a meeting of the members of the Society here and disown him. [Laughter.]

I would suggest that the gentleman withdraw his proposition now and have it printed, and that we consider the article without it, and consider that when the proper article comes up.

The PRESIDENT. The question is on the motion of the delegate from Chester (Mr. Darlington.)

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

Mr. H. W. SMITH. I second the call.

Mr. BIGLER. I rise for the purpose of stating to our friend from Chester that I will go as far as any man can go in securing the public money by having a section as stringent as can be useful, but I do think it ought to come in to supersede the section which was adopted in the article on revenue, taxation and finance, that it ought not to be introduced into this article, and I suggest to our friend to withdraw his amendment here and offer it when that article comes up.

Mr. CURTIN. Let it be printed.

Mr. BIGLER. I think it more appropriately belongs there, and his proposition can be printed in the meantime. We shall then have a better opportunity of understanding it. I know that he is master of the situation; but I make the suggestion because I am willing to adopt a measure which shall give the greatest security to the public money, and I incline very much to the idea that it ought not to be touched at all for any purpose except to be received and paid out.

Mr. DARLINGTON. I do not agree at all with the gentlemen who make the objection that this is not the right place. It may be that it is sprung upon them in this way and they have not an opportunity of examining it fully; but I think it will be found that the executive article, where we are defining the duties of officers, is the very place for it; and if it can be got in hereafter, I will very willingly withdraw it now, so as to allow everybody an opportunity of examining it, or if it can be put in a better place, I am willing to do that.

The PRESIDENT. Does the delegate withdraw his motion?

Mr. DARLINGTON. Do I understand the Convention to be indisposed to put it in at that place? ["Yes."] Then I withdraw it for the present. I ask that it be printed.

The PRESIDENT. Leave will be given to have the proposition printed.

Mr. HEMPHILL. I ask unanimous consent to amend section four by the transposition of a few words, and striking out some of the "ands," so that it will read:

"A Lieutenant Governor shall be chosen at the same time, in the same manner, for the same term, and subject to the same provisions as the Governor."

Mr. BUCKALEW. No doubt that should be done.

The PRESIDENT. Will the Convention agree unanimously to this change? ["Aye!" "Aye!"] The change is made.

Mr. S. A. PURVIANCE. I move that the Convention go into committee of the whole for the purpose of amending section ten, by striking out, in the sixth line, the words, "upon due public notice and in open session."

Under this section the Governor is authorized to grant a pardon or a commutation of sentence; but before that is done it has to be recommended by the Secretary of the Commonwealth, the Attorney General, the Secretary of Internal Affairs and the Superintendent of Public Instruction, or any three of them after full hearing. I ask, after all that ceremony has been gone through with, why should we create an open court of pardons and require that it should be opened upon due public notice in open session? It only constitutes that tribunal a court to try cases of pardon and brings to Harrisburg lawyers from every section of the Commonwealth. I hope we shall strike out these words "upon due public notice and in open session," and leave pardons to be determined by any three of the officers named in the section. Is not that enough?

Mr. H. W. PALMER. I hope the amendment of the gentleman from Allegheny will not prevail. This is the one part of the section which is of any virtue. It was put in after full consideration and full discussion both in committee of the whole and on second reading. Two separate and distinct votes of the Convention put it there after having been fully discussed, and it was put there for the purpose of preventing the secret pardons that have wrought so much mischief, brought justice into contempt and put a stain upon our courts. Great rogues have been convicted and committed, and a day or two after their sentence they have flaunted Governor's pardons in the face of the community, pardons obtained by the grossest misrepresentation and fraud, by the presentation of forged certificates, by the production of petitions with false names upon them. These words which we are now asked to erase were inserted for the purpose of meeting that evil and correcting that class of abuses. I hope the motion to go into committee will not be agreed to. The cases of rejected pardons are not required by this section to be submitted to this board. If the Governor rejects a pardon the board has nothing to do with it.

Mr. BIGLER. I desire to say a word or two in favor of this amendment. I en-

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deavored to get it in on second reading. or something similar to it. I felt the more at liberty to do that because it was not in the report of the committee. These words were inserted in the Convention on a motion of the gentleman from Luzerne.

I did not intend at this time to make a motion on the subject, although I have been impressed from the beginning that the only effect of this clause would be to create great inconvenience; but as the motion has been made to strike it out, I shall cheerfully vote for it. There have been cases of great complaint and error, I agree, in granting pardons, and I am very much gratified that a remedy has been found which will be effectual in the appointment of a commission to act with the Governor; but the idea of a public notice in every case, for I suppose that would be the construction of it, is something which I do not desire to see made part of the section.

I think my friend from Centre, (Mr. Curtin,) whose experience in this regard is much greater than my own, will agree with me that a very large proportion of applications for pardons are mere matters of form, applications that come from the inspectors of prisons or the wardens. A man is about to die or his time has nearly expired, and the disabilities of his sentence ought to be removed. The cases that are not really serious are by far the most numerous, and I do not see how you can have public notice in the newspapers of each case and an open trial upon applications of this kind. I think that a commission such as this article provides for, of men accountable to the public, solicitous that no bad man shall escape the penalty of the law, would relieve the Governor of a very great and troublesome responsibility, and at the same time afford a double protection to the public.

I believe the section provides wisely for the public good, but I think it will be greatly improved by striking out the words proposed by the motion of the delegate from Allegheny.

MR. CARTER. I hope most earnestly that this amendment will not prevail. I have been in the habit of regarding this section as one of the best that we have proposed in this Constitution, as an excellent, and admirable one, and one which I believe meets public approbation, and which seems to be absolutely necessary to correct a great acknowledged evil. If we adopt this amendment I am afraid we

will emasculate the section. We will destroy its virility entirely, and be in way of going back to the same abuses which have been before practiced in the matter of pardons.

The practical effect of adopting the amendment of the gentleman from Allegheny would be this: Applicants for pardons will go to those individuals who are to be the appointed counsellors of the Executive, and represent to them in private conversation the reasons on which they base a request for pardon. Well, now, how is it? We all know who have served in any capacity, where several persons were to concur, that a person would come to one and represent a matter in the most plausible manner, and then would add, perhaps: "If you are agreed, Mr. So-and-So is agreed," and in that way a fair presentation nor a fair decision of the case is not given.

In regard to the difficulty that the gentleman from Clearfield (Mr. Bigler) states, I think it will not be very hard for the members of this Board of Pardons to get together, as they all or nearly all will reside in the Capital, nor will there be any difficulty practically in the matter of publication as suggested by him. Due notice may be easily given. It looks to me as a very important provision, that this granting of pardons should be open, open as the light of day. Everything that appertains to a subject where there has been so much darkness and fraud, should now have thrown upon and around it a flood light, and everything connected with it in future should be open and above board, so that a fair knowledge of the subject *pro* and *con* can come before the public.

I think that we will destroy the virtue of this most excellent section if we adopt the amendment of the gentleman from Allegheny. Its practical effect will be to again institute, to some extent, more hidden secret proceedings. Applicants for pardon will go to the members of the Board of Pardons and see them individually and obtain their separate consent. I think the passage of the amendment will be a retrograde course and should not prevail.

THE PRESIDENT. The question is on going into committee of the whole on the amendment of the gentleman from Allegheny (Mr. S. A. Purviance.)

The motion was rejected.

MR. D. W. PATTERSON. I move that the Convention go into committee of the whole for the purpose of making the fol-

lowing amendment in section twenty-two, lines four and five, striking out the words "Auditor General, or."

I never could see the propriety of limiting the Auditor General's office to one term. It is an intricate office. It requires very considerable time to get perfectly acquainted with the laws relating to it and with the practice of the office. That is the testimony of experienced men in the office, and we have seen all parties try to re-elect a good officer, a man who has tried to be a good officer in that department. He handles no money. He only examines the accounts and attends to the auditing department, and I think if an Auditor General has recommended himself to the public by his efficiency and integrity during one term, any political party would desire to have the privilege of presenting him again to the people for their suffrages. Now, we all know, if we know anything about that office—and I have had considerable to do with it indirectly as counsel—that it requires a long time to get acquainted with it, and when a man is efficient and upright, and becomes acquainted with all the duties of the office, I think we would all desire to re-elect such a man. I think it would be for the public weal, and therefore I make this motion.

Mr. HAY. There may be a very good reason why the Auditor General should not be re-elected, but I know of none, and until I do I am willing to vote for the amendment of the gentleman from Lancaster, with whose reasons for proposing this change I heartily concur.

Mr. CURTIN. The office of Superintendent of Public Instruction and that of the Secretary of the Commonwealth are not made ineligible to re-election. The Governor, Lieutenant Governor, Auditor General and State Treasurer are all made ineligible, and a reason for their ineligibility is that it is a very good principle to introduce into the organic law that men who are elected to high official positions shall be satisfied with one term.

But there is a specific reason for confining the Auditor General to one single term from the fact that in Pennsylvania, from custom as well as from the simplicity in which our accounts are kept, the moneys of the Commonwealth received and disbursed, we have but two officers, the office of State Treasurer and that of Auditor General. The one receives and the other accounts, and they are jointly commissioners of the sinking fund. They

appropriate the money in the treasury, in the sinking fund and the payment of the public debt at their pleasure. Their functions are independent of the Governor and they are independent of the Legislature. Separate, and each acting for himself independently, these officers are a check one upon the other. But if these two officers shall combine, and the Auditor General and the State Treasurer choose themselves to use the public funds for their private benefit they can do it in spite of any other officer of the government. Over them there is no supervision or control.

Inasmuch as they receive and have the sacred trust committed to them of the moneys of the Commonwealth, of the people of the State, you make the State Treasurer ineligible for a second term. There is just as much propriety, as strong reasons, why you should make the Auditor General, who is the only check the people have on the action of the State Treasurer. I think that no officer of this Commonwealth who has charge of the public moneys of the State, who settles the accounts of corporations, who stands beside the State Treasurer as the only ward and protector of the interests of the public, should be permitted so to settle his accounts and use his office as that corporations, trusts or people having business with the State should not render just accounts; or that he should combine with the State Treasurer and ask for a re-election to an office to which there are other men as well qualified. For the settlement and revision of his accounts the people have a right to call at the end of every three years, for then the action of that officer can be exposed.

Mr. D. W. PATTERSON. May I ask the honorable member a question? Does not the fact that we prevent the Treasurer being eligible to a second term take away any possibility of that continued combination between the Auditor General and the Treasurer?

Mr. CURTIN. No, sir. If there is a reason for not re-electing the Treasurer, there is the same reason for not re-electing the Auditor General; they act together. We make the one for three years and the other for two years, so that they shall not be elected at the same time, and so far as possible to separate these officers; but the functions of their office are entirely identical. They have charge of the money of the people of the State, and the temptation to re-election might induce a public

officer having the money of the State to do what perhaps he would not if he was sensible that at the end of three years his office would expire.

Mr. D. W. PATTERSON. Allow me to ask another question. Does the Auditor General get a dollar of the Commonwealth's funds into his hands at any time except his salary?

Mr. CURTIN. No, sir; but the money of the Commonwealth cannot pass through the State Treasurer's hands and be used without the Auditor General's consent. They act together; they are the commissioners of the sinking fund; the Auditor General settles the accounts; he audits the accounts. The State Treasurer can do very little indeed unless he has the countenance and support of the Auditor General, and he has not always had that. I differ with my friend from Chester county that at all times and under all circumstances the money of this Commonwealth has been used for improper purposes. I am quite sure that the delegates on this floor who filled the office of Auditor General discharged their duties without any taint or reproach during that time.

Mr. DARLINGTON. I wish to explain. I said no such thing.

Mr. CURTIN. I would bet my bottom dollar and take Judge Black's iron-clad oath that not one cent ever stuck to old Joe Baily's hands while he was State Treasurer. [Applause and laughter.]

Mr. DARLINGTON. Nobody ever supposed there did.

The PRESIDENT. The question is on the motion of the delegate from Lancaster (Mr. D. W. Patterson.)

The motion was not agreed to.

Mr. BRODHEAD. I move that we go into committee of the whole for the purpose of striking out all after the word "thereto," in the eighth line of the twentieth section. I wish to state my objection to this clause. The provision simply requires the Secretary of Internal Affairs to make a report annually, and as often as may be required by the Legislature. I take it that the Legislature have the power to require him to do that anyhow; but it has not been required of the Auditor General, nor of the Secretary of the Commonwealth, nor of the Superintendent of Public Instruction, nor of any of the other officers named; but even admitting that it is necessary to be required, it is provided for in the first two or three lines here:

"The Secretary of Internal Affairs shall exercise all the powers and perform all the duties of the Surveyor General, subject to such change as shall be made by law."

The Surveyor General has it now as one of his duties to make a report annually, and at such other times as he may be called upon by the Legislature. That being his duty now, and that first part of the section devolving his duties on the Secretary of Internal Affairs, there is no necessity for the last three lines.

Mr. BEEBE. Those first lines only require him to make a report as far as the office of Surveyor General is concerned.

The motion was not agreed to.

The PRESIDENT. The article is before the Convention on final passage.

Mr. HEMPHILL. Allow me to suggest one change in section nineteen. ["No." "No."] It is a mere verbal change. In the second line I propose to strike out "shall;" in the third line to strike out "and" and insert "with," and in the fourth line to strike out the word "shall," and in line five substitute "may" for "shall," so that the section will read:

"The Secretary of the Commonwealth shall keep a record of all official acts and proceedings of the Governor, and, when required, lay the same, with all papers, minutes and vouchers relating thereto, before either branch of the General Assembly, and perform such other duties as may be enjoined upon him by law."

The PRESIDENT. Will the Convention unanimously agree to the amendment? ["Aye."] The amendment is agreed to.

Mr. J. W. F. WHITE. I would like to call the attention to one section and suggest a change in it. If members will turn to section thirteen, treating of the powers of the Governor, they will find this language:

"He may, on extraordinary occasions, convene the General Assembly, and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months."

I am aware that that is the section of our present Constitution, but I suggest that we ought to strike out the words "not exceeding four months."

The PRESIDENT. What motion does the delegate make?

Mr. J. W. F. WHITE. I move to go into committee of the whole for the purpose of striking out those words, "not exceeding four months." If the Gov-

erner should have power to adjourn the Legislature when the two Houses cannot agree upon a time of adjournment, why should he not have the power to adjourn them finally? We have tried to guard against frequent sessions of the Legislature. We have said there shall be but one session in two years, and for fear the members of the Legislature might hold adjourned sessions we have said that after the year 1878 they shall have no adjourned sessions. Now, if they are desirous of having an adjourned session, all they have to do is to differ as to the time of adjournment and the Governor would have to call them back within four months under this section. He will have to bring them back within four months if he adjourns them, under this section ;

and by a difference between the two Houses they can compel the Governor to bring them back within four months, if he adjourns them at all. If we are to have such a section to make it effective I think those words ought to be stricken out.

The PRESIDENT. The question is on the motion of the delegate from Allegheny.

The motion was not agreed to.

The PRESIDENT. The question is on the final passage of the article.

The article was passed.

Mr. BRODHEAD. I move that the Convention adjourn.

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

ONE HUNDRED AND FIFTY-SEVENTH DAY.

FRIDAY, October 3, 1873.

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

The Clerk having proceeded for five minutes to read the Journal of yesterday's proceedings—

Mr. KAINE. I move that the further reading of the Journal be dispensed with.

The motion was agreed to.

Mr. LAWRENCE. I desire to ask the Chair what the Journal shows in relation to the amendment offered to the article on legislation, as to the division of the county of Luzerne. I understand it shows that it was withdrawn by unanimous consent.

Mr. LILLY. I objected to that strongly.

Mr. LAWRENCE. I hope the gentleman will not do so, and will withdraw his objection.

Mr. LILLY. I will not do so. Strike out the whole paragraph, and I will; but not otherwise.

Mr. LAWRENCE. I hope the Journal will be corrected. It reads very badly.

LEAVES OF ABSENCE.

Mr. CURRY asked and obtained leave of absence for himself for Monday next.

Mr. SHARPE asked and obtained leave of absence for himself for Monday, Tuesday and Wednesday of next week.

Mr. DAVIS asked and obtained leave of absence for himself for Monday next.

Mr. NILES asked and obtained leave of absence for Mr. Parsons for Monday and Tuesday next.

Mr. STRUTHERS. Mr. President: If we are to go on granting leaves of absence in this manner, we shall be left without a quorum and lose Monday as well as Saturday. It seems to me that in the present state of our business members should not be excused without sufficient cause.

Mr. STANTON asked and obtained leave of absence for Mr. Ainey for a few days from to-day.

Mr. DUNNING asked and obtained leave of absence for himself for Monday next.

Mr. BIGLER. I am obliged, by circumstances over which I have no control, to ask leave of absence until Tuesday next. Leave was granted.

Mr. WRIGHT asked and obtained leave of absence for himself until Tuesday next.

Mr. HALL. It is necessary for me to go home on Saturday, when there is no session, and the first train by which I can return will not get here in time for Monday's session. I therefore ask leave of absence for Monday.

Leave was granted.

Mr. PARSONS asked and obtained leave of absence for Mr. Stewart until Wednesday next.

Mr. BEEBE. We shall not have a quorum left at this rate.

Mr. LILLY. It appears to me that at the rate at which leaves of absence are being granted we had better adjourn to Tuesday. I am opposed to this sort of thing, and I think we had better stay here and attend to business. From the way we are granting leaves of absence we shall never get through with our work.

Mr. J. M. WETHERILL. I ask leave of absence for Mr. Bartholomew for a few days from Monday.

Leave was granted.

JUDGE BLACK'S RESIGNATION.

Mr. WOODWARD. I move to take from the table the resignation of Judge Black and the motion which I made yesterday, and proceed to consider them; and I wish the Convention to understand that I shall deem it my duty to make this motion every day from now to the close of the session, unless this is done, and unless we execute the act of Assembly.

Mr. ALRICKS. On that motion I call for the yeas and nays.

Mr. WOODWARD. I second that.

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

Y E A S.

Messrs. Bailey, (Huntingdon,) Bigler, Bowman, Boyd, Brodhead, Cochran, Cronmiller, Curtin, Dallas, Darlington, De France, Dunning, Elliott, Gilpin,

Hall, Hanna, Hay, Hazzard, Hemphill, Hunsicker, Kaine, M'Michael, M'Murray, Parsons, Porter, Ross, Smith, Henry W., Stanton, Van Reed, Woodward and Wright—31.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Baker, Bardsley, Bartholomew, Beebe, Biddle, Black, Charles A., Broomall, Brown, Calvin, Carter, Church, Corson, Curry, Davis, Ewing, Fulton, Funck, Guthrie, Horton, Howard, Lamberton, Lawrence, Lilly, MacConneil, M'Clellan, M'Culloch, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Simpson, Stewart, Struthers, Wetherill, John Price, White, David N., White, J. W. F. and Walker, *President*—57.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Black, J. S., Buckalew, Bullitt, Campbell, Carey, Cassidy, Clark, Collins, Corbett, Craig, Cuyler, Dodd, Edwards, Ellis, Fell, Finney, Gibson, Green, Harvey, Heverin, Knight, Landis, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Mitchell, Newlin, Read, John R., Runk, Smith, H. G., Smith, Wm. H., Temple, Turrell, Wetherill, J. M., Wherry, White, Harry and Worrell—45.

COMMITTEE ON COMPARISON.

Mr. J. N. PURVIANCE. I offered a resolution the day before yesterday for the appointment of a comparing committee, which was read the first time, and I now ask that it be taken up and considered.

The motion was agreed to, and the resolution was read the second time, as follows:

Resolved, That a comparing-committee of three be appointed, whose duty it shall be to take charge and care of the articles severally as they shall be finally adopted, have them accurately transcribed in duplicate in a plain, legible hand, and after careful comparison with the original, present the same to the Convention at the close of the session for the signature of the members.

Mr. LILLY. I think the proper committee to take charge of this work after it is done is the Committee on Revision and Adjustment. They have taken care of it,

know all about it, and are best calculated to attend to it, and I think we ought to vote down this and let the Committee on Revision and Adjustment receive it and compare it, when it is done, regularly and properly. They have gone through it and know all about it. I move to amend the resolution by striking out all after the word "Resolved," and say that the articles shall be referred to the Committee on Revision and Adjustment for comparison to see that they are properly transcribed.

Mr. J. N. PURVIANCE. The duties of the Committee on Revision and Adjustment, it seems to me, are already sufficient. They have enough to do. Their time is sufficiently occupied and their duties are of an entirely different character from what the duties of a comparing committee would be. When an article is finally passed by the Convention the resolution contemplates that it shall pass into the hands of a comparing committee whose duty shall be to take charge of the article, to become the custodians of it, and that they shall have it transcribed in a plain and legible hand by the transcribing clerks. Then it passes to the comparing committee. They compare the instrument carefully with the original, see that it is accurate in all respects, and if so report it to the Convention for the signatures of the members. The duties of the Committee on Revision and Adjustment are of an entirely different character. They are to correct grammatical errors, they are to make the expressions correct where they are erroneous and to correct words, &c. This comparing committee has no power whatever of that sort. They are simply a committee charged with the duty of seeing that the work of this Convention is properly and accurately presented for the signatures of the members.

Already we have adopted the articles on Legislation, Executive Department, Bill of Rights, &c., and they should be transcribed as directed by the resolution, and thus the work of the Convention would more rapidly progress to completion.

Mr. MANN. It seems to me unfortunate that we should have the healthy action of the Convention arrested in this way, the work on the Constitution itself, to discuss these minor questions. Let us first see whether we can complete a Constitution before we raise any more committees about it. I hope we shall proceed with

our work. I therefore move to postpone this resolution for the present.

Mr. HOWARD. I second the motion.

The motion to postpone was agreed to.

ACCOUNTS OF CONVENTION.

Mr. MANN. I move now that the orders be postponed, and that we proceed to the consideration on third reading of the article on the judiciary.

The PRESIDENT. Reports of committees are in order.

Mr. MANN. I withdraw my motion for the present.

Mr. HAY submitted a report, which was read as follows:

The Committee on Accounts and Expenditures of the Convention respectfully report the following resolution and recommend its adoption:

Resolved, That a warrant upon the State Treasurer for the sum of \$1,500 be drawn in favor of D. M. Imbrie, Chief Clerk, for the payment of such accounts and expenses as he may be authorized to pay by the Convention.

The resolution was read twice and agreed to.

REPORTS OF REVISION COMMITTEE.

Mr. KNIGHT. I am instructed by the Committee on Revision and Adjustment to report article nine on Revenue, Taxation and Finance, also article number ten on Education, and article number eleven on the Militia.

The reports were ordered to be printed and lie on the table.

Mr. HAY. I understand that there are one or two of these reports in which there are hardly any alterations so that the changes could be noted on the pamphlet which is in the hands of every member. I believe in one or two articles there are no alterations at all, except perhaps of a single word. It therefore seems to me unnecessary to reprint these articles and delay the Convention by waiting for that to be done. The alterations can be noted on the book in the hands of every member, and thus we can obviate the necessity of printing.

Mr. D. W. PATTERSON. We ought to have them on our files.

Mr. LILLY. I have given away all my books, and cannot get another. I move that the reports be printed.

Mr. KAINE. Does not that follow as a matter of course, without motion? I hope the reports will be printed. Any other mode of proceeding will throw us into confusion.

The PRESIDENT. They will be printed of course, under the order heretofore made.

THE JUDICIARY.

Mr. ARMSTRONG. I move that the Convention proceed to the consideration on third reading of the article on the judiciary.

Mr. DALLAS. I hope the chairman of the Judiciary Committee will not press that motion at this time. The number of leaves of absence that have been granted this morning admonishes us that we shall scarcely have a quorum on Monday. The judiciary article is one of our most important subjects of consideration, and I have no doubt that much in it still requires consideration at the hands of the House. I hope it will not be taken up at the end of the week with a prospect of continuation on Monday, when there may be very few members here.

Mr. D. W. PATTERSON. I hope it will be taken up; we have not much else to go on with.

Mr. BIDDLE. Yes. Let us go on with it.

On the question of agreeing to the motion of Mr. Armstrong, a division was called for, which resulted forty-eight in the affirmative and twenty-four in the negative. So the motion was agreed to.

The PRESIDENT. The article will now have its third reading.

The article was read the third time, as follows:

ARTICLE V.

THE JUDICIARY.

SECTION. 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the Legislature may from time to time establish.

SUPREME COURT.

SECTION 2. The Supreme Court shall consist of seven judges, who shall be elected by the qualified voters of the State at large; they shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be eligible to re-election; the judge whose commission will first expire, shall be chief justice, and thereafter each judge whose commission shall first expire shall in turn be chief justice.

JURISDICTION OF SUPREME COURT.

SECTION 3. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases of injunction, where a corporation is a party defendant, of habeas corpus and of mandamus to courts of inferior jurisdiction, and in case of quo warranto, as to all officers of the Commonwealth whose jurisdiction extends over the State, but shall not exercise any other original jurisdiction; they shall have appellate jurisdiction by appeal, certiorari, or writ of error, in all cases, as is now or may hereafter be provided by law.

COURTS OF COMMON PLEAS.

SECTION 4. Until otherwise directed by law, the courts of common pleas shall continue as at present established, except as herein changed; not more than four counties shall, at any time, be included in one judicial district organized for said courts.

SECTION 5. In the counties of Philadelphia and Allegheny, all the jurisdiction and powers now vested in the district courts and courts of common pleas, (subject to such changes as may be made by this Constitution or by law,) shall be in Philadelphia vested in four, and in Allegheny in two distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each; the said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three and number four, and in 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; 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; and whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid.

SECTION 6. Each court shall have exclusive jurisdiction of all proceedings at law and in equity commenced therein, subject to change of venue as may be provided by law.

SECTION 7. For Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts, to be appointed by the judges of said courts, and to hold office for three years, subject to removal by a majority of the said judges; the said prothonotary shall appoint such assistants as may be necessary and authorized by said courts; and he and his assistants shall receive fixed salaries, to be determined by law and paid by said county, all fees collected in said office, except such as may be by law due to the Commonwealth, shall be paid by the prothonotary into the county treasury. Each court shall have its separate dockets, except the judgment docket, which shall contain the judgments and liens of all the said courts, as is or may be directed by law.

SECTION 8. The said courts in the counties of Philadelphia and Allegheny, respectively, shall, from time to time in turn, detail one or more of their judges to hold the courts of oyer and terminer and the courts of quarter sessions of the peace of said counties in such manner as may be directed by law.

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 offences and shall also be a justice of the peace therein, so far as relates to criminal matters, and shall be competent to hold the court of quarter sessions of the peace and the orphans' court thereof.

SECTION 10. 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 to be done.

JUSTICES OF THE PEACE AND ALDERMEN.

SECTION 11. Except as otherwise provided in this Constitution, 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; no township, ward, district or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such

township, ward or borough; 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.

SECTION 12. In Philadelphia, for each thirty thousand inhabitants, there shall be established in lieu of the office of alderman as the same now exists, one court (not of record) of police and civil causes, with jurisdiction, not exceeding one hundred dollars; such courts 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 at large; and in the election of said magistrates, 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; they shall be compensated only by fixed salaries, to be paid by said county, and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen subject to such changes, not involving an increase of civil jurisdiction or conferring political duties, as may be made by law.

SECTION 13. All fees, fines and penalties in said courts shall be paid into the county treasury.

SECTION 14. In all cases in this Commonwealth of summary conviction, or of judgment in suit for a penalty before a magistrate, or court not of record, either party shall have the right to appeal to such court of record as may be prescribed by law.

GENERAL PROVISIONS.

SECTION 15. All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the General Assembly.

SECTION 16. Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen, he shall vote for no more than two; and candidates highest in vote shall be declared elected.

SECTION 17. Should any two or more judges of the Supreme Court, or any two or more judges of the court of common pleas, for the same district, be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission, and certify the result to the Governor, who shall issue their commissions in accordance therewith.

SECTION 18. The judges of the Supreme Court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall, at stated times, receive for their services an adequate compensation, which shall be fixed by law, and paid by the State; and which shall not be diminished during their continuance in office; they shall not receive any other compensation for their services from any source, nor any fees or perquisites of office, nor hold any other office of profit under this Commonwealth, nor under the United States or any other State.

SECTION 19. The judges of the Supreme Court, during their continuance in office, shall reside within this Commonwealth; and the other judges, during their continuance in office, shall reside within the district or county for which they shall be respectively elected.

SECTION 20. The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such powers of court of chancery as are now vested by law in the several courts of common pleas of this Commonwealth, or as may hereafter be conferred upon them by law.

SECTION 21. 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 said act 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 or other 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.

SECTION 22. No duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment, except as herein provided; the court of *nisi prius* is hereby abolished, and no court of original jurisdiction to be presided over by any one or more of the judges of the Supreme Court shall be established.

SECTION 23. In every county or city and county wherein the population shall exceed one hundred and fifty thousand, the Legislature shall, and in any other county, or city and county, may establish a separate orphans' court to consist of one or more judges, who shall be learned in the law, which court shall exercise all the jurisdictions and powers now vested in or which may hereafter be conferred upon the orphans' courts, and thereupon the jurisdiction of the judges of the court of common pleas within such county, or city and county, in orphans' court proceedings, shall cease and determine. In any county or city and county in which a separate orphans' court shall be established, the register of wills shall be clerk of such court and subject to its direction in all matters pertaining to his office; he may appoint assistant clerks, but only with the consent and approval of said court.

All accounts filed with him as register or as clerk of said 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. In every county orphans' courts shall possess all the powers and jurisdictions of a register's court, and separate register's courts shall be abolished.

SECTION 24. The style of all process shall be, "The Commonwealth of Pennsylvania;" all prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude against the peace and dignity of the same.

SECTION 25. In all cases of felonious homicide, and in such other criminal cases as may be provided for by law, the accused after conviction and sentence may remove the indictment, record, and all proceedings, to the Supreme Court for review.

SECTION 26. 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 January next succeeding the first general election which shall occur three months after the happening of such vacancy.

SECTION 27. 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.

SECTION 28. 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 of judgments of such courts shall be uniform; 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' court.

SECTION 29. It shall be the duty of the Supreme Court, as soon as practicable, and within one year after this Constitution shall take effect, and from time to time thereafter, as may be necessary, to provide rules and regulations for a general system of practice in all the courts of record of the State, which shall be uniform in all courts of the same class or grade, and shall not be changed except by the Supreme Court: *Provided*, That special rules may be provided for cities 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.

SECTION 30. 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 of record, with right of appeal from the final judgment as in other cases, and with like effect as appeals in equity.

SECTION 31. The Legislature shall have authority to abolish the office of associate judge, after the term of office of the present incumbents shall have expired.

SECTION 32. Whenever a county shall contain forty thousand five hundred 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 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.

Mr. CLARK. I observe that section twenty-seven should have been placed as section fourteen, under the head of "justices of the peace." It refers to the aldermanic system of the city of Pittsburg, and should properly follow that of the

city of Philadelphia under the head of "justices of the peace." I suggest that the change be made by general consent.

Mr. ARMSTRONG. I have no objection to that.

The PRESIDENT. Will the Convention unanimously agree to the change proposed? ["Aye!"] It is agreed to.

Mr. ARMSTRONG. I move to strike out the words "shall be," in the twenty-fifth line of the twenty-third section, on the eighth page, and insert the words "are hereby." "Shall be" would seem to imply the necessity of some future action, whereas the register's court will be abolished by the operation of the Constitution itself. I suggest that the amendment be made by unanimous consent.

The PRESIDENT. Is there objection to the proposed amendment? ["No objection."] It is agreed to.

Mr. BROOMALL. I notice in the ninth section, if my copy is right, the Committee on Revision have stricken out the word "as," and inserted the word "so." That change has made the sentence not grammatical. I desire that the word "as" shall be restored so that it will be grammatical. "So far as" is not grammatical; "as far as" is. If there is any question about it in the minds of others, I will withdraw my amendment until delegates can examine some of the grammars—any grammar, I do not care which.

The PRESIDENT. Does the gentleman from Delaware move an amendment?

Mr. BROOMALL. I withdraw it for the present if there is doubt in the minds of gentlemen.

Mr. WOODWARD. I move to go into committee of the whole to strike out in section two, line one, the word "seven," and insert the word "five," so as to read: "The Supreme Court shall consist of five judges."

The PRESIDENT. That motion is before the Convention.

Mr. WOODWARD. Mr. President: I desire to say a few words on this motion. In the first place, the judges of the Supreme Court have not asked for any increase of their number. We have abolished the court of *nisi prius*, and thus far we relieve them. In the next place, the people of Pennsylvania have not asked for any increase of the number of judges of the Supreme Court. There is no necessity for any increase, because, as everybody understands, the business of that court is not to be diminished nor benefited by increasing the number from five

to seven. Every one of the seven judges, like every one of the five, has to attend to every case, and five judges can do it as well as seven, and better too. The amendment, therefore, which the Convention put in at the instance of the chairman of the committee was an unnecessary one, and it is now quite apparent that it was unnecessary because we are going to relieve the Supreme Court from all other duties. The only possible purpose it can have is to invite some new additional politicians to enter into those disgraceful scrambles which belong to an elective judiciary.

When I proposed to do what I heard the chairman once say he wanted done, "lift the judiciary up out of the whirlpool of politics" by making the judges appointive by the Governor with the advice and consent of two-thirds of the Senate, my proposition got an extremely small vote in this body. This body did decide by a very large vote that judges, like all other public officers, should be dependent upon the passions and the excitements of a popular election. Very well. Now comes a proposition to put two superfluous judges into our court of highest jurisdiction who are to be drawn from the circle of politicians by those means by which politicians do get themselves into public favor and office. That is the whole of it. The business does not require it; the people do not require it; the judges do not ask it; it is simply to furnish a place for politicians.

Now, Mr. President, I think we ought to go back and strike out this number "seven" and insert "five," for the reasons I have given, and because there can be no reason given in favor of the number "seven." I do not suppose that I shall be considered out of order if I refer gentlemen to the thoughts of an old fellow, Sir Thomas Brown, a wit, a poet, and a philosopher, who flourished in the seventeenth century and who has given us some thoughts on this subject of the number "five." I did not know until I was taught by him that "five" is the very number of justice. I have an extract from his essay on the subject which is very short, and which I beg leave to read.

Sir Thomas Brown, in 1646, published his "Inquiry into Vulgar Errors," some of which are abroad yet, in which he discusses the "quincunx" of Heaven. "Five was anciently called the number of justice." I hope the chairman of the Judiciary Committee will remember that.

"It was also called the divine number. Most flowers have five leaves; the feet have five toes; the cone has a quintuple division; there were five wise and five foolish virgins; generative animals were created on the fifth day; there were five golden mice; five thousand persons were fed with five barley loaves; the ancients mixed five parts of water with wine; plays have five acts; the star-fish has five points."

Thus you see that five is a sort of sacred number, and especially is it the number of justice. The people of Pennsylvania had hit upon this fortunate number in fixing their Supreme Court at five. Our learned friend here on my left, (Mr. Armstrong,) whose learning nobody questions, tries to induce us to give up this sacred number of five and substitute the vulgar number of seven, for no reason under heaven than that it will make room for some two politicians, who never ought to be elected to the supreme bench nor to any other court.

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

Mr. WOODWARD. Yes, sir.

Mr. BOYD. Were there not seven golden candle-sticks? In V. Maccabees, verse 9, you will find there were seven golden candle-sticks. Then we have the seven wonders of the world, and seven days of the week, too. [Laughter.]

Mr. CAREY. And seven champions of christendom.

Mr. ARMSTRONG. I hardly think, Mr. President, it is worth while to follow my friend into the discussion of this star-fish amendment. We have a more serious business here than to consider what Sir Thomas Brown thought on star-fish. We discussed this question of the number of judges of the committee, who reported seven. On first and second reading we heard the same discussion except as to Sir Thomas Brown, and we now come back to the same question.

The Supreme Court of Pennsylvania, within the recollection of almost every gentleman here, formerly consisted of three judges. Necessity compelled an increase to five. The supreme judges now desire an increase of force. This does not give them all the assistance, all the aid they require, but it is something. It aids in the deliberation with which they can write opinions; it aids when circumstances may require one or more judges to be absent from the bench. But it would be idle to resume the argument

which has been heard in this House so frequently on both sides of the question. It has been fully discussed, and I do not propose to enter into it again. I trust we shall come to a vote. I see no reason why we should change our views on this point.

MR. DARLINGTON. Mr. President: I do not see any propriety whatever in the Convention fixing any number. That is a matter which is liable to change with the changing necessities of the State. It should be left to the Legislature, as it always has been, to supply the number. Whenever the wants of the community require seven judges, let them say it. If they require nine or five, leave it where it belongs, for the Legislature to fix. I think it unwise to name seven, for before a year we may by experience find that seven is not the right number or that five or nine will be necessary. If we make it inflexible, it is impossible to increase the bench. I hope this will be stricken out and nothing as to the number inserted.

The motion was not agreed to.

MR. PARSONS. I move to go into committee of the whole for the purpose of inserting the following as a new section:

"The judges of the Supreme Court shall appoint a reporter of the decisions, who shall hold his office during the pleasure of the court."

It is well known to all members of the bar that at present the reporter is appointed by the Governor and commissioned for five years. We have now an excellent reporter who has performed his duties satisfactorily and well; but we cannot tell in the condition of politics who will be the next reporter of the decisions of the Supreme Court. Every lawyer knows the value and importance of a good reporter, and the power ought to be vested in the judges, whose decisions are to be reported and the office ought not to be a political one. The judges of the Supreme Court of the United States appoint their reporter, and I believe the judges in other States have the same power. I think this is a good provision, and I hope it will be inserted.

The motion was not agreed to, there being on a division, ayes thirty-seven, noes thirty-nine.

MR. BOYD. I move to go into committee of the whole for the purpose of striking out the thirty-first section, which reads:

"The Legislature shall have authority to abolish the office of associate judge af-

ter the term of office of the present incumbents shall have expired."

This section does not belong here. It was never carried on second reading, or at any other time, and it got in here, I apprehend, by mistake. The provision that was adopted by the Convention is to be found in the thirty-second section on the subject of associate judges, and if you refer to the seventh line of that section, on the tenth page of the print, you will find marked in brackets, which I understand is to be excluded in the estimation of the Committee on Revision, in these words:

"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."

What I desire is to have the thirty-first section stricken out and then to have remain in the thirty-second section the words which I have just read, so that the present associate judges will remain in office until their offices expire. That is the shape in which I understand it to have been passed on second reading, but from some cause or other the thing has got mixed there by the Committee on Revision or by the clerks.

MR. BIDDLE. There is another reason why we should go into committee of the whole to strike out this section. It authorizes the Legislature to abolish the office of associate judge, not merely an "associate judge not learned in the law." Now, we have many associate judges who are learned in the law, and under this section if it is allowed to stand, their offices might be abolished. I state that as an additional reason why the section should be stricken out.

MR. BUCKALEW. The Committee on Revision and Adjustment found both these provisions in regard to associate judges in the article as it was referred to them. I think that both these provisions were adopted by the Convention; this section was agreed upon and then subsequently a provision in the next section abolishing these judges absolutely was also agreed to. Therefore the only thing the Committee on Revision and Adjustment could do was to take the work of the Convention as they found it, and then, in order to distribute the work properly, strike out the latter provision as appropriate to the schedule. The provision to abolish the office of associate

judge properly belongs to the schedule of the Constitution, and therefore it is struck out here. This section is still retained because it will apply to the office of associate judges in those counties where no president judge shall reside. The latter section permits them to be retained in those counties or judicial districts in which the president judge shall not reside. This section, if retained, would provide that the Legislature may abolish them even in those counties.

For my part, I am quite willing to strike this provision out, because I am not willing to abolish the office of associate judge; and I think the Convention has made a mistake in abolishing, or proposing to abolish, that office in any of the counties of the State. Here in Philadelphia and in Allegheny, the office is already abolished; but I hope before we are done with this subject the Convention will retrace its steps as far as that point is concerned. I am sure that we shall find this new system of casting all the responsibilities of all the various sorts of business that are transacted in our courts of common pleas and quarter sessions, upon a single man, the president of the court, will not work well; that the people will be dissatisfied with it presently, and that the judges will find that they are overwhelmed with responsibilities which ought to be divided between them and persons representing the popular element of society in their respective counties; that all the business of reviewing the assessments and taking property in towns and boroughs, itself a huge mass of business now being imposed upon our courts, and the hundred other duties that during the last ten or fifteen years have been devolved upon the courts, cannot be performed properly and satisfactorily by a single law judge; that there is full employment for the officers which we propose to abolish, and that the prejudices of the legal profession, or some members of it, against associate judges, because in certain cases they may not have acted satisfactorily to them in common pleas business, ought not to control the decision of this most important question.

Mr. BOYD. Will the gentleman inform me in what counties in the Commonwealth the courts have jurisdiction of the assessment of taxes except upon appeals from the decisions of the commissioners of the counties?

Mr. BUCKALEW. In every borough of this State, under the general borough law, the assessment is to be made by seven citizens of the borough itself. Their assessment is returned to the court, and the court is ordered by law to revise, amend and correct the assessment.

Mr. BOYD. Does not the gentleman know the general borough act applies to almost no borough in the State, that there are not ten boroughs in the Commonwealth of Pennsylvania that are not incorporated under special laws?

Mr. BUCKALEW. I do not know any such thing.

Mr. BOYD. I will now inform the gentleman of that fact.

Mr. BUCKALEW. I know that there are hundreds of boroughs in this State, under the general borough law, incorporated by the courts; and I know also that under the provisions of the borough law boroughs which were incorporated by special charters have come under the operations of the borough law.

Mr. BOYD. It may be so in Columbia county, but it is not so in the State.

Mr. BUCKALEW. Beside that, we have made provision in our Constitution for the legislation on this subject to be uniform throughout the State. Towns and boroughs are to be under the operation of a uniform law throughout the Commonwealth. However, I do not care to go into a discussion of this subject. I agree for the present that this section should be stricken out.

Mr. ARMSTRONG. I see no objection to striking out this section, and for this reason, which to my mind is conclusive: It is very well known to every lawyer on this floor that the Legislature of Pennsylvania can exercise all the powers which they are not constitutionally restrained from exercising. They therefore have the whole power now which is conferred by this section, and in the absence of any restriction on that power this section is nugatory and of no avail whatever. They can exercise their discretion in precisely the same manner, and to the same extent, whether this section be in or out of this article. I therefore, as a useless section, hope that it will be stricken out.

Mr. HARRY WHITE. After what has been said by the two honorable delegates who have last spoken, I apprehend there will be no difficulty in agreeing to the motion offered by the delegate from Montgomery to go into committee of the whole for the purpose of striking out this

section. The Convention will remember that there was some controversy about the single county system, after which the system was defeated. After that was done the delegate from Lebanon (Mr. Funck) rose in his place and offered this section at a time when the Convention was in an impatient mood, and the section was adopted. I voted against it then; I shall vote for striking it out now. I regard it as an exceedingly dangerous power to remain with the Legislature to change, to create, and to change again, the judicial power of this Commonwealth at their will. I think it would be exceedingly dangerous to allow members of the Legislature to gratify their whims possibly, or the whims of some of their constituents, by introducing a bill to abolish any member of the judiciary, and that is also in conflict with the decisions of the Supreme Court in the famous Lycoming judicial district case, where the effort was made to disintegrate, or to destroy entirely, the Twenty-ninth judicial district.

While I am on this subject, I call the attention of the Convention to the fact that the Committee on Revision and Adjustment, in attempting to strike out the latter clause of the thirty-second section, are seeking to change that which was adopted by the solemn vote of this Convention. They are changing not that which is immaterial, but, changing that which is matter of substance. I submit, then, that when we come to this section, the latter clause of the thirty-second section, the report of the Committee on Revision and Adjustment should not be adopted so far as relates to transferring that feature to the Committee on Schedule. That section was offered by the delegate from Lycoming, (Mr. Parsons,) and was part and parcel of the whole judicial system, and I trust it will not be changed. I merely want in this respect to enter my protest against the remark of the delegate from Columbia.

MR. D. W. PATTERSON. My personal knowledge of the great experience of the delegate from Columbia, (Mr. Buckalew,) as well as that of the chairman of the Committee on the Judiciary, (Mr. Armstrong,) causes me to defer very much in their judgment in this matter. But notwithstanding that, I cannot concur with them in the opinion that this section ought to be stricken out. I am opposed to striking it out, because it was expressly put here in order that the Legislature

might, whenever circumstances permitted or required it, make the judicial system uniform throughout the State. We have abolished the associate judges not learned in the law, in all the districts composed of one county, and where, of course, the president judge resides in that county. We have retained the associate judges where a judicial district is constituted of two, three or more counties, at the request and earnest solicitation of gentlemen residing in such districts. They gave a very good reason for that. Where the president judge resides away off in another county, they cannot do orphans' court business, or proceed with quarter sessions matters or road matters, without engaging the associate judges who reside in such districts. For that reason the latter part of section thirty-two was introduced and carried by a very large majority of the Convention; and hence I think we should retain the latter part of the thirty-second section; but we should also retain this section, so that when those districts, by reason of population or increase of judicial force, may be reduced from three counties to one, or from three to two, a president judge learned in the law may reside properly in the several counties, and then the Legislature may abolish the associate judges in those districts.

That was the purpose and object in introducing it. It does no harm, and it expressly says to the Legislature that they may abolish them. They would not do it in those judicial districts constituted of three or four counties, because they are indispensable under those circumstances to do the business of the courts; but whenever those districts become cut up or reduced to one county by reason of population, and demand for increased judicial force, then the Legislature will in that event abolish the associates not learned in the law. That is the object of this, and the amendment proposed by the gentleman from the city in the second line abolishing the office of associate judge not learned in the law ought to be inserted, in my opinion. Although the sentiment of my friend from Columbia is that we should not abolish them at all, it was manifestly the sentiment of a large majority of this Convention that they would abolish them, and I am sorry he does not concur with it. But that there may be no mistake in that section, I think it should be amended as suggested by the delegate from Philadelphia. I hope the clause will not be stricken out.

Mr. HUNSICKER. I just want to draw the attention of the Convention to one section. In section four it is provided as follows:

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

Then in any event section thirty-one is unnecessary, either whether you intend to retain the associate judges not learned in the law, or whether you intend to strike them out; and therefore I trust this will be stricken out by unanimous consent.

Mr. FUNCK. Mr. President: It will be observed that the object of inserting the thirty-first section in this article was this: The thirty-second section abolishes the office of associate judge not learned in the law in all counties constituting separate judicial districts. Then, so far as those separate judicial districts are concerned, if this article is adopted, there is no office of associate judge. There they are not considered to be necessary at all because the president judge of the district resides within the county and the members of the bar have every facility for getting all the orders they need in their practice in the courts. But in judicial districts composed of several counties there will be no president judge in some of the counties; he must reside in one particular place. In that case the members of the bar of counties in which he does not reside will labor under great inconvenience if they must go beyond the limits of their county to find the president judge to get such orders as they need. In a case of that kind the associate judge was retained; but suppose the Legislature conceives it proper to create new judicial districts out of these counties, so that each of them would constitute a separate judicial district; in that case the associate judges would still remain and the Legislature would have no authority to abolish the office. This section was intended to apply exclusively to a case of that kind. I have no objection, and I think it would be perfectly proper, to amend the section so as to read:

"Associate judges not learned in the law," &c.

And when this motion is disposed of I shall move that that amendment be inserted in the section.

The PRESIDENT. The question is on the motion to go into committee of the whole to strike out the thirty-first section.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Andrew Reed in the chair.

The CHAIRMAN. The committee of the whole have had referred to them section thirty-one of the judiciary article, with directions to strike it out. It will be stricken out.

The committee rose, and the President having resumed the chair the Chairman (Mr. Andrew Reed) reported that the committee of the whole had had referred to them section thirty-one and had stricken it out as directed by the Convention.

Mr. BOYD. Now, I move to go into committee of the whole for the purpose of restoring the words in the thirty-second section, in lines seven, eight, nine and ten, as follows:

"The office of associate judge not learned in the law is abolished, excepting in counties not forming separate districts; but the several associates judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

Mr. BROOMALL. I desire to call the attention of the gentleman from Montgomery to the fact that the words "excepting" and "not" are unnecessary, and that the sentence would be shorter and the meaning precisely the same if he would make it read: "The office of associate judge not learned in the law is abolished in counties forming separate districts," &c.

Mr. LILLY. Does that take away associate judges from little counties like Carbon? ["No." "No."] We want to understand whether it affects us, and we do not want any ambiguity about it. If it does, we are opposed to it. Where we have three or four counties in a district, we want an associate judge in those counties where the president judge does not reside.

Mr. BUCKALEW. I desire to explain how these various clauses of a temporary character were treated by the Committee on Revision.

The Convention yesterday transferred the clause abolishing the office of Superintendent of Common Schools from the article upon the executive department to the schedule, or rather struck it out of the executive article. The Convention also struck out the clause abolishing the office

of Surveyor General from the executive article, with the intention of having it transferred to the schedule. The Committee on Revision have struck out six or eight provisions of an analogous character in different articles, with the intention of having them transferred to the schedule, and when we are through with our revision, we propose to make a copy of all these clauses or sections which the committee have struck out, and have them referred to the Committee on Schedule for incorporation in their work; and this is exactly one of that class. The clause abolishing the office of associate judge is a temporary provision, like other clauses of the same class, and it ought not to appear upon the face of the Constitution itself, the main instrument, which is a permanent one, and ought not to contain matter of a temporary character.

I state this to show what the action of the committee has been, and to show also that in omitting this clause from the present article, the Convention do not pass upon it, do not condemn it; it will be before the Convention in the schedule, and voted up or down then, according to the pleasure of the majority.

Mr. BOYD. It may be for want of comprehension on my part, and I think that is quite likely, but if we refuse to go into committee of the whole to reinstate this clause, it seems to me that then the Committee on Schedule will have nothing to do with it, because it is under the condemnation of the body; but if it is understood that these words are a part of the section then the Committee on Schedule may take them out and put them in their proper place. It seems to me therefore that the remarks of the gentleman from Columbia do not fit this case.

Mr. BUCKALEW. I do not understand the gentleman.

Mr. BOYD. I say if we refuse to go into committee of the whole, as the matter stands now, the clause of being out, the Committee on Schedule will have nothing to do with it, because they will only act on that which the Convention has adopted. If we agree to reinstate the clause, then the Committee on Schedule may put it in the schedule.

Mr. BUCKALEW. Oh, no, they cannot; this is the final reading of this article; we finish the text now.

Mr. BOYD. I understand that these words are out now.

Mr. BUCKALEW. Certainly.

Mr. BOYD. Very well; if the Convention refuses to go into committee of the whole to re-insert them, will they not stay out?

Mr. MACVEAGH. Out of this article, but the Committee on Schedule will take up the articles as we pass them and adjust the schedule to the new condition of things when the new Constitution goes into effect.

Mr. BOYD. Will the Committee on Schedule put this in?

Mr. BUCKALEW. I understand so.

Mr. HOWARD. I rise to a question of order. This argument may be very interesting to those gentlemen on the other side, but we should like to hear it. I insist that gentlemen address the Chair, and not hold conversations on the floor among themselves.

The PRESIDENT. Gentlemen must address the Chair hereafter, not for the accommodation of the Chair, but in order that they may be heard by the House.

Mr. HOWARD. There is another point of order. I should be very sorry to disturb the distinguished delegate from Montgomery (Mr. Boyd) in any way, but we could hear him much better if we had him over in his own corner.

Mr. BOYD. Rather than give up the seat I am now in, I will yield the floor.

Mr. HOWARD. When he is over there we do not know whether it is the delegate from Montgomery or the delegate from Columbia, or who it is that is speaking. We know them a great deal better when they are in their places. I hope the rule will be enforced.

The PRESIDENT. I wish the Convention to understand that I shall require gentlemen to speak from their seats, not because the Chair himself desires it, but because that is the rule of the Convention and they desire it to be enforced.

Mr. DARLINGTON. I only desire to state that I hope we shall have a vote upon this distinct proposition, as suggested by the gentleman from Montgomery. I, myself, am in favor of the total abolition of the office of associate judge not learned in the law, in all the counties of the State. This proposition does not go quite that far. It is only to abolish it in those counties that are separate judicial districts. That far, at least, we ought to go.

I do not see that there is any good reason in what the gentleman from Columbia has suggested, that the judges of the courts of common pleas are in some in-

stances called upon to revise assessments. That has never been done by them in our county, and it ought not to be done by them anywhere. It is not a judicial duty and it ought not to be imposed upon them, and the law which authorizes it ought to be repealed immediately. They ought to have no such duty imposed upon them, for they are unfit for it. I would abolish the office of associate judge unlearned in the law, in all cases, and I would cast upon the prothonotary of every county in which a president judge does not reside, the duty of hearing applications to stay executions, and such like things, for which he is much better qualified than one of these unlearned associates.

Mr. BOWMAN. Mr. President: I am in favor of coming to a square vote upon this proposition. It is now moved by the gentleman from Montgomery to reinstate what the Committee on Revision and Adjustment have stricken from this section. I believe that we shall make a very great mistake by abolishing the office of associate judge in this Commonwealth. Why, sir, we have provided already in this judiciary article that only one judge shall occupy a position on the bench in your largest counties, and we have imposed upon that judge additional duties. You propose to make the judges auditors of accounts in the orphans' court, and other additional duties have been cast upon them. Now let me suggest this case to gentlemen who live in the rural districts, in counties containing eight hundred or a thousand or twelve hundred square miles. It is important that you immediately obtain a writ of *habeas corpus*; you have only one judge in that county; he may be absent from home; but suppose he is not; you have to go to the county seat, you have to go to his residence or his office before you can get your writ; whereas, as we have it now, the associate judges are residing in different parts of the county, and they can hear the application and grant the writ. Again, it becomes necessary for you to get a rule to show cause why a writ in the hands of the sheriff shall not be stayed, and what have you to do? You have to go to the judge learned in the law in order to obtain that, if you abolish the office of associate judge.

Again, as every gentleman knows, and as has been well said this morning by the gentleman from Columbia, each and every

court in the Commonwealth to-day is a body for the purpose of revising and adjusting the assessments made by the different assessors in the counties and the taxes levied in pursuance thereof by the commissioners. You are imposing this duty upon your courts; and is any gentleman here willing that one man shall decide the question in relation to the value of property and say that the tax is too high or too low, and that man one whose business is not, and never has been, to inquire into the just valuation of that property?

I say, then, in conclusion, Mr. President, that I believe we are committing a very serious mistake, one that we shall all regret. The people have not asked this change at our hands. I believe we had better retain these officers. Their compensation is not large. There are a hundred things that are to be decided and passed upon by a full bench, and it is right and proper that the judge learned in the law should call these associates to his aid and assistance in advising him upon questions that are brought before him, that are not really and strictly of a judicial character, road cases and many others that I might mention. But, gentlemen seem to be determined to abolish at one single stroke of the pen what I regard as a very valuable part of the judiciary of the Commonwealth. I hope we shall not go into committee of the whole for the purpose of reinstating that portion of this section which the committee in their wisdom, as I believe, have struck out, but that we shall meet this question now and settle it, so that the Committee on Schedule shall have nothing further to do with it. I trust gentlemen will pause for a moment and consider the inconvenience to which they will put men to go to a judge learned in the law when you have but one in all that territory.

Mr. CURTIN. I do not know what the office of associate judge may be now in the rural districts of this State, but some years ago, from the experience that I had as a member of the bar, I regarded it as an office of the highest use and the largest benefit to the people of the county, not so much in the road and bridge cases that are to be disposed of as that the judge learned in the law shall have beside him two laymen who may have that commodity so useful even to the highest judicial learning, common sense. It must be remembered that the associate judges

take part in the sentence of persons convicted of crime.

"Judges learned in the law" is a term which is applicable in constitutional language to those who occupy the chief places on the bench; but suppose they are not charged with too much learning in the law, as sometimes may happen; for while you discredit the character and the learning and the usefulness of the associate judge, who comes from the people and who has a sympathy in common with them, and who takes to the assistance of the learned gentleman who sits with him his experience and his integrity, it may occur that the president judge who would be called "learned in the law" in his commission, might not have so much learning in the law in fact as would give him the right to take the place of three minds, although two of those minds are not learned in the law.

Mr. President, judges learned in the law are just like other men. They are subject to the same prejudices, passions, sympathies, friendships and dislikes. A judge learned in the law may visit upon his enemy the highest pains and penalties, and he may sometimes require, for the protection of the liberty or the rights of the citizen either in his person or his property, the common sense of an associate judge not learned in the law, because after all learned in the law does not make the highest judicial character. It requires integrity; it requires common sense; it requires the absence of all prejudice and passion, and no judge, however learned in the law, upon the bench could give an entirely just judgment in all those case in which the associates are called in to assist his judgment and have their assistance. In the appointment of road viewers, as has been said, or of bridges, in granting licenses, in sentencing the convicted, in hearing motions for new trials—in all those various and complicated duties and powers given to your courts, the associate judge is certainly of great service; and, besides that, on your bench of the common pleas he represents the people of the county or the district, and he brings to the judge on the bench a knowledge of the local affairs of the county which may be of use to him. He knows the witnesses and the parties that come before the court, and he may afford a judge on the bench very useful hints as to the credit of the witnesses or the character of the parties who are before him for his judicial decision.

Mr. President, I will not vex the Convention with further remarks on this subject, as I am merely repeating what has fallen from the lips of other delegates during the discussion of the subject on second reading, except to say that I am opposed to the abolition of the office of associate judge, even in districts made of single counties.

Mr. BAER. Mr. President: I trust that the words which the committee struck out will be restored. I should like to know by what authority the Committee on Revision and Adjustment undertook to strike out a clause that we labored so long and so hard to get into the instrument itself—

Mr. BUCKALEW. I rise to explain. The Committee on Revision has not struck this out in the ordinary sense of the term, but simply decided to transfer it to another place without any reference to the merits of the question.

Mr. BEAR. I understand all the gentleman has said on that, but after you reject it here I should like to see how you are going to get it in your schedule. It is an indirect way of slaughtering it. Now, sir, to me it looks as though this was intended to kill section thirty-two entirely, by which this Convention provided for separate judicial districts in counties of forty thousand inhabitants, and in my opinion the moment you strike this clause out, the other will go out also. I admit with the gentleman who spoke last, but one, Mr. Bowman, that the people are not here asking for the abolition of the office of associate judge, but I also tell him that this Convention has not in a single instance given anything that the people have been here asking for. The people by petition have asked for prohibition. This Convention have not given it to them. The people have asked by petition for woman suffrage. This Convention did not give it to them. For anything else they have relied on the good sense of this Convention as to what they should do, and so they rely in this case. If we are only to give to the people that which they are coming in here and begging for, we shall have a most miserable Constitution. They have sent men here who, they supposed, knew what the wants of the community were, and they are expecting them to exercise a sound judgment in forming a Constitution that will be acceptable to them. I therefore trust that this clause will be restored, so that when the section comes up it may be incorpora-

ted, with that provision in, into the fundamental law.

Mr. COCHRAN. Mr. President: If I understand the reading of this section, or rather of the section of the old Constitution, the associate judges are constitutional judges, and under that section they can no more be abolished by the Legislature than could the president judge, and now under the fourth section of this article the courts of common pleas are to continue as they were, except as altered by this Constitution.

Mr. ARMSTRONG. Altered by law.

Mr. BUCKALEW. That was entirely stricken out.

Mr. COCHRAN. Then the effect would be, according to my judgment, that if this section is not reinserted you continue the office of associate judge and, I think, place it beyond the power of the Legislature to change the constitution of the court or to abolish the office. Then the question comes up, in this Convention in favor of abolishing the office of associate judge in those counties which constitute separate judicial districts? It is impossible that that question should be determined by the Committee on schedule. The Committee on Schedule is to do no more than to provide for the practical operation of the principles which have been inserted by the Convention in the Constitution. Unless you say that the office of associate judge shall be abolished, the Committee on Schedule have nothing at all to do with it, nor do I see exactly what they have to do with it after you have abolished it under the terms of this amendment.

Now, sir, I cannot conceive for my part why that office should be continued in counties forming separate judicial districts. There is reason, and that reason was forcibly submitted here, why it should continue in counties which are clustered together in forming judicial districts and where the president judge does not reside; but in a single county forming a separate judicial district there is no necessity for the continuance of this office of associate judge; and according to all the information that I have had, all the expressions of public sentiment in that portion of the State in which I reside, it is not the sentiment of the people there that they desire the office to be continued. They look upon the associate judges, I must say, as a mere excrescence upon the system, and that the associate

judges are not necessary, or useful, or ornamental to the system as it exists.

The eloquent picture that was presented here by the gentlemen from Centre (Mr. Curtin) has another side to it. In all that he says where the associates may do good, in every such particular they are capable of doing harm; and I say that in very many instances that has been the result of the interposition of men put upon the bench through mere party and political influences, and who, after they get upon the bench, are swayed by all the influences which were used to elevate them to that position.

I hope, therefore, that this proposition to go into committee of the whole will be adopted, and that the Convention will stand by the work which it deliberately did when this question was up before, and that in all cases where counties form separate judicial districts the office of associate judge will be abolished.

Mr. BEEBE. Mr. President: I supported the action of the Convention in putting in this clause. I did it somewhat against my judgment and conviction, for I admit it had seemed to me that there had grown up within the Commonwealth, so far as my observation extended, a prejudice or feeling against the office of associate judge. I did not then examine as to all the reasons which might have operated to produce this. I am satisfied, however, that while there have been individual instances of associate judges not understanding and conforming to the requirements of their oath, this feeling was largely created by an opinion of the bar who, I might say, hold in contempt the opinion of any man upon the merits of any case, if it be a legal one, who has not the sanction of his sheepskin containing, as my friend from Centre said, the words "learned in the law," whether he has learning or not. But, sir, I observe that the tendency in this Convention is to vest all these guarantees of the rights and liberties of the people in a one-man power, in the legal and judicial fraternity, and I am afraid the people will so regard it; and while it may be that our judiciary are as pure and immaculate as is represented, (and I trust they are,) yet, as my friend from Centre said, they are but men; they are human, subject to like prejudices and passions with other men; and may it not be, Mr. President, that when these powers are wholly vested in one man to transact all this business, to do all these things which

are now left to the associate judges, our law judges themselves will be the subjects of the personal solicitation and the private interviews and influences from which they are now exempt, and I hope ever will be exempt? Why, sir, I have heard on the floor of this Convention that not only associate judges were the subjects of such personal solicitation, but I have also heard it said by members of the bar in this Convention that there were instances where our judges of the common pleas in Philadelphia and different parts of the State were being subjected to personal solicitation and private interviews quite as much as the associate lay judges. This is all wrong, and I trust the moral power of public sentiment and the force of public judgment will lead every man in this Commonwealth to know that we must be redeemed from this; and yet I believe it will not be attained by striking at the office of associate judge, but that it will be quite as likely then to extend to the president judge.

Again, Mr. President, men of judicial mind put upon the bench may differ in their characteristics and judgments quite as much as other men, and such men are too apt, irrespective of the circumstances and surroundings, to make all their judgments conform to the one straight rule as laid down by legal jurisprudence, and in many cases of sentences of criminals instead of considering the surroundings and the influences and the temptations, and even the knowledge of these surroundings and influences and temptations that the associate judge may have, his sentences will invariably be the one rule without the consideration of the merits of the case. I say we have such judicial minds that know no other principle of judgment than the fact that the statutes and the law require it. I therefore say that notwithstanding I supported this section before, notwithstanding I was willing to acquiesce in the judgment of the Convention putting it in, mature reflection now induces me to favor this amendment with the view of striking out the section which now stands stricken out in the report of the Committee on Revision and Adjustment, and I shall so vote forthat purpose.

Mr. Ross. I desire to call attention to what appears to me to be a difficulty in the way of the adoption of this amendment. It may be that it is supplied somewhere else, but if it is I am not aware of

it. The present Constitution provides in section seven of article five :

"The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace and orphans' court thereof."

If this amendment be adopted, I am at a loss to see how, without another section, we can compose an orphans' court. Under the present Constitution the orphans' court is required to consist of at least two of the judges of the common pleas, and the court of quarter sessions is also required to consist of two of the judges. If this Constitution be adopted, section thirty-two, which provides that a judge shall be elected for a county containing a population of forty thousand five hundred inhabitants, that he shall be the only judge in that district, and providing that associate judges are to be abolished, would seem to be at variance with the clause of the present Constitution which requires that the judges of the orphans' court shall be at least two in number, and I think there ought to be some section proposed which would meet that difficulty.

While I am on this section, I desire to put myself upon record as being opposed to the abolition of the associate judges. I come from a rural county, and when gentlemen undertake to say upon this floor that the rural counties in this State do not require these associate judges and that there is a unanimous disposition in favor of their abolition, I beg leave to differ with them and to say that the county of Bucks, which I partly represent here, does not desire the abolition of associate judges, but desires to retain them.

Mr. HARRY WHITE. I am not going to extend the discussion further than to remark that the issue is not here one of the propriety or otherwise of associate judges. I understand the point made by the delegate from Columbia, representing the Committee on Revision and Adjustment, is this: That the Committee on Revision and Adjustment thought this clause came within their jurisdiction, inasmuch as it properly belonged to the Committee on Schedule, and they reported it to be stricken out here so that it could be transferred to the jurisdiction of the Committee on Schedule, and reported back from that committee. That is the practical and the only question here. With all due deference to the delegate who represents

upon this section that committee, I differ entirely with him.

Delegates will understand that the jurisdiction of the Committee on Schedule is to prepare a bridge to carry us practically from the old condition of things to the new under the Constitution we are preparing. Now I submit, anything that belongs to a separate system, anything that is complete in itself, anything that establishes or recognizes a new doctrine, belongs to the text of the Constitution itself. I submit to the judgment of the Convention, that if they will turn to the thirty-second section, they will discover it provides that whenever a county in this Commonwealth shall be composed of forty thousand five hundred people it shall constitute a separate judicial district, but in juxtaposition to that, in convention with this new system, we have a provision "that the office of associate judge, not learned in the law, is hereby abolished excepting in counties which do not form separate judicial districts;" and I submit, with all deference and respect to the Committee on Revision and Adjustment, that this clause in this section, is part and parcel of and necessary to the balance of the section. Hence I insist that it does not naturally and necessarily come within the jurisdiction of the Committee on Schedule, and therefore if we desire to stand by the action of the majority of the Convention had heretofore upon this section we will vote for the motion of the delegate from Montgomery and re-instate this section.

Then again, apropos to this when we had this question heretofore before the Convention, the item of expense of administering justice would, it was argued, be very largely increased. In answer to that, the remark was made that the associate judges of this Commonwealth drew from the revenue for their compensation \$60,117 63—I read from the last Auditor General's report—and it was submitted as part of the calculation and part of the argument in behalf of this section that the large expenditure for associate judges would be saved to the Commonwealth, and thus the addition of ten or eleven judges to the judiciary of the Commonwealth, by reason of creating counties judicial districts, would be a mere bagatelle. I hope we will stand by the action of the Convention had heretofore in passing this section.

Mr. BUCKALEW. I hope the gentleman will allow me to correct him on one point.

The gentleman from Indiana supposes that the Committee on Revision and Adjustment simply determined that this was proper for the Committee on Schedule. That is not precisely the point. The point is this: The Committee on Revision and Adjustment determined in adjusting the matters that are to come before them, that this clause should go into the schedule. It did not make any difference to the Committee on Revision and Adjustment what the Committee on Schedule do. If this clause is not reported by the Committee on Schedule, it will be reported by the Committee on Revision and Adjustment, and the clause in the schedule be transferred from this section to the other, and there will be but one vote on it. I understand, therefore, that all the present debate on the merits of this question is useless.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment proposed by the gentleman from Montgomery.

Mr. DE FRANCE. I call for the yeas and nays on that question.

Mr. BOYD. I second the call.

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

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baker, Boyd, Brodhead, Broomall, Brown, Calvin, Church, Clark, Cochran, Corson, Curry, Darlington, De France, Elliott, Fulton, Funck, Guthrie, Hazzard, Hemphill, Hunsicker, Landis, Lilly, Littleton, Long, MacConnell, MacVeagh, M'Michael, M'Murray, Mann, Mantor, Minor, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purviance, Samuel A., Reynolds, Russell, Simpson, Smith, Henry W., Struthers, Van Reed, Wetherill, John Price, White, David N., White, Harry, Woodward, Worrell and Walker, *President*—53.

NAYS.

Messrs. Bailly, (Perry,) Bailey, (Huntingdon,) Bartholomew, Beebe, Biddle, Black, Chas. A., Bowman, Buckalew, Carter, Cronmiller, Curtin, Cuyler, Davis, Dunning, Ewing, Gibson, Gilpin, Green, Hay, Horton, Howard, Kaine, Lamberton, Lawrence, M'Clean, M'Culloch, Mott, Niles, Patterson, D. W., Patton, Purviance, John N., Read, John R., Rooke

Ross, Sharpe, Smith, H. G., Wetherill, J. M., White, J. W. F. and Wright—39.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bigler, Black, J. S., Bullitt, Campbell, Carey, Cassidy, Collins, Corbett, Craig, Dallas, Dodd, Edwards, Ellis, Fell, Finney, Hall, Hanna, Harvey, Heverin, Knight, Lear, M'Camant, Metzger, Mitchell, Newlin, Pughe, Purman, Reed, Andrew, Runk, Smith, William H., Stanton, Stewart, Temple, Turrell and Wherry—41.

The Convention accordingly resolved itself into committee of the whole, Mr. Sharpe in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the amendment suggested by the gentleman from Montgomery, (Mr. Boyd,) to restore, in section thirty-two, the words: "The office of associate judge, not learned in the law, is abolished in counties forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms. The amendment is inserted.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Sharpe) reported that the committee of the whole had instructed him to report the section with the amendment inserted.

Mr. BRODHEAD. I move that the Convention go into committee of the whole, for the purpose of amending section eighteen, in lines four and five, by striking out the words, "and which shall not be diminished during their continuance in office." I make the suggestion because the provision is supplied by section fifteen of the article on legislation. ["Unanimous consent."] I withdraw my motion to go into committee of the whole, and ask unanimous consent to make the amendment.

The PRESIDENT. Will the Convention unanimously agree to the proposed amendment? ["Aye."] It is agreed to.

Mr. BIDDLE. I move to go into committee of the whole in order to amend the twenty-third section by striking out in the fourth line the words "or city and county;" in the sixth line the same words; in the eleventh line the same words; and in the seventeenth line the same words, making sixteen words in all.

These words were evidently introduced under the apprehension that the city of Philadelphia was not a county, and it was supposed necessary whenever that county

was referred to, to speak of it as "the city and county." I have taken the pains to refer to the law of the second of February, 1854, supplementary to the act chartering the city and county of Philadelphia, commonly called the consolidation act, and by the forty-fifth section of that act the county of Philadelphia is expressly preserved, and all county offices. I will just read that, and then I think the Convention will be satisfied there is no use in keeping these superfluous words in:

"The county of Philadelphia shall continue to be one of the counties of this Commonwealth, and all county officers not superseded by this act shall continue in office, and shall continue to be elected and voted for," &c.

Judicial officers are county officers and State officers. I hope these words will be stricken out, because we get rid of sixteen useless words, which in an article as long as this is an important gain. I ask unanimous consent.

The PRESIDENT. Will the Convention unanimously agree to the proposed amendments.

Mr. BUCKALEW. The committee have made exactly this change in several sections, striking out "the city of Philadelphia" whenever it occurs. If this particular section we retained the words "city and county" because that is the style of the court writs. I think myself in the Constitution "the county of Philadelphia," in reference to the orphans' court and other courts, will be sufficiently distinct. Therefore I have no objection.

Mr. BIDDLE. I will remark that in the fifth, seventh, eighth and twelfth sections the language is correct and the words "city and" are there struck out.

The PRESIDENT. Is there unanimous consent to the amendment suggested by the gentleman from Philadelphia? (Mr. Biddle.) Is there objection? ["None."] The amendment is made.

Mr. HOWARD. I move to go into committee of the whole for the purpose of striking out section twenty-one.

Mr. MANN. I trust that this motion will prevail. I consider this one of the most objectionable sections that have been proposed to this Constitution. I consider this too big a load to impose upon the Constitution of Pennsylvania. We load it down very heavy by putting in what gentlemen deem to be absolutely necessary provisions; but when we put in this

section we shall load it so heavily that it will inevitably break down.

It is very clear that the people are earnestly desiring such amendments proposed at the hands of this Convention as will be certainly adopted, and it is within our power to make great reforms in Pennsylvania by our work; but when we undertake to do so much, when we undertake to do everything, we shall certainly make it very doubtful whether we shall do anything or not. The very earnest opposition this section met with in this Convention showed very clearly what would be the impression throughout the State made upon the very best minds of the Commonwealth. Since the pamphlet edition of our work has been published my own impressions have been strengthened by the criticisms of the press and people upon the section. They say this section will be a brand put upon the Legislature of the State, which will go throughout the Union, publishing to the world that the Legislature of Pennsylvania has become so corrupt, and is passing laws annually by bribery and corruption to such an extent, that it is found necessary to provide in the Constitution some remedy for the rottenness of the Legislature.

Now, I apprehend, Mr. President, that the true remedy for bribery in the Legislature of Pennsylvania is to punish by severe penalties persons who are guilty of the offence; and that the Governor of the State, if he shall corruptly put his signature to a bill, shall be pursued and impeached; that you shall punish the agents in the improper legislation and not jeopardize the interest of the Commonwealth by striking at the Legislature through all the forms of law. It is in your power to frame such laws as will strike at the guilty agents in improper legislation without injuring in any way the peace and jeopardizing the property of the Commonwealth. The introduction of this section does just the reverse. It will unsettle the minds of the people as to every act of Assembly that may be hereafter passed. There will be no certainty whatever as to what had been accomplished by legislation. And you put on trial in the courts of the State every act of Assembly that is passed; whereas, if you confine your penalties and fines to the guilty agents of the Legislature then there will be no imputation cast upon honest members, and there is no allegation, never has been any, that any great proportion of the Legislature are guilty of bribery. But

this section brands the whole body in every way; and we have had entirely too much of that. We are doing more to demoralize the public sentiment of Pennsylvania by the publication of such sections as this, and the inferences which follow from them than we are doing together by the penal section we introduce here.

Mr. BRODHEAD. We had this question before us heretofore and had it very thoroughly discussed. It has been sufficiently debated. We got nothing new, but merely a rehash of the old arguments. I therefore call for the yeas and nays on this section.

Mr. WORRALL. I second the call.

Mr. S. A. PURVIANCE. Mr. President: This is perhaps the only section of the judiciary report to which I am opposed, and I therefore desire the attention of the House for a very few moments while I give my reasons for that opposition.

I regard this as an anomaly in the history of our jurisprudence; that is, that a law having passed through all the forms of a law, having passed through all the formula prescribed by the Constitution, should yet become subject to being put into the criminal box and upon trial. Such a thing is unheard of, I believe, anywhere, and in almost every age and in every country it has been spurned by judicial authorities.

Now, sir, what is this cumbrous machinery that is proposed by the Committee on the Judiciary? That after a law has been passed, after it has been read three times on three several days, after it has had the yeas and nays recorded upon the Journal, after it has had the certificate of the Secretary of the Commonwealth and after it has the Governor's signature, it shall yet be subject, upon the mere affidavit of some scamp of a fellow anywhere in the Commonwealth, to be put upon probation. How long, sir? Not six months, because the provision is that at the end of six months the affidavit may be filed, and if the Supreme Court or one of the judges think there is probable cause it shall then go upon trial, and after trial it shall then be suspended for three months for the purpose of taking a writ of error. How long the proceeding may last when the issue is formed and when the trial is progressing, remains for the consideration of the members of this body. It may be a year; it may be two years; and after all that three months are to elapse in which a writ of error may be taken. And, sir, what is the probable cause? Fraud

undefined by any statute and undefined by anything in the Constitution. That is the probable cause for which you may put upon trial one of your acts of Assembly. Then the Supreme Court are to order a form of proceeding, and in an appropriate form they are to make up the issue.

Then, sir, what next? One of the judges of the Supreme Court is to be detailed from the important service and duty assigned to him as one of the judges of the Supreme Court, to sit in judgment before a jury on the trial of every case in which a law may be assailed. I ask whether that is not destructive of the interests of the litigants of this Commonwealth, if they are first to try all laws before they can have the subject-matter tried which falls within the purview of those laws? Then publication is to be made, and as a matter of course if it is intended to be effective it must be all over the Commonwealth. Are you to have publication made in every newspaper of the Commonwealth? If so, I ask what is that to add to the expense of this proceeding? A very large amount.

Then, again, what I object to is mainly that in the Commonwealth of Pennsylvania, as well as in every Commonwealth, the people have an abiding faith in the law of the land. When they go into your courts and look over the railings and see a trial going on, a criminal in the box, or the trial of an action of ejectment, or any trial, they hear the decision of the judge and they go home respecting the law and having an abiding confidence in it. But, sir, if after you adopt this provision in the Constitution the people go into one of your courts and look in upon a trial and they ask the question, "what is on trial?" and they are told, "there, on the table of the counsel is the law that is on trial; there is the criminal that is on trial within the lids of that book containing what professes to be a statute of this Commonwealth," it will tend to beget a want of respect for and confidence in the laws of the land.

Now, sir, as I have but a very short time, and perhaps would not have time to extend my remarks any further, I will ask the Clerk to read, so that it may be incorporated as a part of my remarks, an able review in brief of two of the reform journals of this Commonwealth on this very question.

MR. BRODHEAD. I ask if the reading of the paper will take up more time than the gentleman is allowed under the rule?

SEVERAL DELEGATES. Let it be read.

MR. BRODHEAD. We have all read it a couple of times.

MR. MACCONNELL. I should like to know what papers it is proposed to read from.

MR. S. A. PURVIANCE. The *Philadelphia Press* and the *Pittsburg Evening Telegraph*.

MR. CORSON. I object to the reading. I suggest that it be filed without reading.

MR. HARRY WHITE. Oh, no; let it be read.

The CLERK read as follows from the *Press*, of Philadelphia:

"Now it is proposed to make the courts competent to inquire into the motives of legislators in enacting laws, and stamp uncertainty upon every statute until it has passed a probation of six months after its official publication, which may be six months after its passage and approval. The proposition is not entirely novel, but it has been uniformly spurned from every court as most mischievous and unsound. Chief Justice Marshall, of the Supreme Court of the United States, and Chief Justice Lowrie, of our State, have given such unanswerable reasons for denying such power to the judiciary, that no lawyer should hesitate for a moment.

"It is possible in a free government like ours, as has been the experience of other governments in every age of the past, that the judiciary may become tainted with the pollution of power. Will Judge Black pretend that it is entirely independent now? He has strongly denounced the alleged control of the judiciary by Congress, and would he empower a packed judiciary to nullify laws at pleasure upon the assumption that legislators had not been honest in voting for them?

"The *Pittsburg Evening Telegraph*, an earnest reform journal, so clearly presents the objections to this section that we copy its language and commend it to the serious consideration of delegates:

"We also object to the proposed amendment because it will introduce into public and private affairs a vexatious and dangerous element of uncertainty of what is or is not law. It gives six months from the publication of the pamphlet laws in which to assail the integrity and validity of any statute, no matter how pressing may be the demand for its enforcement.

Virtually this will operate to prevent any laws being accepted as in full force until six months after their publication, especially laws in which large pecuniary interests are involved, and which are the ones most likely to be assailed. A simple affidavit, filed on the last day of the six months, hangs up a law, and submits its validity to a judicial proceeding that may be made as dilatory as the ingenuity of the lawyers can suggest. Then after a decision has been reached, and the law declared honest and valid, or fraudulent and void, as the case may be, the parties have three months in which to tinker up a writ of error. That hangs it up indefinitely in the Supreme Court. Is not this a palpable absurdity? It is not of uncommon occurrence that sales of property are made by judicial proceedings, under laws which have just passed the Legislature, and the titles may be again and again transferred, until the innocent holder is startled eight or nine months after the Legislature has adjourned (six months after the laws have been printed) by proceedings in court to declare the law void by virtue of which he has acquired valuable rights. There are hundreds of ways in which this provision may be made oppressive, but worse than all, it destroys that certainty in the validity and force of law which is the great conservator of society, and the safe-guard of all departments of industry and business. The people, after sending their representatives to the State Capital for three months to make laws, will be compelled to wait six months longer, before they avail themselves of them, to see if any capacious persons may take the notion to still further delay their operation. It substitutes uncertainty, confusion, and never-ending litigation for what should be the embodiment of simplicity, directness and certainty.

"What we have said goes to the necessity and expediency of the amendment, but there are important principles involved in the proposition sanctioned by the Convention, which, it seems to us, endanger the independence of the three co-ordinate departments of the government by giving the judiciary an undue preponderance. Although questioned at one time, the power of the judiciary to declare an act of the Legislature unconstitutional and void is now universally conceded; still it is exercised with great caution by the courts, and it has become a settled principle that it should never be

done in a doubtful case; there must, as Chief Justice Marshall says, be a clear and strong conviction in the mind of the judge of the incompatibility of the law and the Constitution with each other. The people have always looked with jealous eyes on any disposition of the courts to set aside the acts of their direct representatives, and the fact that its exercise has most generally only been attempted in clear and undoubted cases is one of the strongest holds the judiciary has on the public confidence. With us the functions of government are distributed in three co-ordinate branches, legislative, executive and judicial, and it is necessary to the smooth working of the whole machinery that each should remain within the strict limits of its legitimate sphere. In this way, and only in this way, can the harmony of our system be preserved. Yet we have in this proposed amendment something at war with the basis of the whole American system, for it implies nothing more or less than that the judiciary shall be the judges of the *motives* (whether they are corrupt or honest) that induced legislators to vote for a given law, or the Executive to stamp it with his approval."

Mr. CORSON. I objected to the reading of the article, because we all had read it, as it had been distributed among us, and I intend to vote against this motion. I shall then move to go into committee of the whole for the purpose of striking out "six," in the first line, and inserting "three," and striking out "three months," in the twentieth line, and inserting "one month."

Mr. WOODWARD. Mr. President: I am in favor of this section—

Mr. BRODHEAD. I rise to a point of order. Have not the yeas and nays been ordered?

The PRESIDENT. They were not ordered.

Mr. KAINE. I hope the gentleman will give the delegates who are in favor of this section a fair chance of being heard in support of it.

Mr. WOODWARD. I am very sorry that my friend from Northampton is so impatient on this matter. It is a very important question. Besides, sir, the idea that a man may not speak after the yeas and nays are called is a novelty in this body. The very time for a man to put his opinions on record is when he is obliged to put his name on record.

Mr. BRODHEAD. I rise to explain. I merely asked the Chair if the yeas and nays had been ordered.

Mr. WOODWARD. Now, Mr. President, this is an important reform. Nobody will deny that there are on our statute books many acts of Assembly that have been passed by fraudulent and corrupt means. I read in a Pittsburg paper not long since, which fell into my hands accidentally, a well-written article on this subject, the general tenor of which was opposed to this section; but in that article it was stated expressly that some acts of Assembly have been certified by clerks, who had been bought up for the purpose, that never passed the Legislature in either House, and that Pittsburg article said expressly that it would be wise for us to put into the Constitution such a section as this applicable to that class of cases—cases where clerks have certified to acts of Assembly that have never been passed by either House of the Legislature in the forms of the Constitution. Certainly that is a gross case; but is it any more gross than where in the forms of the Constitution acts of Assembly are passed corruptly?

This section does not contemplate a judicial review of all the acts of the Legislature. That is a distorted statement; and the gentleman from Allegheny, who seems shocked at the idea of going into a court house and finding them engaged in trying an act of Assembly, ought to feel equally shocked on going into a court house and finding the court and jury engaged in trying the question whether that will was forged or not, whether that deed was forged. Why, what a solemn instrument is a will; what a solemn instrument is a deed; and yet gentlemen have seen them questioned many a time, thoroughly questioned not only as to the validity of the instrument, but the fairness with which it was made. A judgment of the highest court of this Commonwealth may be impeached for fraud. There is a maxim of the common law, that fraud taints everything it touches, and it is a sound maxim. Now, sir, what is the wisdom of talking about the inviolability of an act of Assembly that has been bought and bribed through your two Houses? The Pittsburg editor thought that if it was passed without any of the forms of legislation, this section would operate fairly upon it; but I hold that such a law is no more iniquitous than many that could be mentioned, some

of which were pointed out by the chairman of the committee in a former argument of this case, and many more might be mentioned that have passed in the forms of the Constitution, but in violation of the rights of the people of Pennsylvania.

Mr. President, so long as it remains true that courts investigate fraud in all other human transactions and set aside the most solemn instruments on account of fraud, it will be true that a corrupt act of Assembly ought to be set aside by some power in the State. The case of *Fletcher vs. Peck*, reported in sixth Cranch—which I have not here but which I have sent for—was not quite correctly stated by the learned chairman of the committee on a former occasion, as I have his statement before me in his speech. Chief Justice Marshall did indeed rule in that case that the judiciary would not overhaul and investigate an act of the Legislature in a *collateral proceeding*. That is what he ruled. That was an action of ejectment, and he said “in this collateral case we are bound to take the law as we find it in the official publication of the statutes of the land, and in a collateral case we will not entertain the question whether that act was passed by fraud or not.” But in the very same case he said that whilst it is to be lamented that such practices do prevail in our American Legislatures, if the question was to be tried at all, it must be by direct issue made upon the law itself. That is the reason why this section contemplates a direct inquiry. That is the doctrine of Chief Justice Marshall in the case of *Fletcher vs. Peck*, and if the book comes in before I get through, I will read his language to fortify what I have said. It was because the court could not reach it in a collateral proceeding that the Chief Justice ruled as he did, and ruled soundly and right. You cannot attack the judgment collaterally, and that is the whole effect of the decision. So when gentlemen use the decision in *Fletcher vs. Peck* as an argument against putting into the Constitution a provision to try and condemn these base acts of Assembly, they make an issue which Chief Justice Marshall never made. On the contrary he does expressly say that if there is to be an inquiry it must be such as this section contemplates.

Mr. President, I vote for this section not only because the thing is right in itself—for if the Legislature will pass these bad acts of Assembly it is right in us to

give the people of Pennsylvania an opportunity through the action of the Attorney General, discreetly taken, to test and set aside such fraudulent acts of Assembly—but I go for it for another reason. If you put this in the Constitution, you stop this kind of legislation, and the best possible thing that could happen to this section in the Constitution is that it should be a dead letter, that there should be no occasion for judicial review because the fact that there may be a judicial review will stop these corrupt practices at Harrisburg. I have voted for many things on exactly this principle. I took the liberty on a former occasion to say that the best view of this body is that it is an educational body; it is to educate the future legislators of this Commonwealth up to the conviction that they must be honest, to educate the young men who are to be the future legislators of this Commonwealth that they must be honest, that "honesty is the best policy," after all, even for politicians and legislators. This provision is one of that sort. It will teach men that, if they will smuggle through corrupt acts of Assembly, there is power in the Commonwealth to try that question and set them aside. But strike this out, leave your Constitution at the mercy of speculators in legislation, and it may be done again and again as it has been done in the past. There are several other amendments which I voted for, and some which I mean to vote for, on exactly this principle. I do not believe Judge Black's iron-clad oath will do any harm, because I believe when men are bound up in that way they become honest, although they might be dishonest in their dispositions before, but when a rogue sees that his rascality will not pay, he is likely to put on the robes and manners of an honest man.

I think all these measures are calculated to bring back that virtue that has been so long stained, and therefore I vote for them, and am supporting this section. I support it on principle. I say there is nothing in an act of Assembly to restrain the sovereignty of the Commonwealth of Pennsylvania from investigating and looking into it. There is nothing sacred about an act of Assembly; it is the most ordinary piece of business among men; and whilst you set aside wills, and deeds, and judgments, for fraud, it is nonsense—I hope the gentleman from Allegheny will excuse me for saying it is nonsense—to say that you must not inquire into the va-

lidity of the steps by which an act of Assembly was passed.

I have stated the view of Chief Justice Marshall on this subject. I heard somebody say, I think it was the newspaper article that was read, that Judge Lowrie had condemned this proposition. I wish to know when and where. I would thank any gentleman who makes that assertion to prove it, because I remember well that Judge Lowrie used to lament that he had no power to try these acts of Assembly when they were brought before him at *nisi prius* and on the supreme bench. It was the sentiment of Judge Lowrie then that the power ought to be lodged with the judiciary. If he has ever said anything to the contrary, I know not when and where he said it.

THE PRESIDENT. The gentleman's time has expired.

MR. BROOMALL. The gentleman from Philadelphia forgets that most of the mischiefs of which he complains—and he has reason to complain of them—have been in the passage of private acts of Assembly, in private legislation. The actual causes of complaint have been in that. Now, in the Constitution which we have adopted we have cut up that whole business. There can be nothing done now, or almost nothing, in the way of legislation except the passage of general laws. These will be done more deliberately; there will be more time taken, there will be more opportunity of investigating fraud, and there will be little chance of an act of that kind being passed by fraud. Now, I grant the evil of which the gentleman complains, in times past, and if we were going to leave open the whole business of special legislation, however strange the proposition to correct the evil may seem, I should be inclined to go for it; but inasmuch as the evil itself must be insignificant hereafter I am not willing to vote for a proposition of this sort, which is what? We limit the Governor to ten days to veto a bill, and then we require him to give his reasons to the Legislature and allow them a chance to overhaul those reasons; and yet you allow by this section the most uncertain body under heaven in its action, a jury of twelve men upon a question of fraud, (one of the most uncertain questions in its results that can be submitted to a jury,) an actual veto power, not qualified but absolute, to extend throughout the period of six months. Is this not strange? You set up twelve men, as likely to be bought as the men that those

twelve men vote for for the Legislature, because in voting for members of the Legislature we try to get men at least as good as ourselves—you set up these twelve men against the two hundred and fifty men whom we propose to have in the Legislature. The proposition to me is a monstrous one, and I must vote against it inasmuch as the evil hereafter can be reduced to insignificance.

Sir, it is said the judiciary is pure. I grant it. But how long will it be pure when the same influences are brought to bear upon it that it is said have corrupted so many good men in the Legislature? When a judge and twelve men selected indiscriminately—thirteen individuals, human beings—are subjected to the same influences that are said to have corrupted the Legislature, how long will that tribunal remain pure? The corporation or the individual who can buy the one a charter and the other an office from the Legislature, would laugh when he was turned over to thirteen men no better than the Legislature themselves, and just as liable to be bought—probably not worse, but as liable—thereafter.

I do not admit the corruption to the extent gentlemen talk of; but when they tell me that twelve men and a judge are utterly incorruptible, and that two hundred and fifty men selected for their honesty are corruptible, I say to them I would trust the two hundred and fifty quite as far as the thirteen. I therefore will not vote for this absolute veto of thirteen men upon an act of Assembly to continue for six months when we have limited the Governor in his veto to ten days and made it then only a qualified one. I say "veto," because upon a question of fraud the question that a jury will ask of themselves will be not whether there was fraud, but whether this act ought to have passed. That will be the only question the jury will consider, in spite of all the judge may say to them. Hence I am opposed to this strange and anomalous veto.

MR. BIDDLE. If any enemy of free institutions were desirous of working their ruin, he would not attempt to make any open assault upon them. Such an attack would bring about general, if not universal, resistance. He would go to work in quite a different way. He would endeavor to sap insiduously the strength of each great department into which our government is distributed. If it were his pleasure to single out the Executive, he would endeavor to hamper and nullify

it as far as possible; if the judiciary, to degrade and make it despicable in the eyes of the people; if that body which speaks, or ought to speak, the wishes of the whole people, he would employ himself in covert attacks upon the Legislature. There must be a "be all and an end all" somewhere in regard to every one of these departments. When the decision of the Supreme Court has been pronounced, no matter how important the question is, no matter what the magnitude of the private rights involved, no matter the greatness of the political questions that may for the time being be brought for solution before them, the people must acquiesce, though the decision be made by a bare majority, because there is no other mode that we know of obtaining the exposition of the law as it is written. Why should it not be so with the legislative will when once expressed? Are you going to keep open—not for six months but perhaps for six years—a very distasteful act of Assembly, because although the objection must be made within six months, a writ of error is almost a necessary consequence, and the ordinary delays of law may spin out the case for years?

But again, how are you to have a greater assurance from the action of a jury than from the action of the Legislature itself? Are you going to attempt some mode of reviewing the finding of the jury on a question of fact? Just look what is to be submitted to them:

"If it shall appear to the court and jury, upon such trial, that the passage or approval of the said act 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."

Now, I ask in the name of all that is reasonable, why are you to attribute conclusiveness to the finding of twelve men, of like passions as ours, and whose passions will be regularly appealed to every time a distasteful act of Assembly comes before them for approval or disapproval of the expressed will of the people as given through the Legislature. Who ever heard of such a thing unless you claim to stand up and say manfully, boldly, directly, that our whole system of government is a failure? I do implore gentlemen to pause before they commit themselves to this extraordinary mode of getting rid in any locality—because the locality may be selected where the act of

Assembly may be most unpopular—of the expressed will of the majority of the people.

What guarantee have we that a judge himself—it is disagreeable to speak of such things, but we cannot help it and we are compelled by the stress of the argument to meet these objections—what guarantee have we where an act of Assembly may involve enormous rights, that the same tampering which we have heard so much said about with regard to the Legislature, may not be resorted to to obtain the disapproval of the act of Assembly? Are jurors immaculate if legislators err? Are judges so unapproachable where the whole body politic is rotten, that there is no danger of private solicitation or worse influences being addressed to them? Let gentlemen reflect that that bright exemplar of corruption which we have had brought before us so prominently by the distinguished delegate from York (Mr. J. S. Black) on almost every question which involves the principle under discussion, was not a legislator. He was a judge. "The wisest, brightest, meanest of mankind," was not a man who gave expression to the popular will through the passage of laws, but through their exposition.

Read the lessons of history wisely! Do not be misled by these arguments, which are mere specious and which are not directed to the true evil. You have already done much to deprive the people, in my apprehension, of their fair share in the government, by saying that they shall elect their Representatives every two years instead of every year. You have tied the hands of the Legislature and enacted biennial sessions instead of annual sessions. Now, do not permit this—I can call it nothing else, I speak of it as I think, and it is not yet adopted—this monstrosity, this covert blow at the very institutions under which we have lived happily and well. Pause! Do not believe that a jury under the direction of a single judge, is any wiser or any better than the body of the people. It is a monstrous fallacy. Judges are put there, and juries, for no such purposes. Their function is the exposition of the law, not the uprooting of it. If this provision is enacted into a constitutional clause, you will have done more by your action to-day to destroy the integrity of our government than all the good that all the changes, advantageous as they may be, will ever apologize for. I do trust that every

gentleman who gives a vote on this subject will give it with a full sense of the solemn obligation that is resting upon him, when he is called to remit the final action of the Legislature, to be re-tried by another tribunal, and that tribunal so unsatisfactory that toward the end of the very article, you yourselves ask to withdraw from it even the common issues of fact in the every-day affairs of men and relegate them to another tribunal.

Mr. President, I could not commit myself to a silent vote on the passage of a section like this, because I feel deeply and earnestly upon it. I feel that if we commit ourselves to this we have in fact destroyed the form of government under which we are living, and I hope it will not pass.

Mr. CURTIN. Regarding this as a most important change in the organic law of this State, like the gentleman who has just taken his seat, I cannot find my duty discharged by simply voting in favor of striking this most obnoxious section from this article. I do not think, Mr. President, that in the article on legislation, providing that everything which comes to the people from their representatives shall be in the forms of general law, is a care for the evils of legislation. But inasmuch as the laws are to be general, I cannot think it is a wholesome or a healthy reform in our organic law that a general law, however beneficent or useful, or however much it may be demanded by the people, shall be subjected to a review and be held in abeyance for six months until that review occurs. If the Legislature of Pennsylvania is as corrupt as is stated on this floor, it is a painful reflection indeed. If it be true that the very foundation of all our system of government is corrupt, then the canker worm is gnawing at the very vitals of our theory, and the whole superstructure of government will fall from the corruption at its base. A general law may be procured by fraud, corruption and bribery; but while a special law procured by the same improper means may only affect individuals here and there, or localities or communities, a pernicious general law to affect a special purpose, may spread desolation over an entire Commonwealth; and if it be true that general or special laws are procured by corrupt means, then for the future of this great Commonwealth there is not much promise.

We have a system of government, departments of government. The people express their belief and their desire

through their representatives in the Legislature, and it is to be presumed that the people will send to the Legislature of their own kind men representing their own ideas, and if the Legislature of the State, the representatives of the people, are corrupt, and we are here to cure that corruption, we had better commence just at the beginning and abolish that representative body of the people. There is just as much virtue to-day as there was when this government was formed, and if you expect virtue, and integrity, and fidelity, of the people in your Legislature, the people themselves must correct the evil by electing proper men. We cannot do it by constitutional enactments and provisions. Certainly we cannot do it by referring to the courts the reviewing of the action of the Legislature, where the body of the people are represented.

Judges have been tried for crimes and convicted of receiving bribes in this country, as well as in the country from which we draw our laws and the model of our institutions; and as has been properly said by the gentleman who has just taken his seat, and who so ably and eloquently exposed the danger of interpolating this new change, this violent wrench given to our institutions, I cannot think that a judge and twelve men are not as open to corruption and the influences that may affect a Legislature as the body of the representatives of the people themselves. Judges are just like other men; they are no better and no worse; and while I agree to all that has been said of the purity of the judiciary of Pennsylvania by gentlemen on this floor, the time may come when men as pure and incorruptible as now sit upon the bench will not find their places there. While I know quite well that the very sheet-anchor of liberty is trial by jury, the time may come when juries may be as corrupt as the Legislature; and lest they should become corrupt, I would leave the judicial branch of the government to the exercise of its proper and legitimate functions, and I would leave to the Legislature the powers that necessarily belong to them; and I would not allow, at the pleasure of any man in this Commonwealth, the right to review the action of the representatives of the people by a judge and twelve jurors, however pure the judge's character may be, or however eminent his learning, or however pure the twelve men before which the action of the representatives of the people is to come for review.

Sir, I am opposed to this section, and I am in favor, as far as possible, of the plan of government we now have; and notwithstanding the corruptions that are alleged, I believe that our government is destined to run on and on for all future time, and that when corruption becomes so apparent and potent as that the people are aroused to a sense of it, they themselves will correct abuses which the one hundred and thirty-three men of this Convention can never reach.

Mr. BUCKALEW. Mr. President: There is a political evil in the land and it is this: That any corporation or borer, if gentlemen will allow the plain term, that can get an act passed through a legislative body in this country, get it through the forms of enactment, is secure in the enjoyment of that which he seeks; for the Constitution of the United States, with reference to all acts affecting corporations, is that upon their acceptance by the corporate body they become like the laws of the Medes and Persians, unchangeable; they are irrevocable; they are beyond the reach of the sovereign power of the people at any future time to repeal them, or to impair their efficacy and virtue for the objects for which they were obtained. In other words, a wrong may be committed in the political action of government, and being once committed, at all events as to corporate enactment of an important character, it is unchangeable afterwards; and there are men in this country, in our State and in other States, who hold private fortunes of enormous magnitude, the direct result of evil legislation which constitutional principle has sanctioned, so to speak, and rendered irrevocable in their favor. And then comes in the legal principle which gentlemen insist upon, that you shall look no further than the certificate of the Secretary of the Commonwealth and the seal of the State in determining the validity of an enactment of the Legislature. You are not to go behind that to cast the slightest glance upon anything which has preceded the enrolment of the law. This is our condition with reference to legislation in this State and in other States, and it is our condition from Maine to California; and the result inevitable and certain of this condition of things, is known of all men and deplored by all honorable men.

The Supreme Court of the State of New Hampshire have decided in a recent case, which was re-published in this city, that they will not close their eyes to

an allegation against the integrity of a statute. They have decided that they will look to the official journals of the legislative body, possibly to any other officially recorded information; and if the law has not a constitutional sanction or is shown to be wanting in a constitutional sanction, it will be declared void; and that court says that such has been its decision in former cases; and therefore it is established as constitutional law in that State. We ask for nothing more in this section except the application of the same principle, only guarded and put under the accepted modes of procedure which are known to the common law as usual in this and other States.

But it is said that it is dangerous to allow twelve jurors and one judge to pass upon a question of fraud. Why, do gentlemen forget that our judicial system is based upon the principle that the judgment of twelve men of the country and one judge learned in the law shall decide the highest and gravest of all judicial questions, even the question of human life, even a pecuniary question in which millions of dollars may be involved? Do gentlemen not remember that even the question of the election of a Governor of this State, the highest office, is to be determined by a committee of thirteen members of the Legislature, drawn by lot, to which the Convention has now added on my motion a presidency by the Chief Justice of the Supreme Court? This combination of freshmen, selected by lot from the mass of the people, and with a learned judge to preside over and instruct them, is the great principle of English and American freedom, the very foundation upon which all its securities and guarantees rest. And yet gentlemen are concerned for fear this instrumentality shall be invoked to ascertain whether a statute proposed to be placed upon the statute book has or has not been enacted by fraud! It is possible for gentlemen to suppose evil; imagination or fancy may run riot over possibilities, but I take the experience of ages, our own experience in this State, and I say that a court constituted of a learned judge and twelve jurymen impartially selected, is the best possible instrumentality for the investigation of a question of fraud or for the ascertainment and determination of justice in any possible judicial inquiry.

It is a mistake to suppose that this section is mainly concerned with the direct

bribery of members of the Legislature. It includes that, but that is not its principal object. Questions of bribery are mainly raised by another amendment to the Constitution which has been agreed upon. The main form of a question which will arise under this section, will be a question of fraud by which the Legislature itself may be imposed upon, by which perhaps nine men of ten in the membership of the Senate and House will be entirely unaffected; and I deny that this section is an impeachment of the average integrity of the Legislature, or an impeachment of republican institutions. It will be a protection to the honest men in the legislative body as well as to the people against the insidious, multiplied and various forms by which fraud may assail the Legislature of the Commonwealth.

But the gentleman from Chester seems to suppose that we have abolished private legislation. We have limited it, but there will be a large amount of private legislation under this amended Constitution if it shall be adopted, and a great deal of private objects will be accomplished in the form of general laws; but he is mistaken also in supposing that there has been no question of fraud in reference to general laws heretofore. Why, sir, a few days ago I was reading a decision of the Supreme Court gravely made upon the statute abolishing the former law of sequestration in regard to corporations, and which allows the property of any corporation to be sold, like any other property on execution, upon issuing a *fi. fa.*—a law which to my knowledge never passed the Legislature.

MR. HARRY WHITE. It did.

MR. BUCKALEW. I think it was in that statute which the gentleman from Lycoming referred to the other day, a general law relating to railroads crossing at grade. Do I understand the gentleman from Indiana to desire to interrupt me?

MR. HARRY WHITE. I could not fail to express my conviction when I heard the delegate announce that no such law had ever passed. I was present, a member of the Legislature, when that law did pass, and it passed over the Governor's veto by a two-thirds vote.

MR. BUCKALEW. The gentleman refers to the law of the next session. I am not speaking of that, which was very properly passed over objection by him; I am not going into debate on that, because time will not permit; but I say that there are cases, more than one, of public or gen-

eral statutes, the integrity of which was questioned at the time of their passage, and which in my judgment would have been declared void if there had been any mode by which the manner of their enactment could have been examined.

The PRESIDENT. The gentleman's time is up.

Mr. HUNSICKER. I was very much impressed with the argument of the delegate at large from Philadelphia, (Mr. Woodward,) especially with that part of it in which he declared that fraud vitiated everything, that it destroyed a will, set aside a deed, and nullified the judgment of a court; and coming from so distinguished a lawyer, it effected a temporary lodgment in my mind; but I should like to ask him, and I should like any friend of this section to answer if it can be answered, how can you assail the judgment of the Supreme Court for fraud? Who is to assail the validity of a judgment or decree pronounced by the Supreme Court of the State? There is no power anywhere to do it, and why? Simply because it is one of the three co-ordinate branches of our government, and is supreme within its jurisdiction.

Take the Legislature. What is that? It is the law-making power, the very highest power of sovereignty which can be exercised. If the law-making power is to be subject to be reviewed by the judiciary, you make the judiciary absorb the legislative branch and you destroy the very government under which you live. That is the effect upon principle, and that, it seems to me, entirely answers the remarks of the delegate at large from Philadelphia.

Mr. BOWMAN. If the gentleman will allow me, I suggest that if you wish to call in question a decision of the Supreme Court on account of fraud, all you have got to do is to get up a law to take the case back to the justice of the peace. [Laughter.]

Mr. HUNSICKER. Mr. President: This section is proposed to remedy an evil. Let me go on in my line of thought—and I trust the members of the Convention will not become impatient. I trust that this subject will be discussed without any regard to the length of time consumed, because if the section is intrinsically and inherently sound, argument will develop it, and if it cannot stand the test of discussion, it ought to be stricken out. My mind is inquiring after truth, and if the

friends of this section can give me satisfactory reasons why it ought to pass, I will vote for it.

But let me go on a step further in the line of my argument. If you allow the judiciary to review the acts of the Legislature, I say that you absorb by that process the legislative function. What are the mischiefs to be remedied? It is said that there have been some laws passed by fraud. Do you remedy that by this section? How do you remedy it? Let me suppose a case that might happen. Suppose a political party was in power who entertained political views hostile to those entertained by the judges of the Supreme Court; suppose there should be a war, and the administration should call out the militia under a law passed for that purpose, and provision and arm them in the defence of the State, and suppose that the judges of the Supreme Court were opposed to that war and opposed to that law. Then some man could go before the Attorney General alleging that the law was passed by bribery; the Attorney General would file his information to the Supreme Court and they would assign a judge to try the issue of fact in some county where the people were notoriously hostile to the enforcement of that law. Could any judge on earth, if he were as pure as an angel, restrain the prejudices and the passions of that inflamed community against tearing the law to pieces because it did not coincide with their sentiments.

Go a step further. Suppose you have a perfectly pure judge and a perfectly pure jury, and the judge commits an error in the admission of evidence or in the rejection of evidence; three months after the six are allowed for a writ of error, and the case goes to the Supreme Court on writ of error to revive a question of law alone, and the Supreme Court sends the case back for a new trial, upon the ground that the judge committed an error in the acceptance or rejection of testimony; the case goes back again to that court, and it may go up the second time, the third time, the fourth time, and the fifth time. Let me ask the gentleman from Philadelphia, and the gentlemen who advocate this section, what becomes of the law in the interim? What is the language of the law? It obliges. The language of the law is, "Thou shalt." It is binding upon the judge and everybody else. There is no suspension of its validity all the time.

Suppose the Legislature pass a law to punish a crime; suppose they pass a law declaring that the stealing of a horse shall be a felony punishable with death, can the judge stop? He must try the man under that act of Assembly; he must sentence him; nay, he must have him executed, and executed, too, at the very time when the law is undergoing the revision provided for by this section!

Why, gentlemen, it is a Pandora's box full of evils; there is no good in it, and this Convention was talked off its feet when it passed it on second reading by the scare that has been got up here time after time about legislative corruption. Legislative corruption has been the bugbear that has frightened men out of their propriety. Sir, as I said in the beginning of my argument, it comes to just this: If you adopt this section, you destroy the legislative branch of your government altogether.

Then what next? Suppose that the judiciary should become corrupt as they did, as I am reminded by the delegate from Allegheny, (Mr. Howard,) in New York, when every leading railroad man owned a judge, and could get his injunction to extend over every part of the State, and they would appoint receivers, enter into stores and counting rooms, break open safes, and take possession of books. God forbid that it should ever happen in Pennsylvania, that the judicial ermine should be dragged in the dust; but if you will subject the judges of your courts to the same malign influences that affected them in New York—and human nature is the same everywhere—I am not sure that in the attempt to purify one branch of your government by destroying it, you will not destroy the other by making it corrupt.

Mr. J. W. F. WHITE. Mr. President: I was not in the Convention when this article was up on second reading, and was not present when this section was adopted, and as I regard it as very objectionable, I ask the indulgence of the Convention for a few minutes while I state the reasons of my opposition to it.

The first thought in my mind would be that we should also have a tribunal to try whether the judges have been influenced by fraud or corrupt means in their decisions, as a counterpart to this section.

I consider that the section now before us strikes at one of the great fundamental principles of our government—the in-

dependence of the legislative department of the government. In England to this day the courts have no power to pass upon the validity of an act of Parliament. Whenever Parliament proclaims an act, the whole realm must take it not only as passed properly, but in conformity to the Constitution of the realm. In the early history of our own country and in this State, when the question was first raised whether the courts had power to declare an act of Assembly unconstitutional, many of the best jurists of the land hesitated, and one of the greatest jurists of Pennsylvania took the stand boldly and strongly, and his argument is almost irresistible, that the courts had no power to declare an act of Assembly unconstitutional; that it trenched upon that great department of the government. Those who will read Judge Gibson's dissenting opinion will find his arguments almost overwhelming and conclusive that the moment the courts undertake to pass upon the validity of acts of Assembly, they are erecting themselves into a power superior to the legislative department of the government.

What do we now propose? It has become settled law in this State that the courts may overrule an act of Assembly because of its unconstitutional character; but now it is proposed not only to go that far, but that the courts shall enter into the motives of our legislators; that they shall inquire into all the motives that influenced them in voting for an act of Assembly. It is proposed that when any individual alleges that an act of Assembly was passed or approved by fraud or bribery or corrupt means, the courts shall seize hold of it and order a jury trial of twelve men, to try what? To try whether any of the members voting for that act of Assembly acted improperly, were influenced by improper motives; whether the Governor who signed it was influenced by improper motives when he put his signature to the act. Allowing them to sit in judgment upon the representatives of the people as to their motives and leaving the court to construe those words "fraud and corrupt means," what may they not end in? What may not some of the courts decide may be "fraud or corrupt means" on the part of the Governor or members of the Legislature? If a jury of twelve men are to act in judgment on two hundred and fifty sworn men and the Governor, the legislation of your State will become a farce.

It seems to me that we are acting here on the theory, in the first place, that the people cannot be trusted to elect representatives, and, in the next place, that no officer elected by them, from Governor down, is to be trusted with anything. Of all the new-fangled notions that ever were thought of to be put in a Constitution, it strikes me this one of submitting to a jury of twelve men, in some remote county of the State, perhaps on the order of one judge of the Supreme Court, to pass upon the motives influencing the members of the Senate and House of Representatives in passing an act, or the motives of the Governor in approving it, is the worst. I would quite as soon vote for a proposition that, on the allegation of some person that the decision of the courts was procured by fraud or corrupt means, a county judge should call a jury of twelve men to pass upon that question. It would be just as rational and as consistent with our theory of government.

Sir, if we wish to maintain our government, we must trust our Legislature. We have thrown around them all the guards that we can. If they commit frauds, we have the means of punishing them. If a legislator or a Governor or anybody else commits a fraud, the criminal law of the land can come in and punish him. The idea that by an issue of this kind you are to get at fraud better than under the criminal law, seems to me to be an absurdity.

I cannot vote for a section of this kind to load down our Constitution. If it is adopted along with some others, I am afraid they will sink it irretrievably. I hope it will be stricken out.

MR. DALLAS. Mr. President: I do not desire to detain the Convention; but the question involved in this section is to my mind a very important one, and I think should have the calm consideration of this body, and that every member should have an opportunity to express his views upon it, who desires to do so.

To consider the subject dispassionately, there are some things upon which every delegate in this Convention can agree. Without being able to unite as to the extent to which corruption has hitherto prevailed in the Legislature, there is no doubt in the mind of any delegate that some laws at least have occasionally been passed through corrupt means. There is no doubt, I believe, in the minds of most delegates that some enactments have been placed upon the statute books of this State

that have not gone through the forms of law at all. That that state of affairs was an evil in the past, and one which, if possible, we should remedy for the future, is another statement which I believe all of us might agree in making; and if we can, without violating any principle of free government or the spirit of our institutions, correct this evil, I suppose we will all agree that we should do so if it can be done.

I should like to ask those delegates who are so horrified at the thought of a court and jury—that tribunal which passes upon all questions of fraud between man and man—examining questions of fraud in the passage of acts of Assembly, to tell me whether there is not more to shock them in the exhibition of a court of justice trying and deciding cases upon laws which are not laws at all; and whether it is not more humiliating to a citizen of Pennsylvania to step into the courts of this Commonwealth, and there find the judges saying: "We find the great seal of the Commonwealth, upon this paper; it is duly certified to be law, and, therefore, though we know it is not your case, your property and your rights must be made to depend upon it as if it were a law, and you have no remedy." I say that is a state of affairs which I cannot but believe every delegate in this body will agree with me in deploring, and that if we can find, without violation of right principle, some correction for it, it is not only proper, but it is a duty that we should correct it.

Notwithstanding that I hold these views very strongly, if I could concur with the gentleman from Philadelphia (Mr. Biddle,) the gentleman from Centre, (Mr. Curtin,) the gentleman from Allegheny, (Mr. J. W. F. White,) and others who have argued that in order to bring about this remedy this section proposes to violate the fundamental principles of our government, I could not, even to accomplish so good a purpose, vote for this section; but I do not. After listening carefully, attentively, and with much interest, to their arguments, I do not follow them in their conclusions. I cannot perceive that our system of government will be at all disturbed by the adoption of this section. I cannot perceive that that balance which we should always maintain between the executive, judicial and legislative departments, will be at all disturbed by the adoption of the proposition which the section contains.

Now, sir, as the gentleman from Allegheny has stated, there was an early stage in the judicial history of this State a question raised as to the right of the courts to determine even upon the constitutionality of an act of Assembly; and the very same arguments which we have heard here to-day addressed to us were addressed to the court, and the result was that they then held, and now never doubt, that they have the right to examine into the constitutionality of every enactment. If they had not so held, what would have been the result? Why, in times recently past, who supposes that the Constitution would have been the slightest check upon the Legislature, and who doubts that our statute books would not now be crowded with enactments that every lawyer and every judge would know to be unconstitutional, but without the power to say so effectively? But, sir, fortunately for us, the judicial branch of the government did assume that it has a right to determine not merely what appears upon the statute books but what is *the law*. That is the function of the judiciary. The Legislature cannot foist upon the people acts that never passed, or acts that were improperly passed or corruptly passed, and say that they shall be the law. The people have a right, and should through their Constitution repose in their judges the power, of saying what is the law of Pennsylvania, and we ask by this section that they shall say that nothing is law which takes from you your sacred right of personal liberty, or from another his right of property, through the force of a statute corruptly passed, or, it may be, not even passed at all.

Why should not such a clause be put in the Constitution? Why should not the power of the judges to pass upon the acts of the Legislature be extended just as far as is proposed by it? What possible violation of principle would it be to do so? It does not provide for a review of the acts of Assembly; it does not look to the passage of laws by the judiciary; but its purpose is simply to provide that nothing shall be the law which is the result of corruption or is tainted with fraud; and notwithstanding the triumphantly-asked question of the gentleman from Montgomery, I think that even the judgments of the Supreme Court may be re-examined for such cause. I am surprised that any lawyer should doubt that any party in interest applying to the Supreme Court and alleging fraud in any

of its judgments would be entitled to a bill of review. Such course of procedure is well understood, and no judge of the Supreme Court would have the right or the desire to refuse the prayer of such a petition when properly sustained by proof.

Mr. HUNSICKER. Who would review that judgment?

Mr. DALLAS. The judges of the Supreme Court would review it.

Mr. HUNSICKER. The same judges.

Mr. DALLAS. The same judges, because it is a subject for judicial action. If unfortunately all the judges should be corrupt men, who would not honestly examine a question of fraud, the people would be the sufferers from that branch of the government failing in the performance of its duty; but it would be placed in the right hands for review and examination; that is in judicial hands, where it belongs.

But, sir, it is said that it is not safe to trust this power to a court and jury. I have already said that we trust all questions between man and man to that tribunal. All allegations of fraud made by one man against another are so tried. It may be that juries are sometimes corrupt in the trial of private causes; but their purity is our last and only hope, and there is no more danger of corruption in the trial of an issue such as this than in the case of a trial between private persons. If, when the people of Pennsylvania find on the statute book a law, or what purports to be a law, which affects them all, but which has been imposed upon them corruptly by their representatives, cannot have it reviewed by the judiciary of the State, then the whole community must remain without that remedy against the fraud of their agents which the law affords to all individuals against their private agents.

The PRESIDENT. The gentleman's time has expired.

Mr. CUYLER. Mr. President: I am warmly in favor of the passage of this section and regard it as one of the most salutary provisions that our proposed Constitution contains, and I desire to say a very few words in illustration of the idea that is in it.

The argument against it concedes fraud, and we are brought face to face with the proposition that fraud of the most monstrous description exists, and there is no remedy for it in the law. Let me illustrate, if the Convention will pardon me,

from my own experience. A year ago last winter, a bill was introduced into the Legislature of New Jersey, printed and placed on the desk of every member, which proposed to incorporate a railroad company that should convey the property of a mine some seven miles to a lake. It was printed in that form and laid on the desk of every member; it was read in that form from the clerk's desk; but a fraudulent bill had been printed and there was appended to it a section not contained in the manuscript bill or in the printed bill that swelled this small mine road into a national railway and changed its location nearly a hundred miles from that which appeared on the face of the printed bill. After the bill had been compared by the committee to compare bills, the right bill was slipped out and the fraudulent bill put in. It was taken to the Governor. Fraud was practiced again in his presence in the reading over of the bill by the suppression of this section. He signed it; it was enrolled and a certified copy was taken. I speak of that which is conceded and which nobody disputes. When that bill was brought into question in the courts of justice in New Jersey, we were met by the proposition that the broad seal of the State was there and that no inquiry could possibly go behind it.

Is it designed that such a condition of affairs should exist here? Let me suppose another possible case. Let me suppose that the signature of the Governor of the Commonwealth is forged to an act of Assembly and that it is taken to the office of the Secretary of the Commonwealth, and there enrolled, and a certified copy taken, what is the redress? Simply none at all. According to the theory of the gentlemen on the other side, the very signature of the Governor, the very signature of the presiding officers of the two Houses of the Legislature, may be forged and placed on the bill, and it becomes a law. Why?

Mr. J. W. F. WHITE. I should like to inquire of the delegate how the signature of the Governor could be forged to a bill?

Mr. CUYLER. I do mean to say that on the theory of the gentlemen on the other side, the argument is that the seal of the State affixed to the enrolment of a bill, to the certified copy concludes further inquiry; and that is the doctrine of the courts.

Mr. J. W. F. WHITE. I simply beg leave to differ with the gentleman on that point.

Mr. CUYLER. Gentlemen may differ with me if they will; but no gentleman can reconcile with the arguments on the other side any other doctrine than that. I am speaking of the doctrine, itself, simply that a certificate from the office of the Secretary of State is conclusive proof of the legitimacy of the law, and that no inquiry can possibly go behind it. That is what it means.

Mr. J. W. F. WHITE. Will the gentleman allow me another question? Does not an apparent fraud of that kind vitiate everything?

Mr. CUYLER. It does not according to the argument of the gentleman on the other side, vitiate that law. Our position is that fraud vitiates everything; that is our view; but you must have a method of ascertaining in regard to it, and when that tribunal which is to investigate is to be told that a certain kind of evidence is conclusive, and that there can be no inquiry upon it, it necessitates just such a view as I am taking, and I do mean to say that without some such provision as this wise section places before us, according to my judgment, as bare a case of fraud as I have presented to this House cannot be the subject of judicial inquiry or review. If the very question of the certificate of the Secretary of the State was brought into a court of justice, there would be an end of all inquiry on the theory of the gentlemen on the other side, and in the absence of a constitutional provision that would authorize investigation such as I am speaking of.

Let us contemplate such a state of affairs as that for a single moment. When the Constitution of Pennsylvania says that a law is that which has been intelligently acted upon and resolved upon by the majority of the two Houses of the Legislature and has received the approving signature of the Governor of the Commonwealth, are we to be told that the Secretary of the State is the law-making power, for it comes down to that? It is an extreme case, but it illustrates the truth of which I speak. Can it be that when the Constitution of the State says that when a law is only that which has been enacted in certain forms, the bare certificate of an official, who, thank God, never has been in the past corrupted, but who may be corrupted—that the bare

certificate of that individual is to make that the law which lacks every one of the essential requisites with this, the Constitution of the State, has prescribed? And yet that is just the proposition. Where does the power that is proposed to be exercised here differ from the power exercised by our courts for generations past in pronouncing acts of Assembly unconstitutional? Why is it more wrong that a court of justice should have permission to pronounce that not to have complied with the forms of the law or the forms of the Constitution, than that they should have such a power as to that which is inconsistent with its substance? Why shall we treat the form as more sacred than the substance? Is not the Constitution the higher law? When you shall have put this section into it and such an investigation has been had, and an act of Assembly is pronounced void, for the reasons there prescribed, is it not just as much pronounced void because it is unconstitutional as if it were pronounced void because it was in conflict with some of the substantive provisions of the instrument itself?

I entreat gentlemen, then, to pause and consider that they are going to place, if they reject this section of the instrument, certain functionaries above all law; they are going to clothe certain powers in this State with absolute irresponsibility; they are going to say that in that which is most vital, in that which is most sacred, in that which touches the very life of the State, fraud may be perpetrated, bribery and corruption of the grossest character may exist, and we are to fold our arms in silence and submit to it, finding no redress of any kind whatever. Such a proposition is shocking. There must be a power to review it; there must be a power to pronounce it void. If there must be such a power, why not place it where all other judicial functions are exercised, in the hands of a court and jury?

Mr. BOWMAN. Allow me to ask the gentleman what power could review a decision made by a majority of corrupted judges?

Mr. CUYLER. No power except the people themselves. We come at last to an ultimate point on all these matters, and that ultimate point is reached so as to leave us no redress except impeachment; and the only mode a wrong of that kind could be redressed would be by the people, but let us go at least as far as we can do.

The PRESIDENT. The gentleman's time has expired. ["Question?" "Question!"]

Mr. KAINE. Mr. President: I hope the gentlemen who oppose the introduction of this section into the Constitution will have a little patience, and give members, their peers on this floor, an opportunity of expressing their views in regard to it. I have had enough experience in life not to be deterred from the discussion of any question in any place by the call for "question" or "vote." I think this is one of the most important sections that have been placed in this Constitution, and before there is a final vote upon it I desire to express my views very briefly.

The gentlemen who have spoken in opposition to this section have dwelt largely and patriotically upon generalities. Not one of them, not even my friend from Allegheny, (Mr. J. W. F. White,) has come down to a single solitary specific question that may arise in a case of this kind.

The gentleman from Philadelphia who has preceded me so ably (Mr. Cuyler) has referred to a case that occurred within his own knowledge of this kind of legislation in the adjoining State of New Jersey.

I will refer to another that occurred in this State at the last session of the Legislature. A bill was introduced into the Senate affecting the constituents of the gentleman from Allegheny, and it passed the Senate. It passed through on the first day of April. It went to the House of Representatives upon the third day of April. It was laid upon the table of the House, and so marked in red ink by the Clerk. It remained upon that table until the eighth of April, two days before the final adjournment, and it was then placed upon the private calendar. It was a local bill. It was placed upon the private calendar of the House. It was not reached on the eighth, but it was on the ninth, the very last day on which any bill was passed by the Legislature. It was reached regularly upon that calendar, and it was voted down by a *viva voce* vote of that House. That fact is shown by the calendar itself; that fact is shown by the minutes of the Clerk who kept the minutes that day; it is shown by the written Journal, and it is now to be seen in the printed Journal of the last House of Representatives. The bill was defeated all the way through. Yet notwithstanding all that—because now I speak from what I know, for I went there and examined every mark and every figure to which I have re-

ferred—a Clerk in the House wrote upon that bill in red ink “passed,” and it went to the transcribing room and there it was messaged over to the Senate as having passed; it went through the comparing committee and all the forms, was signed by both the Speakers and signed by the Governor, and it is on your statute book to-day. It is a printed law of this State to-day, although it was voted down in the House of Representatives. Now I want to know of my friend, the gentleman from Allegheny, how he can remedy a case such as that?

Mr. J. W. F. WHITE. I ask the gentleman if he does not think that under the present Constitution the courts have power to investigate a case of that kind and declare that the act never passed? That is my construction, and he said so to me himself.

Mr. CUYLER. That is to concede the very power this section gives.

Mr. KAINE. I understand, and it is generally believed by the most learned lawyers in the State, that the courts will not go behind the certified copy of an act of Assembly; and if there is any doubt on that subject let us put it in a position where there can be no doubt. If there is no tribunal that has power to reach a case such as that, let us have one established, because that is not the only case of that kind and it is not the only case that transpired during the last session of the Legislature, as I am informed.

Mr. BOWMAN. Will the gentleman state that he believes it to be possible that under the provisions requiring the reading of a bill three times on three separate days, and that the yeas and nays shall be called upon the final passage of that bill and a majority of all the members elected to either branch of the Legislature shall vote in the affirmative—does he believe it possible for a bill of that kind to pass?

Mr. KAINE. Why, Mr. President, it is the easiest thing in the world. I ask the gentleman who has spoken on the other side, what difference does it make whether the bill has passed at all or not? Suppose it has passed, or suppose it has been defeated; suppose the yeas and nays have been called on it and it has received three readings on three separate days, and has been defeated; and yet a clerk marks it as passed, and it is signed by the Speakers and signed by the Governor; where is your remedy?

Mr. LILLY. The Speaker has to sign it in the presence of the House.

Mr. KAINE. Yes; but I say to the gentleman from Carbon that a clerk who will do what I have asserted has been done, will forge the names of the Speakers to it, and then it goes to the Executive chamber and is signed.

Mr. LILLY. The gentleman must suppose every man in the Legislature is a scoundrel, to do a thing like that!

Mr. KAINE. No, sir, the gentleman is entirely mistaken. Every member of the Legislature may be a perfectly honest man, everything may be right, and all this may be done by a rascally clerk. A single man can do the whole thing.

Now, sir, what has been done in the past may be done in the future, and I desire to provide some remedy for reaching a thing of this kind. It is all very well for the gentleman from Allegheny (Mr. S. A. Purviance) to have extracts read from a couple of newspapers; it is a very nice thing for them; but what remedy is there for the people who have been destroyed by such acts of Assembly as I have described? I want to say to the gentleman from Allegheny that those acts destroy the property of fifty of his constituents in the county of Allegheny. He is a delegate at large, but I say it destroys the property of fifty of the constituents of the gentleman from Allegheny who sits behind me (Mr. J. W. F. White.) Is there no remedy for them? Have the gentlemen who have so much regard for the integrity of the Legislature and the sanctity of an act of Assembly, no feeling of sympathy for injured citizens, for their injured and ruined constituents; because if their doctrine be true, if their arguments are to have force here, there is no remedy for those people from that act of Assembly except by its repeal.

I am willing to trust a court and jury in cases of this kind. I have no apprehension of the corruption of juries or the corruption of courts. The jury is the first institution; it is at the bottom of every other in this Commonwealth and in this country. It dates before your act of Assembly; it is the bulwark of your liberties and of the rights of the people; and I am willing to-day that it shall pass upon acts of that kind.

Gentlemen say that such an act of Assembly as has been spoken of would have no force. My friend from Allegheny says so. But how are you to reach it; how are you to ascertain it? Where is the tribunal? Has the Governor a right to issue his proclamation and say that an

act of Assembly is void because it never received his signature, or never was signed by the Speakers of the Houses, or never was passed by the Legislature? That is a monstrous doctrine, indeed, that the Governor shall issue a proclamation without a previous authority, to declare an act of Assembly void. We desire to have a tribunal first, to decide whether an act of Assembly is void because of having been passed by corrupt means or not passed at all; and then that the Governor shall have a right to issue his proclamation and declare that such an act of Assembly is void, stating the reasons therefor.

I see the President looking at the clock and therefore I suppose my time is out, and I yield the floor.

Mr. ARMSTRONG. Mr. President: It is very extraordinary to me that men in this Convention stand in the presence of a most enormous wrong that is perpetrated on the rights of the people, and yet attempt to fritter away every remedy which proposes to redress it, by the merest generalities. We know that acts of Assembly are now on the statute book which never passed the lower House, which never passed the Senate, and which the Supreme Court of this State are asked in their places, under the forms of law, to enforce and to interpret—provisions that have not within them one single attribute of constitutionality; laws which violate the Constitution in letter and in spirit, which are no law; and yet because they stand under the cover of the great seal of the State they enact the solemn farce (for lack of power to do otherwise) of enforcing laws which shock our common honesty, which sap the foundation of government by the grossest corruption of the Legislature. Shall these things be? Shall we be grasping forever at shadows, and let the substance go?

The learned gentleman from Allegheny says that the courts will inquire into certain cases of fraud in the passage of an act of Assembly. I challenge him, with all his distinguished learning, to produce one case that will justify his assertion in this State. Suppose the case put by the gentleman from Philadelphia, the forgery of the signature of the Governor to a bill. I assert in my place upon my responsibility as a lawyer that there is no mode of investigating that fraud, and I put it to the judges and the lawyers who are here. Is it not a principle of law as old as the interpretation of the law that you cannot

impeach an act of Assembly collaterally? You stand before the court with an act of Assembly under the seal of the State, and you rise to object, if you please, if it be a private law, to the introduction of that act because the signature of the Governor was forged; is there a tribunal in the State that can inquire into it? In what mode can it be presented? No judge on the bench, following the line of decisions which have become invariable and conclusive on this question in Pennsylvania, will permit an inquiry before him or before a jury, which shall test the question of whether or not the Governor's signature was forged to that bill? I say it cannot be done.

The learned gentleman from Allegheny draws this distinction, that if an act of Assembly fails in any of the formalities of law they can inquire, but if it fails in the essential substance of the law, that which is necessary to its validity, then they may not inquire. Why, sir, that begs the whole question. I say it cannot be done, and every decision in the State is against it. We stand then just in this position, that a corrupt law, a law passed by fraud and under the seal of the Commonwealth, is the only exception known to the jurisprudence of this State of fraud which cannot be uncovered by investigation. It is monstrous. It strikes me with a force which I cannot express, that in the presence of an evil of this enormity men should stand here and tell us about the sovereignty, forsooth, of the Legislature. Why, sir, we attack the sovereignty of the people at every point where there is corruption. Is there an investigation into the election of an officer, from the Governor down, that fraud will not taint and overthrow; and yet it is investigating the authority of the people in its very highest exercise! The Supreme Court undertakes corruptly, if you please, to render a decision; a bill of review upon such questions is not a matter of grace, but is a matter of absolute right. Suppose they are all corrupt—imagine the strongest case that can be supposed—then you go before the Legislature and you impeach the judges, you remove them for that corruption. What will you do with the Legislature. The Legislature is an ephemeral body, whose life passes away when they have enacted the law. Can you reach them? Can they be impeached? In what manner will you reach the corruption of the Legislature?

Mr. HOWARD. By the people.

Mr. ARMSTRONG. "By the people" the gentleman suggests. Yes; and God forbid that we should ever let go one strand of the anchor which holds us to that dear right of protection by the people. But who will protect the people? That is the question.

Mr. DARLINGTON. Will the gentleman allow me a single suggestion?

Mr. ARMSTRONG. Who will protect the people against the corruption of members who are here to-day and gone to-morrow?

Mr. DARLINGTON. Will the gentleman allow me a suggestion?

Mr. ARMSTRONG. I will listen to any question.

Mr. DARLINGTON. Suppose the judges to be corrupt and to deliver a corrupt judgment, you impeach them, but what do you do with the judgment?

Mr. ARMSTRONG. You would ask the court to investigate the question. There would be a trial, and if it were a question which rested upon the decision of the court alone, the Legislature themselves could interpose to grant any redress which was not already fastened by a vested right. But there is an *ultima thule*; there is a point beyond which you cannot go, and in which the Legislature cannot be trusted. But is that to prevent us from placing every safeguard around the Legislature as well as around the courts? No. I challenge, here upon this floor, contradiction on the point, there is not known to human transactions one single fraud (except the passage of a fraudulent law) which there is not power to undo, and no lawyer on this floor dare contradict this assertion; and yet when we propose a remedy, lawyers stand here to talk about the sovereignty of a Legislature! Why, sir, this section proposes not to investigate the question of sovereignty, but to protect that sovereignty, so that under the name of sovereignty there shall not be perpetrated wrongs which destroy the rights of the people in their elementary and fundamental capacity. What hardship is there in this?

Gentlemen talk about delay. One gentleman proposes to make this "three months" instead of "six." I am quite content that we should make it thirty days instead of three months to take appeals in error. I want nothing embarrassing whatever upon the question of the enforcement of such a law, but I do want a power which shall stand above corruption, and I say in my place, on the best of

my judgment, that there is nothing which the corrupt men in the Legislature and the corrupt men who swarm around it that they may fatten upon its corruption, would so much dread as the power of investigation before the courts. And suppose that there is delay. There are Constitutions in the United States that will not permit any law to take effect short of six months after its passage. But gentlemen say there may be delay indefinite; there may be delay, first, to the last limits of six months, or three, as the case may be, and then in the Supreme Court. Why, what would happen if a law had been honestly passed and commended itself to the judgment of the Legislature? At its very next session they would re-enact the law and stop the controversy.

Mr. HOWARD. Would they not repeal a bad one passed by all the frauds you have spoken of?

Mr. ARMSTRONG. They could not repeal it in some respects; and if corrupt influences are to be exercised without restraint, they would have no disposition to repeal it.

The PRESIDENT. The delegate's time has expired.

SEVERAL DELEGATES. Let it be extended.

Mr. ARMSTRONG. I will not ask that it be extended. I am ready to vote.

The PRESIDENT. The Clerk will call the names of delegates on this motion.

Mr. ARMSTRONG. I rise to a parliamentary inquiry. I understand (and if I am wrong the Chair will correct me) that the vote now is to go into committee of the whole to strike out the section. Those who favor the section will vote "No."

The PRESIDENT. Certainly.

The question being taken by yeas and nays, resulted as follow:

YEAS.

Messrs. Bailly, (Perry,) Baker, Bartholomew, Beebe, Biddle, Bowman, Brodhead, Broomall, Brown, Carey, Carter, Clark, Cronmiller, Curtin, Darlington, Davis, De France, Dunning, Elliott, Fulton, Funck, Green, Hall, Hemphill, Horton, Howard, Hunsicker, Lamberton, Landis, Lawrence, Lilly, M'CLean, M'Michael, Mann, Mantor, Minor, Niles, Patterson, D. W., Patterson, T. H. B., Pughe, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Simpson, Stanton, Van Reed, Wetherill, John Price, White,

David N., White, Harry, White, J. W. F. and Walker, *President*—52.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Black, Charles A., Buckalew, Calvin, Campbell, Church, Curry, Cuyler, Dallas, Gibson, Gilpin, Guthrie, Hay, Hazzard, Kaine, Knight, Long, MacConnell, M'Culloch, M'Murray, Mott, Palmer, G. W., Palmer, H. W., Patton, Porter, Read, John R., Reed, Andrew, Russell, Smith, H. G., Smith, Henry W., Woodward, Worrell and Wright—37.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bigler, Black, J. S., Boyd, Bullitt, Cassidy, Cochran, Collins, Corbett, Corson, Craig, Dodd, Edwards, Ellis, Ewing, Fell, Finney, Hanna, Harvey, Heverin, Lear, Littleton, MacVeagh, M'Camant, Metzger, Mitchell, Newlin, Parsons, Purman, Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Struthers, Temple, Turrell, Wetherill, J. M. and Wherry—44.

The Convention accordingly resolved itself into committee of the whole, Mr. Green in the chair.

The **CHAIRMAN.** The committee of the whole have had referred to it an amendment to strike out the twenty-first section of the article. The amendment is made. The section is erased, and the committee will rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Green) reported that the committee of the whole had stricken out section twenty-one, as ordered by the House.

Mr. **GILPIN.** I move to go into committee of the whole for the purpose of further amending the article, by striking out section thirty-two.

The **PRESIDENT.** The Clerk will read the section proposed to be stricken out.

The **CLERK** read as follows:

SECTION 32. Whenever a county shall contain forty thousand five hundred 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 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.

Mr. **GILPIN.** It will be recollected that when this section was before the Convention on second reading that it (or similar provisions differing only in number of population required) was stricken out after a very careful consideration of several days, and it was then resolved that county districts should not be established, but that judicial districts composed of one or more counties should remain as they now are; but after that was done the vote was on a subsequent day by a slim house reconsidered and the present section put in. I do not now intend to go over what was then so elaborately argued, or repeat any of the arguments against this section. I only wish to reiterate what I then stated, that I believe the people are in favor of the judicial districts remaining as they now are rather than this debasing of the judges of the common pleas to the level of justices of the peace. And I say this in the face of what was presented some time since as a petition from the members of the bar of my own county asking for a section such as this one. I would say in relation to that very petition, and perhaps the same may apply in relation to other petitions in favor of this section if there are any other, that that petition was gotten up and the signatures to the same obtained (as one of the signers lately in this city and in the presence of a member of this Convention informed me) upon the representation made to the petitioners that a letter had been written to that county by a gentleman of this Convention stating that the people would receive no relief at all from this Convention by increasing the judicial force in the districts and that their only hope for relief of any kind was in this project, namely, of establishing counties as districts; and that actually every person, but two, signing that petition were in favor of the judicial districts as they now are, with an increased judicial force. It was only as a last resort that they signed themselves as in favor of this plan of county districts composed of a single judge. So that petition, so far from refuting what I then stated, serves only to confirm it. As to those other two signers to it, of whom I have no information, they also may have been influenced in the same way, and by like representations, and I again say that there is no desire on the part of the people of my section that the county system should be preferred to that of the judicial districts as they now are.

I therefore, in order that the Convention now may, if it thinks proper, come to the same conclusion that it did in the first instance, that it may reconsider the vote which was taken to reconsider that former and, as I think, better digested action of this body when it was considered on second reading, I have moved to strike out this section.

Mr. LILLY. When this section was under consideration in committee of the whole I opposed it and it was defeated. On second reading, if the Chair will recollect, this present section was carried by a handful of the Convention who went from member to member, begging for votes, altering the figures all the way from thirty thousand to sixty thousand, and twisting it around in every possible way until it was finally agreed to. I never saw worse log-rolling.

Mr. DARLINGTON. I rise to a point of order. The gentleman is out of order in referring to what took place in committee of the whole.

Mr. LILLY. I am not alluding to the committee of the whole; I am speaking of what occurred on second reading, and I have a perfect right to speak of it; and it was, as I have said, by this sort of operations that this monstrosity, as I think it is, was foisted upon the Constitution. It should be now stricken out; and if gentlemen will look at it for a moment, understand it, and apply it to their different counties they will find that I am right.

I do not believe that in the last ten years we have had forty weeks of court in Carbon county. We, of course, do not reach the limitation of forty thousand five hundred population named for a separate judicial district, and we shall be annexed to another county, probably Monroe, and I do not believe in these two counties in the past ten years there have been sixty weeks of court. In our present judicial district we have four counties, and the business is not excessive; the judge is not overworked; and why should this change be made to add this great expense and foist upon the country a system for which it is not prepared? I hope this section will be voted out.

Mr. GIBSON. I desire to suggest to the gentleman who made this motion that he modify it so as to strike out the section down to the clause relating to the associate judges, because that has just been voted in by the Convention, and the motion to strike out should stand by itself.

Mr. GILPIN. I so modify it.

Mr. LAWRENCE. I only want to say a word in explanation of my vote on this question. When it was up before I voted against the section, and I supposed my vote was in accordance with the views of my people, the lawyers and leading men in my district. After I went home and mixed with the people, and exchanged views with leading gentlemen in my county, I found they were in favor of something of this kind. Hence now I shall vote in accordance with their wishes for keeping the section in the article. I would prefer, however, that the number should be enlarged from 40,500 to 45,000 or upwards. But if there is no proposition of that kind, I shall vote against going into committee of the whole to strike it out.

Mr. CALVIN. I found when I went home that the general sentiment of the bar in my district was that this subject had better be left to the Legislature, that the Legislature should in the future, as it has in the past, regulate the district. It seems to me that the proposition, instead of elevating the judiciary, would degrade it; but if this section is not stricken out, then I shall be in favor of increasing the number as the gentleman from Washington (Mr. Lawrence) suggests; and I would increase it to 50,000 or 60,000. I shall vote for striking the section out.

The PRESIDENT. The question is on going into committee of the whole for the purpose of striking out section thirty-two.

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

Mr. MCLEAN. I second the call.

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

Y E A S .

Messrs. Bailly, (Perry,) Bailey, (Huntingdon,) Broomall, Buckalew, Calvin, Cassidy, Church, Cochran, Curtin, Ewing, Fulton, Gibson, Gilpin, Hay, Landis, Lilly, MClean, Patterson, D. W., Porter, Reed, Andrew, Reynolds, Russell, Smith, H. G. and White, David N.—24.

N A Y S .

Messrs. Achenbach, Alricks, Baer, Baker, Bartholomew, Beebe, Biddle, Brodhead, Brown, Campbell, Carey, Carter, Clark, Corson, Curry, Dallas, Darlington, Davis, De France, Dunning, Elliott, Green, Guthrie, Hall, Hazzard, Hemphill, Horton, Howard, Hunsicker, Kaine,

Knight, Lawrence, MacConnell, M'Culloch, M'Michael, M'Murray, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Pughe, Purviance, John N., Purviance, Samuel A., Simpson, Smith, Henry W., Struthers, Wetherill, Jno. Price, White, Harry, White, J. W. F., Woodward, Worrell and Walker, *President*—57.

So the motion was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Armstrong, Bannan, Barclay, Bardsley, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Bullitt, Collins, Corbett, Craig, Cronmiller, Cuyler, Dodd, Edwards, Ellis, Fell, Finney, Funck, Hanna, Harvey, Heverin, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Mitchell, Newlin, Parsons, Purman, Read, John R., Rooke, Ross, Runk, Sharpe, Smith, Wm. H., Stanton, Stewart, Temple, Turrel, Van Reed, Wetherill, J. M., Wherry and Wright—52.

Mr. LANDIS. I move to go into committee of the whole for the purpose of specially amending section twenty-nine, by striking out the following words after the words, "*Provided, That:*"

"Special rules may be provided for cities and counties exceeding one hundred thousand inhabitants;" and also at the close of the section the words, "with the consent and approval of the Supreme Court."

Section twenty-nine provides that the Supreme Court shall provide rules and regulations for practice in all the courts of record of the State, which shall be uniform in all courts of the same class or grade and not changed except by the Supreme Court. It now stands, however, with a proviso:

"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."

The object of my amendment is to allow special rules to be added in every judicial district. I understand here that a special rule is allowed in no case in which a judicial district does not exceed one hundred thousand inhabitants. Now, it is well known that special rules will be required in all judicial districts. At present I cannot see why a special rule may be required only in districts where the population exceeds one hundred thou-

sand which the Supreme Court may not approve. We know that the wants of the people in various parts of the State are different. We know that the requirements in regard to the matter of roads, in regard to the settlement of estates, taking judgments, and in regard to many other matters that come before the courts are different by reason of the varied circumstances and wants of the people; and therefore, while there may be in the main a uniform system of rules and regulations adopted by the Supreme Court, yet when we allow by this section special rules to be added in very large districts, it seems to me that special rules ought to be allowed in any judicial district, without the provision that the Supreme Court shall approve of them. We do not like the inconvenience of resorting to the Supreme Court.

I consider this an important matter and, if I remember, on second reading there was quite a stout resistance to the passage of the section in its present shape, and I do hope, now, that the friends of the section will so far agree to modify it as to allow special rules to be added without the consent of the Supreme Court.

The PRESIDENT. The question is on the motion of the delegate from Blair (Mr. Landis.)

Mr. LANDIS. 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:

YEAS.

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Broomall, Carter, Cassidy, Cochran, Corson, Darlington, Davis, Fulton, Gibson, Hunsicker, Landis, Lawrence, Lilly, MacConnell, Minor, Palmer, H. W., Patterson, D. W., Pughe, Purviance, Samuel A., Reed, Andrew, Struthers, Wetherill, John Price, White, David N., White, J. W. F. and Woodward—29.

NAYS.

Messrs. Armstrong, Baer, Biddle, Bowman, Brodhead, Brown, Buckalew, Calvin, Church, Clark, Dallas, De France, Elliott, Ewing, Gilpin, Guthrie, Hall, Hay, Hazzard, Hemphill, Horton, Howard, Kaine, Knight, Long, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Niles, Palmer, G. W., Patton, Purviance, John N., Read, John R., Reynolds, Russell,

Smith, H. G., Wetherill, J. M., Worrell and Walker, *President*—41.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Chas. A., Black, J. S., Boyd, Bullitt, Campbell, Carey, Collins, Corbett, Craig, Cronmiller, Curry, Curtin, Cuyler, Dodd, Dunning, Edwards, Ellis, Fell, Finney, Funck, Green, Hanna, Harvey, Heverin, Lamberton, Lear, Littleton, MacVeagh, M'Camant, M'Michael, Metzger, Mitchell, Mott, Newlin, Parsons, Patterson, T. H. B., Porter, Purman, Rooke, Ross, Runk, Sharpe, Simpson, Smith, Henry W., Smith, William H., Stanton, Stewart, Temple, Turrell, Van Reed, Wherry, White, Harry and Wright—63.

Mr. EWING. I move to go into committee of the whole for special amendment, to strike out section twenty-nine entirely.

As I understand that section, it authorizes the Supreme Court to make rules of practice for all the courts in the State. It lodges by constitutional enactment that entire power in the Supreme Court. It is a large power of legislation. It may not be abused, but possibly it may be. It would lodge that power in the Supreme Court without any appeal to any other source. The Legislature would be utterly unable to help the people, and I am unwilling to lodge power in the hands of any set of men, be they executive, legislative, or judicial officers, that cannot be reached by the people. If the Legislature should authorize the Supreme Court to enact rules of practice for the different courts, all right; it can be repealed; but I shall not vote to put such a section in the Constitution, and I hope to see it stricken out.

Mr. ARMSTRONG. It is hardly needful to again bring to the attention of the House the arguments upon which this section was adopted. There can be no more difficulty in providing a uniform practice in the courts of common pleas than there can be in equity or in admiralty or in any other of the departments of law which the courts have already unified by a single system of practice. I think it is wise. It commended itself to the judgment of the House before. I do not wish to take up time in discussing it. I hope the motion will not prevail.

Mr. WOODWARD. Mr. President: I hope the motion will prevail. I was not

here at the time this section passed before, and therefore I had not the benefit of the argument to which the gentleman alludes. I should like to hear some reason assigned in favor of this great innovation, for it is an innovation upon all the usages of the bar of Pennsylvania. Why, sir, divers rules prevail in different districts which experience has dictated, and counsel are familiar with them, the people are familiar with them, and no inconvenience results. When a case arising under those rules comes before the Supreme Court, the Supreme Court always inform themselves of the rule, and administer it as it is administered in the county from which the case comes, and thus they have a superintending power over the whole subject now. I do not believe that it will commend this Constitution to the people of Pennsylvania to break up all their usages and customs, and I do not believe there is any necessity for doing it. Indeed, I think some serious inconvenience might result from it.

Why, sir, in 1841, when I went to the Fourth judicial district, being the largest district in the State, including all the central counties, they had never had a judgment docket in either of those counties, although the act of Assembly was passed in 1827, which required every judgment to be docketed. Full of these ideas about rules, the bar requested me to prepare a body of rules, and I did so. Amongst other things, I established a judgment docket because the act of 1827 made it imperative; but my predecessors, who were Judge Burnside and Judge Houston, had decided that they would have no judgment docket, and they never had one until I established one in that district, and they got along well enough. I do not know that any inconvenience resulted from the violation of this positive act of Assembly for twenty years. But we got a judgment docket. The rules which I prepared very carefully, after examining a large number of rules in other districts, I reported to a general meeting of the bar. The general sentiment there was, "we do not care what your rules are; you can make any rules you please; we do not propose to change our practice under which we have lived heretofore, and we do not care anything about rules." I found in that large district an indisposition to undergo any change. We did establish a judgment docket, and I do not know that we established any other rule of any importance in that district.

Now, sir, this attempt to force upon the Supreme Court the making the rules for every county court in Pennsylvania will prove a failure. In some counties they keep the dockets of the orphan's court in a very different manner from what they do in other counties. In Luzerne county they keep the files of the orphans' court in pigeon holes, and when an estate has gone through partition, and the heir pays the money, the receipt is filed there, and the title is prepared immediately. In other counties they are more exact. Is the Supreme Court going to provide rules for all the orphans' courts in Pennsylvania? It will be a Herculean task, and a still greater task to familiarize the lawyers and the people of those rules, whatever they are. They may be very good; but I prefer to leave the matter to the local tribunals to fix the local rules.

Sir, home government is generally the best government. The best government on earth is that of the family. God instituted that. All these other governments of States and commonwealths and nations are the work of man. The home government is the best government. The people of any remote county knows better what they want than the Supreme Court knows, and a great deal better. Therefore I hope this motion will prevail. I did not make it, but I am glad it is made, and I hope it will prevail and this section be stricken out. I believe it is superfluous, unnecessary and mischievous.

Mr. DARLINGTON. I would very gladly agree with the gentlemen from Lycoming, (Mr. Armstrong,) provided the Supreme Court would adopt the rules we have prevailing in our district, for they are a perfect model for all persons to follow; but I fear they might not suit our friends from Lancaster or Montgomery and probably other counties of the State. We have given a good deal of attention to this subject in our county and have devised and put in force rules which have been revised, re-considered, re-printed through several editions and are now about as perfect as the wit of man can make them. So we think. We have a very summary mode of collecting debts. We believe in Chester county, in men paying their debts; and if they do not do it and suit is brought, the writ is returnable in ten days after it is issued, and if the cause of action is set out on the record distinctly the defendant at the end of ten days must either succumb or file his affidavit of defence. If he files his affidavit

of defence he is required to plead in twenty days and we put the case at issue for the very next court; and at the next court we try it. I do not know that this summary mode would be agreeable to all persons, and therefore I am for allowing the bar and the court of each district to adopt such rules of practice for the administration of justice as shall be deemed by them most convenient for themselves. We cannot expect to be harmonious in this thing. Being in a court in Lancaster some time since, I found they had a system prevailing there that we had abolished thirty years ago; the judge taking up the docket and calling over the cases, and asking for pleas and rules being taken. That was abolished thirty if not forty years ago in our county. In Montgomery county they have a very excellent and admirable system of pleading by which they try all appeals from justices of the peace, and I understand upon a declaration that money was received, or some such simple thing. It suits them. Probably we shall adopt that in time.

All that I mean to say is that an attempt here on the part of this Convention to organize a system of rules for the various bars and courts for the State is simply unwise, and can be productive of no good. What harm has ever arisen, I ask, from allowing the bar and courts of each district to regulate their own modes of practice and to fix their own rules? If I go into another district I make myself acquainted with the rules there. If another gentleman comes into mine to practice he is careful to make himself acquainted with our rules, and thus we readily conform to each other, just as perfectly as any other business dove-tails into another. I think it more wise to let this matter alone and strike out the whole section.

Mr. ARMSTRONG. The leading idea which pervades this judiciary article is an attempt, more or less successful, to harmonize the judicial system of Pennsylvania. My friend on my right (Mr. Woodward) looks one way and rows another. The facts that he states are strong reasons why this provision should be in the Constitution. Rules of court become rules of property, and it is in the experience of lawyers here that the rules of adjoining counties differ very much. For illustration, in my own county a plaintiff who does not file a *narr.* within two years may be non-suited; and in the adjoining county of Clinton a plaintiff who does not file his *narr.* within one year may be non-

suited. It is so in other counties. When this question was under discussion before, various members on the floor indicated a great many instances in which a pernicious practice has prevailed. A lawyer in one county does not know what the practice is in another. Judges going from one county into another to hold special courts are not informed of the rules of the court which they must administer. Even the Supreme Court have no knowledge until they make careful inquiry while on the bench in the argument of cases before them, what the rules of a particular county may be.

There is no difficulty whatever in harmonizing these rules. The rules of equity are the same throughout the State now. They establish a fixed and uniform practice with great advantage. Every lawyer in the State knows what they are, and so far as the rules of court are concerned, can practice just as well in one county as in another; but as to common law rules it is not so. In Chester county they may have a very excellent set of rules; and so also those suggested by Judge Woodward in other districts may be very good; but we want the best of all these rules consolidated for the administration of the law throughout the State at large. No harm can come from it, and I can see very great advantage in harmonizing the systems and in giving to judges and lawyers who go outside of their own county all the information they require as to the practice within the counties where they may go.

Mr. BUCKALEW. Allow me to ask the gentleman a question. Is there any difficulty in regulating this whole subject by statute?

Mr. ARMSTRONG. No, Mr. President, there is not, and it may be said of a great many things that they can be regulated by statute. If that suggestion were to be carried through this Constitution we could strike out an infinite number of things which could be equally well regulated by statute; but this is a matter which, for the sake of uniformity and as a part of the judicial system of the State, it is eminently proper to fix by constitutional provision. It is flexible enough, since the Supreme Court may change it whenever necessary, and it is sufficiently flexible since with their consent special rules may be applied to other counties of large population.

Mr. KAINE. Before the gentleman sits down I should like to ask him whether it

is not the law now that the judges of the Supreme Court shall devise new writs and establish uniform rules of practice throughout the State.

Mr. ARMSTRONG. No, sir, I do not understand it so. I understand that the Supreme Court may devise new writs when they become necessary, but they are not required to establish any uniformity of practice in the State, and they have not done it.

Mr. DALLAS. I do not rise to take part in the argument of the question involved. My colleague (Mr. Woodward) has already given the reasons that would induce me to vote against this section on principle. I desire to call the attention of the Convention to the fact that the section does not meet the purpose that the chairman of the Committee on the Judiciary says it has in view. It would not establish throughout the Commonwealth a system of rules which would be uniform. Its provisions and exceptions prevent that conclusion. The proviso is:

"*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."

That recognizes the difficulty which the gentleman from Chester has pointed out, that in different sections of the State the bar and the bench are wedded to their own rules; and we shall have the presiding judge of every district applying to the Supreme Court, which would never like to disregard such an application for special exception in every case, so that I think the end desired to be attained (without discussing whether it is good or necessary or not) will not be attained by this section, and it is therefore at least objectionable because it is an unnecessary section adding largely to the length of this very long article.

Mr. MANN. Mr. President: The reasons given by the gentleman from Philadelphia why this section ought to be stricken out are so clear that it is hardly necessary that another word should be said, but it seems to me there is one very serious objection which he omitted to state, and that is that the section, if adopted, will put these rules of court beyond the power of the Legislature to interfere with them.

Now, what are rules of court? They are laws. You propose to say here that the

Supreme Court of Pennsylvania shall make a part of the laws of Pennsylvania. The rules of the various courts of this Commonwealth become laws as absolutely, until they are changed, as the acts of Assembly. This section proposes that the Supreme Court shall make laws. Some of the most important laws that are made are the regulations of the business of the people in the courts. It not only gives them power to make laws, but to make special laws, a duty we will not impose on the Legislature.

I think this is a very serious objection to the whole section; and the reasons given by the distinguished chairman for the section, to my mind are against it; and, as stated by the gentleman from Philadelphia, we cannot have uniform rules for the practice of law throughout Pennsylvania. A rule that is satisfactory to Philadelphia and Chester county and other large counties would be oppressive in the rural districts. The people would not endure them. We would not submit to such rules as the gentleman from Chester says are acceptable in his county, and there would have to be various rules for the various courts. That, of itself, would defeat the very purpose which it is said is to be answered by this section. I hope, therefore, the motion will prevail.

The PRESIDENT. The question is on going into committee of the whole to make the amendment indicated.

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

Mr. HEMPHILL. I second the call.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Alricks, Bailey, (Huntingdon,) Baker, Beebe, Black, Charles A., Broomall, Buckalew, Calvin, Carter, Cassidy, Dallas, Darlington, Davis, De France, Ewing, Gibson, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Knight, Landis, Lawrence, Lilly, Long, Mann, Mantor, Minor, Mott, Niles, Patterson, D. W., Purviance, John N., Reynolds, Wetherill, John Price, White, David N., White, Harry, White, J. W. F. and Woodward—40.

NAYS.

Messrs. Achenbach, Armstrong, Baer, Baily, (Perry,) Biddle, Bowman, Brodhead, Brown, Church, Clark, Cochran, Elliott, Fulton, Gilpin, Guthrie, Hall, Hazzard, MacConnell, M'Clean, M'Culloch, M'Murray, Palmer, G. W., Palmer, H. W., Purviance, Sam'l A., Read, John R., Russell, Smith, H. G., Struthers, Worrell and Walker, *President*—30.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Boyd, Bullitt, Campbell, Carey, Collins, Corbett, Corson, Craig, Cronmiller, Curry, Curtin, Cuyler, Dodd, Dunning, Edwards, Ellis, Fell, Finney, Funck, Green, Hanna, Harvey, Heverin, Lamberton, Lear, Littleton, MacVeagh, M'Camant, M'Michael, Metzger, Mitchell, Newlin, Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Purman, Reed, Andrew, Rooke, Ross, Runk, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wherry and Wright—68.

So the motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Hemphill in the chair.

The CHAIRMAN. The committee of the whole has had referred to it for special amendment section twenty-nine, and are directed to strike out the same. The section is stricken out, and the committee will rise.

The committee accordingly rose, and the President having resumed the chair, the Chairman (Mr. Hemphill) reported that the committee of the whole had stricken out section twenty-nine, in accordance with the instruction of the Convention.

Mr. BUCKALEW. There is a correction which the committee omitted that I desire to have made before we adjourn. I want the word "where" to read "when" in section twelve, line eight.

The PRESIDENT. That correction will be made by unanimous consent.

Mr. J. W. F. WHITE. I move that the Convention adjourn.

The PRESIDENT. The hour of adjournment having arrived, the Convention stands adjourned until Monday next at half-past nine A. M.

ONE HUNDRED AND FIFTY-EIGHTH DAY.

MONDAY, October 6, 1873.

The Convention met at half-past nine o'clock, A. M., Hon. John H. Walker, President, in the Chair.

The Journal of the proceedings of Friday last was read and approved.

LEAVES OF ABSENCE.

Mr. ARMSTRONG. I have received this morning a letter from Mr. Cuyler, in which he informs me of the sudden death of a member of his family, and desires me to ask leave of absence for him for three days from to-day.

Leave was granted.

Mr. LAWRENCE asked and obtained leave of absence for himself for a few days from to-morrow.

Mr. J. M. BAILEY. I ask leave of absence for a few days for Mr. Kaine, who was called from the city very unexpectedly on Friday last.

Leave was granted.

Mr. MINOR. I ask leave of absence for Mr. Mantor for a few days from to-day on account of illness.

Leave was granted.

PERSONAL EXPLANATION.

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

The PRESIDENT. Shall leave be granted? The Chair hears no objection and the delegate will proceed.

Mr. DARLINGTON. On the 13th of May last I made some observations which will be found on the three hundred and sixtieth page of the fourth volume of Debates, on a motion made by the gentleman from Philadelphia (Mr. Littleton) in regard to the pay of judges of the city of Philadelphia in part by the city. The motion was to strike out the clause allowing that. I am reported to have said:

"The judges here"—referring to the district court of Philadelphia—"cannot be trusted to try certain causes that were removed to Delaware county."

This expression so reported is calculated to do great injustice to those gentlemen, which was furthest from my thoughts. If I did say so, I certainly did not intend it. If I am accurately reported, then I

said what I did not mean. It is possible that the reporters may not have clearly apprehended what I did say. So far as regards the position of those gentlemen occupying those positions of judges of the district court, I have the highest respect for them, and I never entertained the idea which is conveyed by this remark, and therefore I think I could not have made it.

COURTS IN PHILADELPHIA.

Mr. DALLAS. Mr. President: Mr. Cuyler had confided to him, by a meeting of the Bar of Philadelphia, held on Saturday last, resolutions passed by that meeting and ordered to be presented to the Convention. They were not here in time to be presented in the regular order of business on account of Mr. Cuyler's absence. He has had them sent to me, and I ask leave now to present them in his name, and move that they be read and laid on the table.

The resolutions were read, as follows:

1. *Resolved*, That in the opinion of the Bar of Philadelphia the system of courts proposed for this district by the Constitutional Convention is not suited to the wants of this community, and is objectionable, amongst other reasons, for the following:

1st. Because it will make unnecessary changes in our judicial system, which must introduce uncertainty and confusion in practice and the conduct of business.

2d. Because by the creation of several courts of equal and concurrent jurisdiction for this city, it would lead to the selection of judges by suitors and counsel.

3d. Because in the event of discordant rulings in matters of discretion, the construction of their own rules and the like, in this district, there would be no means of securing revision or correction.

4th. Because it would diminish the dignity of the office of judge and the respect of parties and of the public for the judgments of our courts, and consequently greatly increase the business of the Supreme Court for this county.

2. *Resolved*, That a copy of the foregoing resolution be forwarded to the Con-

vention, with the request that this subject may receive its further consideration.

The resolution was laid on the table.

NUMBER FOR A QUORUM.

Mr. J. N. PURVIANCE. I offer the following resolution:

Resolved, That hereafter forty-five delegates present shall constitute a quorum.

Mr. MANN. Must that not lie on the table under the rule?

The PRESIDENT. It must.

PAY OF FIREMAN.

Mr. HARRY WHITE. I offer the following resolution:

Resolved, That the Committee on Accounts and Expenditures are hereby directed to examine and settle the account of John Switzer, the fireman, and to allow him at the rate of \$3 50 per day since the meeting of the Convention on the sixteenth of September; and that a warrant on the State Treasurer be drawn in his favor for the amount due.

The PRESIDENT. What order will the Convention take on the resolution?

Mr. HARRY WHITE. I ask leave to make a statement at this time.

Mr. President, on the 13th of November last we passed a resolution for the employment of officers, and the Clerk was authorized to appoint one fireman at three dollars and fifty cents per day and two janitors at three dollars per day. Now, the old fireman has been continued since the meeting of the Convention on the sixteenth of September. We have had his services, and this resolution merely provides for the settlement of his account at three dollars and fifty cents per day, so that he can get some money to pay his board. I trust that there will be no refusal to proceed to the second reading and consideration of this resolution.

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

Mr. COCHRAN. The chairman of the Committee on Accounts and Expenditures is not present, I believe, this morning, and I do not understand this resolution exactly. It is proposed by some gentlemen to refer it to the Committee on Accounts. I do not see the point in referring it to that committee; for the committee, if the resolution were simply referred to them, I presume could not report anything on the subject. It is a question for the Convention whether or not they will pay this officer at the rate of three dollars and fifty cents per day.

There is another thing about which I would like information also, and that is whether or not we have one or two firemen or whether Mr. Switzer, who is named in this resolution is the only fireman, for if he is the only fireman here present and attending to this business, then, in my judgment, he ought to be paid some reasonable compensation, because we know, however unnecessary it has been, that we have had fire going ever since we met here last month nearly every day. I know we have it this morning, and instead of making this hall more comfortable, it seems to me to make it oppressive and uncomfortable. This is a matter which I apprehend must be decided in the Convention as to whether or not the fireman shall be paid.

Mr. HARRY WHITE. In answer to the remarks of the delegate from York, I have only to say this, that there is but one fireman, and that fireman was authorized to be appointed by resolution passed on the thirteenth of November last, was appointed and has continued in the performance of his duty. He was paid at the rate of three dollars and a half per day, until he was discharged at the commencement of the warm season. Then when the Convention reassembled on the sixteenth of September, he resumed his place by the appointment of the Chief Clerk. This resolution simply authorizes the Committee on Accounts and Expenditures to go through the ordinary formula which they do with all other officers in the settlement of the account of this fireman. It is manifest that we cannot get along without a fireman, and this man has been at his post all the time and faithfully performed his functions.

I will say, furthermore, that he and the janitors are the only officers of this Convention who have received no increase of pay, and who have asked none. I hope this resolution will be referred to the Committee on Accounts and Expenditures. I believe that I improperly inserted in the resolution a provision that a warrant should be drawn on the State Treasurer for the payment of this officer. I believe some of these officers are not paid by a warrant, but are paid by the Clerk out of the contingent fund, after the accounts have been settled by the Committee on Accounts and Expenditures.

Mr. DARLINGTON. I move to refer the resolution without instructions to the Committee on Accounts and Expenditures.

The PRESIDENT. The question is on the motion to refer.

The motion was agreed to.

RESIGNATION OF J. S. BLACK.

Mr. WOODWARD Mr. President: I move to take up from the table the motion which I submitted the other day, that the resignation of Judge Black be accepted and referred to the appropriate committee.

I wish to be indulged in making one single observation. It has been suggested, perhaps in print, that this motion is adverse to Judge Black, and there are some gentlemen on this floor who voted against it under the pretence of doing Judge Black a favor. Now, there is no gentleman on this floor who thinks more highly of Judge Black than I do. I consider him one of the few men of the age. I should like to have him in this Convention above all others, but the reasons which he gave for retiring were conclusive and in their nature continuing reasons.

Now, sir, it happens, that when a member resigns the law of the land (not the whims of members on this floor but the law of the land) requires such delegates to fill that vacancy; and therefore, and only therefore, have I made this motion; and therefore I shall renew it every day until the majority of this body consent that the law of the land shall be executed.

Mr. ALRICKS. Have you seen Judge Black?

Mr. WOODWARD. No, sir, I have not seen Judge Black, and I do not want to see him on this subject. Judge Black wrote me a full account of the reasons why he resigned. He is a man, and like most men of Judge Black's stamp, he knew what he was saying. He has resigned his seat in this body. The law of the land requires fourteen delegates to fill the vacancy. The majority of this body violate that law by refusing to refer it to the fourteen delegates. I am going to renew that motion until it is carried.

Mr. ALRICKS. I will vote against that motion—

The PRESIDENT. This is not a question subject to debate.

Mr. ALRICKS. I thought it had just been debated.

The PRESIDENT. The gentleman from the city asked leave to make a statement.

Mr. ALRICKS. I really thought the gentleman was making a speech. I think

we can get back Judge Black sooner than we can get any gentleman substituted in his place.

Mr. G. W. PALMER. I should like to ask the gentleman from the city if he did not resign himself in this House?

Mr. WOODWARD. I did; but the question of acceptance was not taken.

Mr. D. W. PATTERSON. And if we had accepted it we would have been deprived of the labors of Judge Woodward.

Mr. LILLY. And it will work the same way in this case.

The PRESIDENT. The question is on the motion to take the resignation of Judge Black from the table.

Mr. WOODWARD. I ask for the yeas and nays.

Mr. BOYD. I second the call.

The PRESIDENT. The Clerk will call the names of delegates.

Mr. BOYD. Is not this debatable?

The PRESIDENT. It is not.

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

YEAS.

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Baker, Black, Charles A., Bowman, Boyd, Brodhead, Campbell, Church, Cochran, Cronmiller, Curtin, Dallas, Darlington, De France, Edwards, Hanna, Hemphill, Hunsicker, Knight, Landis, Lear, M'Michael, M'Murray, Metzger, Newlin, Niles, Porter, Smith, Henry W., Stanton, Van Reed, White, David N., Woodward, Wright and Walker, *President*—36.

NAYS.

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Biddle, Broomall, Brown, Carter, Clark, Corson, Ewing, Fulton, Guthrie, Hazzard, Heveria, Horton, Howard, Lawrence, Lilly, MacConnell, M'Clellan, M'Culloch, Mann, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Rooke, Russell, Simpson, Struthers, White, Harry and White, J. W. F.—38.

So the motion was not agreed to.

ABSENT—Messrs. Addicks, Ainey Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Buckalew, Bullitt, Calvin, Carey, Cassidy, Collins, Corbett, Craig Curry, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Finney, Funck, Gibson, Gilpin, Green, Hall, Harvey, Hay, Kaine, Lamberton, Little-

ton, Long, MacVeagh, M'Camant, Mantor, Mitchell, Parsons, Pughe, Purman, Read, John R., Reed, Andrew, Reynolds, Ross, Runk, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Temple, Turrell, Wetherill, J. M., Wetherill, John Price, Wherry and Worrell—59.

THE JUDICIARY.

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 third reading of the article on the judiciary.

Mr. DARLINGTON. I ask the unanimous consent of the Convention to make a verbal alteration in the fourth line of the second section, by striking out the words, "eligible to re-election," and inserting the word "re-elected."

Mr. BROOMALL. "Shall not be again elected" would be better.

Mr. DARLINGTON. No; "shall not be re-elected."

The PRESIDENT. Will the Convention unanimously consent to that amendment?

Mr. HUNSICKER. I object to that change.

The PRESIDENT. Objection is made.

Mr. DARLINGTON. Then I move to go into committee of the whole for the purpose of making that amendment.

Mr. ARMSTRONG. I think "eligible to re-election" is quite an unobjectionable expression, and I do not see any necessity for a change.

Mr. DARLINGTON. We have condemned it by several votes, and it has been stricken out everywhere else.

The PRESIDENT. Will the Convention go into committee of the whole for the purpose of making the amendment indicated by the delegate from Chester (Mr. Darlington)?

Mr. BOYD. On that question I ask for the yeas and nays.

Mr. CORSON. I second the call.

The question being taken by yeas and nays, resulted as follows:

Y E A S.

Messrs. Achenbach, Alricks, Bailey, (Huntingdon,) Baker, Beebe, Brodhead, Broomall, Brown, Church, Clark, Cronmiller, Darlington, De France, Guthrie, Hemphill, Heverin, Horton, M'Culloch, M'Murray, Mann, Patterson, T. H. B., Rooke, Smith, Henry W., Struthers,

White, Harry, White, J. W. F. and Walker, *President*—27.

N A Y S.

Messrs. Andrews, Armstrong, Baer, Baily, (Perry,) Biddle, Black, Charles A., Bowman, Boyd, Campbell, Corson, Dallas, Edwards, Ewing, Fell, Fulton, Hanna, Hay, Hazzard, Hunsicker, Knight, Landis, Lawrence, Lilly, MacConneil, M'CLean, M'Michael, Metzger, Minor, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Porter, Purvance, John N., Purvance, Samuel A., Russell, Simpson, Stanton, Van Reed, White, David N., Woodward and Wright—44.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Buckalew, Bullitt, Calvin, Carey, Carter, Cassidy, Cochran, Collins, Corbett, Craig, Curry, Curtin, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Finney, Funck, Gibson, Gilpin, Green, Hall, Harvey, Howard, Kaine, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, Mantor, Mitchell, Mott, Parsons, Pughe, Purman, Read, John R., Reed, Andrew, Reynolds, Ross, Runk, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Temple, Turrell, Wetherill, J. M., Wetherill, John Price, Wherry and Worrell—62.

Mr. ARMSTRONG. I desire to make a verbal correction in the same connection, in the fourth line of the second section, by striking out the words, "to re-election," and inserting, after the word "be," the word "again," so that it will read: "but shall not be again eligible." I think this might, by unanimous consent, be done. It covers the ground.

The PRESIDENT. Is there objection to the amendment being made? ["No."]

Mr. HUNSICKER. I object to it.

Mr. ARMSTRONG. I will state it again, and ask gentlemen to look at the fourth line of the second section. Some amendment there is needed, but the amendment proposed by the gentleman from Chester I did not think covered the ground. The word "eligible" is in itself sufficient. "Re-election" ought not to be inserted there, because it would not exclude re-appointment for a short time. The amendment I propose is to insert the word "again" after the word "be," so as to read: "but shall not be again eligible," and

leaving out the words, "to re-election," because it necessarily includes them.

Mr. HUNSICKER. How would that leave it in regard to re-appointment?

Mr. ARMSTRONG. It would exclude re-appointment as well as re-election.

Mr. HUNSICKER. That is the reason I oppose it.

The PRESIDENT. The delegate from Lycoming moves to go into committee of the whole for the purpose of inserting the word "again," after the word "be," and striking out the words, "to re-election."

Mr. ARMSTRONG. I see no reason why the judge should be eligible to appointment, and I think it is better to exclude appointing them for a short term, so as to cut up the thing entirely and prevent a judge who has once served a full term being re-elected or re-appointed. That is why I make the suggestion.

Mr. EWING. I think the first thought of the gentleman, when he put this in, was a great deal better than his second thought. I suppose the object of saying they shall not be eligible to re-election is this: That, ordinarily, a judge of the Supreme Court, having served his twenty-one years, is too old to be re-elected for another term of twenty-one years; but such an objection would not apply to an appointment that would necessarily be confined to a year or less. I think it is much better as the section stands. The way it is it covers all the ground.

Mr. HUNSICKER. One other reason would be this: The idea is to prevent the judges from scheming for their own re-election; but there is no danger of an appointment being schemed for. If a judge's term should happen to expire and there should be a vacancy for a short time until the next election, I see no reason why that judge might not be appointed by the Governor for the intermediate space.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment suggested by the gentleman from Lycoming.

The motion was agreed to, there being, on a division, ayes forty, noes ten.

Mr. ARMSTRONG. I trust now that the amendment will be made by unanimous consent to save time. ["No objection."]

The PRESIDENT. Will the Convention now unanimously consent? ["Aye."] The correction was made by unanimous consent.

Mr. ARMSTRONG. I move now to strike out the word "will," in the fourth line of the same section, and insert "shall," which is better grammar. The phrase should be "the judge whose commission shall first expire."

The PRESIDENT. Will the Convention unanimously consent to this correction?

Mr. ALRICKS. Let me call attention to the fact that adding the letter "s," after "expire," and making it "expires," will avoid the necessity of putting in either "will" or "shall."

Mr. ARMSTRONG. I should think not. It ought to be in the future.

The PRESIDENT. The correction will be made, there being no objection.

Mr. STRUTHERS. I move to go into committee of the whole for the purpose of striking out the sixteenth section, which reads as follows:

"SECTION 16. 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."

I do not wish at present to occupy time on this amendment. I have heretofore stated my views in regard to the question involved in that section.

Mr. HOWARD. Mr. President: I hope this section will be stricken out. ["Why?"] The reason I have to give is this: When the voter goes to the polls to vote for an officer that is to participate in his government in one of its great departments, the Executive, Legislative or the Judicial, it is his right to vote for all the candidates that are to be chosen. For the elector, when he goes to the polls, and two judges are to be voted for, to be told "You shall vote for one and you shall not vote for the other" is a denial of the right of the American citizen, and it seems to me that it should not be put into the Constitution of any State, or in the law of any State. It looks like a contradiction of republican government. The idea undoubtedly is to bring the minority into actual participation in the government, which, in point of fact, they have no right to possess under a republican system. The business of the minority is to wait until they can build themselves up with the people and become the majority, then they will come into power; and the majority for the time being must govern. If judges are to be elected by

the people there should be no exception to the rule.

I am perfectly aware that in the election of inspectors of election the limited vote has been acquiesced in; but they are nothing more than mere clerks. They do not in any way participate in the government. They constitute no part of it. They are mere clerks to keep accounts at the elections; and it has also been applied to county auditors, but they are mere clerks to adjust accounts. It is proposed again to apply it to county commissioners, but they are no more than mere clerks and business agents for the county. Here it is intended to apply this principle to one of the great departments of government. Why, sir, it seems to me a very strange state of affairs if in Pennsylvania we are to say to a citizen when he comes to the polls: "You may vote for this man, but you shall not vote for that man," although both are expected to be elected. It is the equal right of every American citizen who has a right to vote when he comes to the polls to vote for each and every candidate that is to be elected, and further, that this right should never be questioned. Therefore I hope that this section will be stricken out.

The PRESIDENT. The question is on agreeing to the motion to go into committee of the whole to strike out this clause.

Mr. BAER. Upon that I call for the yeas and nays.

Mr. ACHENBACH. I second the call.

Mr. ARMSTRONG. I desire to appeal to the Convention upon this question, and the general term is as well applicable to this as to other sections. We have a rule, which is enforced upon third reading, which limits debate, and which renders it extremely difficult to wisely and calmly review the considerations which have induced the adoption of the various provisions not only of this article but of others. Now I fully recognize the fact that wherever a proposed amendment is clear to the judgment of the Convention, they have a full right to adopt it, or to deal with it as they please. But I appeal to this Convention now whether it is wise to strike out, upon a hasty consideration, such as the proposed amendment must now receive and the rules of the Convention as they stand require, a section which was inserted upon full consideration on second reading and received the endorsement of this Convention in very full assembly. This amendment was as fully and as amply debated as any provision of

this article or of any other. I think, therefore, that it is not wise to take a crude suggestion which may be thrown out now—I speak with all respect to the gentleman, his ideas are only now what they were before, and in that sense are not crude—but we cannot reply to his arguments in the Convention when it is as impatient as it is now, and I believe we are doing more harm than good to the Constitution by adopting suggestions thus hastily thrown out. I believe it is wiser and safer for us to adhere to the letter of the article as it has been adopted.

Mr. BROOMALL. I do not understand the argument of the chairman of the Committee on the Judiciary. Surely he does not mean that we are not competent to give a question of this magnitude the same consideration that we did when the article was on second reading. There is no difference. If we did wrong then, we should correct that wrong now. In several very important instances, we have amended and greatly amended what we did in committee of the whole and upon second reading; and I trust no such idea will be adopted by the Convention as that a thing must remain now because we did it then. I never did see the very great philosophy of the declaration of the witness that because he did say the horse was sixteen feet high, he should say so to the bitter end. I propose to change whatever I find wrong. I propose to vote in favor of the proposition to go into committee of the whole for the purpose of voting this section out. I said about all I could say before, but was out-voted and will only repeat now that if there is any practice that is pernicious it is that of leaving the selection to political combinations, to political conventions, without any appeal over again to the people. Rather than let the two political conventions appoint the judges I would go back to the old plan and let the Governor do it, because he at least would be responsible. We would know who he is and where to fix the blame of any wrong that might be done. But this proposition which lets the action of the two political conventions be final, is simply saying that the most prominent politicians in each party in the State shall appoint the judge. If we are willing to say that, I for one want to know it. I know and I can name the individual who while he lives would always appoint the judge upon our side, and I imagine the gentleman who sits before me (Mr. Buckalew) can name the individual who would al-

ways while he lives appoint the judge on the Democratic side, and there would be no appeal to the people in either case. I am not willing that any such thing as this should be done if my voice and vote can prevent, and I propose to vote to strike out this provision.

Mr. HAY. Will the gentleman from Delaware allow me to ask him a question?

Mr. BROOMALL. Certainly.

Mr. HAY. I would like to ask whether it is not better that two men should have a voice in that matter than one.

Mr. BROOMALL. I will answer the question by saying that if the two men are legally appointed for that purpose and have a responsibility to the people, I would certainly prefer it, but these politicians have no such responsibility. All they want is to rule the people in their own way and for their own purpose.

Mr. WOODWARD. Let me ask the gentleman who are the two men to whom he refers?

Mr. BROOMALL. If the gentleman in front of me will name one, I will name the other, but it is not worth while to mention names in this connection.

Mr. WOODWARD. I would like to know to whom you refer.

Mr. BROOMALL. I think I can name the man who will appoint the Republican candidate without appeal to the people. My friend in front of me can name the man who would appoint on the other side, and it would be the most unscrupulous and the most irresponsible politicians in the State, who would do it in each case. It would be a man in each case who, if he went before the people, would be repudiated, not getting one tenth part of the votes of his own party. I do not propose to leave the appointment of the judges to any such power as that. I want the people to have the substance as well as the form of the choice of their judiciary.

Mr. CORSON. Mr. President: I had supposed that this case had been argued out to a conclusion. We thought we had effected a compromise between the gentlemen of the Convention who were in favor of a cumulative vote, and the gentlemen of the Convention who were in favor of electing the judges in the old way, and those others who were in favor of the Governor appointing the judges of the Supreme Court by the adoption of the limited system of voting. We effected that compromise by the adoption of the sixteenth section. There were those here

who would have the judges appointed by the Governor; there were others who would have them elected as they are now elected by both political parties, and never yet in my time was man in Pennsylvania elected to the office of supreme judge who had not been selected by his political party. The people never yet repudiated the nomination of a political party and elected a man who had not been nominated by either party. It is my good fortune to be able to say that I have voted for every man who is now on the supreme bench of Pennsylvania.

Mr. DARLINGTON. The gentleman does not remember the case of Judge Campbell and Judge Coulter.

Mr. CORSON. No; that was not in my time; that was before the flood. [Laughter.]

Now, the people come together; they send men to their political conventions fit to select candidates to the Supreme Court. The gentleman over the way (Mr. Broomall) perhaps is grieved because Delaware and Chester could not dictate to the people of Pennsylvania at the last Republican Convention who should be the candidate for the Supreme Court; the people of Philadelphia also were grieved because they did not get their candidate; but it should not affect this question, because it is right that the people of Pennsylvania, who are so nearly divided in political parties, shall each party have one man upon the supreme bench, and let the gentlemen of this Convention remember that this, perhaps, will never happen but once, when two judges of the Supreme Court are to be chosen. If this Constitution shall be adopted, of course two additional judges will have to be elected, and at that time each one of the political parties of the State of Pennsylvania will be able to name a judge; but it may never happen again. It is, therefore, nothing to be scared at.

There is, therefore, no danger that the political party which is in the ascendancy in the State will ever have a minority on the supreme bench; and certainly no honest man, be he Democrat or Republican, would ever want more than a majority. Is it not right that the minority should always have its representative in every body? What party to-day complains that this Convention is composed of almost equal numbers of both political parties? No word of complaint comes up from any part of this land, and no honest man in Pennsylvania will complain that

the minority shall always have a judge of the Supreme Court.

I trust this section will not be stricken out. I am as strong a party man as lives in Pennsylvania, and I am the author of that section. It was carried in this Convention without a single remark made by me in its favor, because it was a compromise between the men who represented the different views upon this question.

I have no fears that the very best men will not always be selected for judge of the Supreme Court. Lawyers largely constitute conventions called to select judges, and they will never agree on any nomination unless it be a good one. Look at the selection of lawyers for this Convention. A political party convention in the strictest sense sent here the oldest, foremost men of the State. We can trust them. Let us not now strike down this section.

MR. DARLINGTON. Mr. President: If it is right to adopt this principle in one instance, why is it not right to adopt it in all? And yet a large majority of this Convention is decidedly opposed, as has been shown by repeated votes upon repeated occasions, to the introduction of this minority principle into everything else than the Supreme Court or corporations. It is not right to introduce it as a fundamental principle to be at all times applied, how can it be right to introduce it at all? We had better stand by the old land-marks; and I beg the gentleman from Lycoming, to remember, when he appeals to us to stand by that which we have done by previous votes, that we ought rather to stand by the practice of the government for the last century. We have done well heretofore, and with the same course of conduct we shall do well hereafter. Our judges have been pure and upright; they have always been chosen, since election was the fashion, by the majority, and we have no reason to suppose that they will be otherwise when chosen by the majority still.

I am opposed to all innovations, especially upon this point of the judiciary.

THE PRESIDENT. The Clerk will call the names of delegates on the motion to go into committee of the whole for the purpose of striking out the sixteenth section.

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

YEAS.

Messrs. Addicks, Andrews, Baily, (Perry,) Beebe, Bowman, Brothmall, Darlington, Edwards, Ewing, Hanna, Horton, Howard, Lawrence, Lear, Littleton, MacConnell, McCulloch, Minor, Newlin, Niles, Patterson, D. W., Porter, Purviance, John N., Purviance, Samuel A., Russell, Simpson, Stanton, Struthers, Wetherill, J. M., White, David N., White, Harry, White, J. W. F., and Walker, President—33.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Biddle, Black, Charles A., Boyd, Brodhead, Brown, Buckalew, Calvin, Carter, Church, Clark, Cochran, Corson, Cronmiller, Curtin, Dallas, DeFrance, Elliott, Fell, Fulton, Guthrie, Hay, Hazard, Hempill, Heverin, Hunsicker, Landis, Lilly, M'Clean, M'Michael, M'Murray, Mann, Metzger, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Read, John R., Smith, H. G., Smith, Henry W., Van Reed, Woodward, Worrell and Wright—50.

So the motion was not agreed to.

ABSENT.—Messrs. Ainey, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Cassidy, Collins, Corbett, Craig, Curry, Cuyler, Davis, Dodd, Dunning, Ellis, Finney, Funck, Gibson, Gilpin, Green, Hall, Harvey, Kaine, Knight, Lamberton, Long, MacVeagh, M'Camant, Mantor, Mitchell, Parsons, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Turrell, Wetherill, John Price and Wherry—50.

MR. DALLAS. I move to go into committee of the whole for the purpose of amending the article, by inserting a new section to come in after section four.

THE CLERK read the proposed amendment as follows:

"In the county of Philadelphia all the jurisdiction and powers now vested in the district court and in the court of common pleas in said county shall hereafter be vested in one court of common pleas, composed of twelve judges, and divided into four divisions of three judges each.

"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 from time to time be 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.

"Each of said divisions shall (except as herein provided) 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 divisions, as to it 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 or 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 exercise such other powers and jurisdiction of said courts (not including trial by jury) as said court 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 be subject to removal by them, and he and his assistants shall be compensated by fixed salaries only."

Mr. DALLAS. Mr. President: If I can have the ear of the Convention for a very few minutes I will try to explain the purpose of this amendment. It is the same, with the exceptions of a few verbal changes, as that which will be found in volume six of the Debates, at page two hundred and seventy-five, and delegates will oblige me if they will take the trouble to turn to that page.

I have offered this amendment to come in after section four of the judiciary article. Sections five, six, seven and eight of that article as we have it from the Committee on Revision are exclusively devoted to the judicial system intended for Philadelphia and Allegheny counties only. I have not moved to strike out those sections, although my proposed amendment will, so far as Philadelphia is concerned, be a substitute for them, because they also relate to Allegheny, and I desire that the gentlemen representing that section of the State shall speak for themselves on the subject.

Mr. President, there was upon Saturday last, held in the city of Philadelphia a meeting of its bar, at which my colleague (Mr. Cuyler) was the presiding officer. He was instructed to present this morning to the Convention certain resolutions which, owing to the misfortune which prevents his attendance here, he was not in his place to offer. Those resolutions I caused to be sent to the Clerk's desk to be read, and they were read there; but in the noise that prevailed were probably not generally heard. I propose as a portion of my remarks to read them again. The resolutions passed by the Philadelphia bar unanimously on Saturday last, were these:

Resolved, That in the opinion of the Bar of Philadelphia the system of courts proposed for this district by the Constitutional Convention is not suited to the wants of this community, and is objectionable among other reasons for the following:

1. Because it will make unnecessary distinctions in our judicial system, which must introduce uncertainty and confusion in practice and the conduct of business.
2. Because by the erection of several courts of equal and concurrent jurisdic-

tion for this city, it would lead to the selection of judges by suitors and counsel.

3. Because in the event of discordant rulings in matters of discretion, the construction of their own rules and the like, in this district, there would be no means of securing revision or correction.

4. Because it would diminish the dignity of the office of the judge, and the respect of parties and of the public for the judgments of our courts, and consequently greatly increase the business of the Supreme Court from this county.

Resolved, That a copy of the foregoing resolutions be forwarded to the Convention, with the request that this subject may receive its further consideration.

Now, Mr. President, so far as I am instructed by that meeting, and so far as my private inquiry since the matter was last before the Convention has enabled me to gather the sentiment of the bar of Philadelphia, I have become more and more strongly convinced that the action taken by this body in relation to the Philadelphia courts is almost unanimously objected to by the members of the profession in this city. They are divided in sentiment in only one respect. They are unanimous, or nearly so, in objecting to the action of the Convention. There is some division upon the question of whether they should ask this Convention to leave them just where they stand to-day, with a district court and a court of common pleas, or whether they should ask us for one consolidated court, abolishing the district court. Upon that question, it is due to frankness to state that there is a division of sentiment, and no man can tell how a full vote of the Philadelphia bar upon that subject would result. But one thing is certain: they would take either of them rather than that which the Convention has given, and I ask the Convention to give their voice therefore upon that subject a fair attention. But they feel—if they do not I am certain I do—that something is due to the bar of the rest of the State, even upon this, which may seem altogether a local matter. I am willing to concede that there is a great deal in the argument made here in favor of uniformity of the system throughout the State, and that Philadelphia should not be given anything which would be an excrescence upon a proper arrangement for the entire Commonwealth.

Holding this view, I have proposed that which resembles the proposition of the Judiciary Committee in all particulars

save one; that is, while the amendment retains the name of the court of common pleas and recognizes what must be recognized, that whereas three judges, and in most cases only one, will answer for a judicial district in the country, we must have at least twelve judges in this county; but while the plan I have proposed recognizes, like that of the committee, the necessity for a greater number of judges for the district, it proposes to put them into one court of common pleas instead of into four. That is the entire difference, with such changes in detail as that difference requires between the report of the committee and that which I have offered.

Mr. CAMPBELL. Will the gentleman permit me to ask him a question?

Mr. DALLAS. I prefer not, with all respect to the gentleman. I have but ten minutes and have scarcely time to complete what I have to say.

Mr. President, it is proposed by this amendment to give Philadelphia what will put her precisely in harmony with the rest of the State, to wit: a single court of common pleas instead of four courts.

A necessity which must be recognized will require us to divide that court into different sections or divisions for the purpose of the transaction of business, as is now done in our district court, the judges of which hold four courts at the same time. We bring our suits simply in the district court, and they are then referred to the district court number one, two, three or four for trial under general rule, and no lawyer can fairly and honestly know beforehand in which of these four courts his cases will be tried. My principal, and perhaps only, objection to the report of the committee upon this head is, that it has failed similarly to arrange in the plan proposed by it, and it is intended by my amendment to extend our district court system and apply it to the present judicial project for this city, so that as a mere matter of detail, when our suits are brought, just as they are elsewhere, in one court of common pleas, they will be assigned by rule for trial or hearing to a division of that tribunal.

The PRESIDENT. The gentleman's time has expired. Does he desire to proceed further?

Mr. DALLAS. No; I will not transgress upon the rules or the time of the Convention.

Mr. CAMPBELL. If the delegate who has just taken his seat (Mr. Dallas) had been willing, I was going to ask him whether the Philadelphia bar, or any of its members except himself, had signified a desire to have the proposition introduced by him passed? I, myself, do not think the bar of Philadelphia would entertain such a proposition.

A word about the bar meeting that the gentleman has spoken of and emanating from which we have had resolutions introduced here this morning. All the lawyers in this body know how bar meetings are gotten up. A call is issued—very often hastily—the object of the meeting being stated in the call, and those persons who are in favor of that object go to the meeting, and those who are not in favor of it generally stay away, and the consequence is that when the meeting takes place it is all one-sided. Those opposed to the object of the meeting are not there, there is no discussion of views; gentlemen get up and make speeches—all in the same vein—and a set of resolutions are passed that have been prepared beforehand by perhaps one or two persons only. These resolutions are not discussed, neither are they scrutinized very closely, but are passed generally as a matter of course, and go forth as the sentiment of the bar. The meeting of the Philadelphia bar on Saturday last seems to be conducted on the plan of operations I have just described. Now, I venture to say that there are many lawyers in this city who were not present at that meeting and who were not in favor of the resolutions passed by it.

As regards the proposition of the gentleman, (Mr. Dallas,) I hope it will meet with the same disfavor that it met with when he offered it at the time we were on second reading of the judiciary article. When he offered it at that time I believe he got his own vote for it; I do not think there was another vote in favor of it; and I think, to say the least, it is a little presumptuous now to offer it before this body again when by such a decided vote it has already been disposed of.

I trust we shall adhere to the report of the Judiciary Committee. It is the best thing that has been yet offered for the people of this city. We are to regard not alone the wishes of the judges of our courts, not alone the wishes of the lawyers who practice before them, but we must look to the people themselves and learn what *they* want. I am satisfied that,

with a fair election, the people of Philadelphia would gladly accept the plan proposed by the Judiciary Committee. If this plan is adopted, it will break up the "criminal court ring" in Philadelphia, and that is what the people want. Therefore I appeal to members from the interior to look at this question not as a purely Philadelphia matter, but as a matter in which the whole State is interested and as a matter in which they should take part, as well as the Philadelphia members, and I appeal to them to aid in sustaining the report of the committee and pass on third reading the sections upon this subject that we have already passed in committee of the whole and upon second reading.

Mr. CURTIN. If we were forming a judicial system now, and were about to arrange that system for Philadelphia, I think the report of the committee, as well as the substitute offered by the delegate from Philadelphia, (Mr. Dallas,) would deserve serious and grave consideration. But, sir, change is not always progress, nor is it improvement. Now, I do not understand that the people of Philadelphia complain of the present organization of their judicial system. Lawyers understand now where to bring their suits, and the people understand the jurisdiction they are to appear before in contesting the rights of property or of person.

I understand all the delegates to agree that the seats on the bench are now filled by eminent, learned men, and men of integrity, and this Convention would not have been called to make a violent change in the judiciary system of this city. We should not have been here for any such purpose; it is not demanded by petition from the people. Surely there is some change asked for by the gentlemen representing various sections and divisions and sentiments of the bar of the city, for it seems to me that even on this floor some of the delegates who practice at the bar are in favor of the present system; some are in favor of the change proposed by the Committee on the Judiciary, and others are in favor of changes quite as novel and strange to the people of the city who have to appear before the courts as suitors as well as to the members of the bar. Now, inasmuch as there is no complaint of the judiciary system as applied to the city of Philadelphia, and as it is perfectly apparent that there must be some difference in the administration of the law between a large city like Phila-

delphia and a rural district such as you, Mr. President, live in and as I live in, and that the system as now pursued in Philadelphia is acceptable and no change is asked, I do trust that this Convention will dispose of this vexatious question by leaving the system as it is now.

Mr. NEWLIN. Mr. President: I have only one word to say. I have nothing to do with the criminal court, and therefore I cannot be considered to have any interest in any supposed "ring" there; indeed I do not believe there is such a thing, but I do know that there is not a single member of the bar that I have met who is in favor of what has been done by this Convention against the wishes of three out of four of the members from the city. If the gentlemen from the interior know better what is good for us than we do, well enough, but it strikes me that when three out of four from the city vote one way, the members from the interior might take it for granted that the large majority is apt to be correct. Had the committee tried their best to concoct a scheme expressly to antagonize the bar they could not have succeeded better.

Mr. J. R. READ. Mr. President: I trust the members of the Convention will pardon the persistency with which a majority of the delegation from this city return to the attack upon this section, but they will please recollect that we are justified in so doing by the natural expression of indignation of the bar of this city, as well as the suspicion that has been excited in the public mind expressed in all the public papers of this city, at what is considered a lack of wisdom on the part of this Convention in this particular; and for my own part, I believe they are justified in cherishing that thought, for it does occur to me with great force that when this Convention with irreverent hands seeks to destroy a court which by its rectitude and its prompt dispatch of business has engendered a feeling of respect and reverence at the hands of this community, the people are justified in feeling a grave doubt of the vaunted wisdom of this Convention.

And what, Mr. President, is the effect of this section? Its effect is, in a word, to destroy one court, viz: the district court; and for what? In the words of the delegate from Lycoming, it is for the sake of obtaining "a symmetrical system,"—a symmetrical system in name and not in fact, because if you will look at the first section of the judiciary article

you will ascertain that the Legislature of the State are authorized to create such other courts as they, from time to time, may deem necessary. So that in point of fact, if we concur in this section as it stands in the report of this committee, and if, after the adoption of this Constitution, the people of this city should see fit, as they have seen fit in the past, to ask for the establishment of a district court, the Legislature has the power to establish it; and thus we might have court of elephantine proportions and a district court as of old.

The courts as they are now established are entirely satisfactory to us. They subject us to no inconvenience. On the contrary, the members of the bar understand and appreciate them, and the people are quite familiar with them, and like them and their manner of trying cases. And what have we here? We have four courts, where we now have two, with power to try the same cases, to settle the same questions, and each to have the same jurisdiction. The result will be then that we shall be liable to have opinions as various as we have members of courts. The decision of court No. 1 may conflict with the decision of No. 2; that of No. 3 with that of No. 4, and so on as often as the changes can be rung. This is one of the great advantages which we are to obtain by reason of the passage of this section!

I cannot say that I am entirely in favor of the amendment suggested by my colleague from Philadelphia (Mr. Dallas.) My views are, as they have been expressed in a previous session of this Convention, that we had better leave these courts alone. That is all we ask, that is all we desire. We ask no change. We ask only that you should let our courts remain just as they now are, to try their cases in the future as they have done in the past.

I do hope that the Convention will not pass this section. I do not think they understand the injury and inconvenience they will inflict upon this community if they pass it as they have it reported by the Committee on the Judiciary.

Mr. DARLINGTON. I do not think that we are justified in permitting this important section to pass without a careful consideration not only by the members from the city of Philadelphia, but I also trust by those from the country. It certainly does injustice to a very large extent, and our business is to see that the

best plan is adopted which we can possibly devise.

As between the report of the Committee on the Judiciary and the project of the delegate from Philadelphia, (Mr. Dallas,) I am decidedly, for one, in favor of the amendment proposed, and my reasons are these: Four courts are proposed by the Judiciary Committee, of equal and co-ordinate jurisdiction. Each court is to be distinct and every suit is to be brought in its proper court. Now, sir, if you were to bring a suit for a client in any of these courts, you would select that court which is presided over by the most intelligent and able judge, and so would I, and so would every other gentleman in the State; and the result would be that if five hundred suits were to be brought in these four different courts, perhaps four hundred suits would be instituted in one of these courts and the other one hundred suits scattered through the remaining three courts. Now, as these suits are brought, so they must be tried. The four hundred suits brought in one court must be tried by the judges of that court, unless you provide other machinery to relieve them of the burden. The other three courts presided over by the remainder of the judges, would each have a smaller number of causes to decide and would have causes of less significance and value. Therefore, under this proposed system of the Committee on the Judiciary there will be anything but equality of labor or equality of talent. What I think is a far better plan than this, is that which has just been proposed by the delegate from Philadelphia, which will enable every member of the bar to bring his suits all in the same court and let the question of the time and manner of their trial be decided by the judges of the courts.

This is precisely the application of the principle and practice found in the district court. All the suits will be brought in one court and the judges will divide the business into four different branches according to the magnitude of the cases, and thus each judge can take his share. Would not that be better, far better, than to have four courts with different kinds of business devolving upon each court? That is one reason why I greatly prefer the proposition of the member who has just presented it. If, however, the Convention shall decline to adopt it, I will be inclined, for one, to go with the gentleman from Centre and with the bar of Philadelphia and leave them alone, taking

from them, if you please, their *nisi prius* court and leaving to them their district court and their courts of common pleas as they are now.

Mr. BIDDLE. Undoubtedly on a question which concerns the interests of the citizens of Philadelphia, if it be possible to get something like an intelligent expression of the high priests who minister at the altars of the law in that community, it would be a very desirable assistance to us; but I am afraid we cannot get it. It is very certain that whether we can get it or not we have not got it yet; for anybody that reads the report of the proceedings of the meeting of the members of the bar of Philadelphia, which appears to have been very largely attended, from the report made on last Saturday, will fail to ascertain exactly what it is they want. I find by a report of that meeting that my distinguished friend from this city, (Mr. Cuyler,) who is necessarily absent to-day, "rehearsed the action of the Convention, and suggested as a remedy therefor the creation of a superior court of three judges to be elected at large from the State for fifteen years, who should have an intermediate jurisdiction in appellant cases in minor causes, and thus relieve the Supreme Court; the judges of this court to hold circuit courts throughout the State, together with the judges of the common pleas and quarter sessions."

Thus far it does not very much relate to that which we are now talking about; but at the close of his remarks I find the following to have been reported:

"As to the local business, he would take appeal cases and trial of causes from the common pleas and vest them in the district courts, and would take from the district court its equity jurisdiction and vest it in the common pleas."

And then follows the presentation of the resolutions by Mr. Dickson.

Now, if the report of that meeting means anything at all, it means something absolutely opposed to the substitute offered by the delegate from the city to-day, which he now wants us to go into committee of the whole to adopt. If we are to gather from the report, which is somewhat obscure, that the meeting, which was largely attended, favored the views of Mr. Cuyler, then they meant to keep the district court as it is now, throwing into it the common law jurisdiction in appeals from aldermanic cases, and to go still further by depriving it of all equity jurisdiction. Now this body, by an over-

whelming vote, voted against that, and it is not necessary to discuss it now.

What we have to discuss now is the value of the substitute offered by my colleague from Philadelphia, and I venture to say that beside himself there is not a single member of the bar from this city who is in favor of it. If there is a member of the bar here who is in favor of it, I would like to see him now. Let him rise and contradict me. I have conversed with a great many of them, and I find them all opposed to it. Whatever they may think of the section as it stands reported in the article, they are not in favor of this.

I intend now after this opening to confine myself strictly to the matter in hand. The question is whether you are going to adopt a plan by which you annihilate the courts, or cut them up into petty departments with twelve judges, against the wishes of all the judges so far as I know, and without the wishes of any respectable minority of the bar; or whether you are going to leave matters as they are, or adopt the article as it is.

Now, these are the three projects. To leave things as they are, I understood to be the view of the gentleman from Philadelphia who spoke last, although what he said did not touch the substitute offered by my colleague (Mr. Dallas.) Are you going to leave things as they are; are you going to adopt the article as reported by the Judiciary Committee; or, are you to permit yourselves to vote in favor of this plan about which the bar meeting did not say a single word? I doubt, and I would like to be corrected if I am doubting in error, whether anything like this plan was ventilated at all before that bar meeting. That bar meeting, if I stood committed to anything, which is very difficult to understand, stood committed to keeping the courts as they now exist, and I therefore hope that this Convention will decline to go into committee of the whole. Let us discuss the section of the article as it stands.

Mr. DALLAS. I rise to explain. In reply to the gentleman I desire to state that the plan now submitted to the Convention by me has been shown to several members of the bar of this city and has met their approval. As to its ventilation at the meeting of the bar, I will say that the bar purposely omitted at that meeting to advocate any plan, preferring to send that matter back to the Convention for its more

appropriate action. And next I desire to say that the abstract read from a paper by my colleague from Philadelphia is a portion of a speech made by Mr. Cuyler at the bar meeting, but Mr. Cuyler's views were not put into the shape of a proposition, nor formally submitted for the action of the meeting, and in my humble judgment, if they had been, they would not have received the approval of a majority of the gentlemen present.

Mr. HARRY WHITE. If there is any one question clear in this body over another it is that a large majority of this Convention desire to do what is acceptable to the majority of the bar of Philadelphia. If there is another thing equally clear it is that a majority of this Convention, not living in the city of Philadelphia, has thus far been unable to discover what is the desire of the majority of the bar of Philadelphia. I stand here for one ready to do that which the experience of the members of the bar of Philadelphia has demonstrated is necessary for the administration of justice here. In the absence of an agreement among the gentlemen representing the bar the delegates to this Convention from the city of Philadelphia, I find myself perplexed; and feeling thus I shall be compelled to vote against any amendment that may be offered to the section as it was passed through second reading.

And while I am on the floor I will remark furthermore that if I have been able to discover anything from the confusion of views among the members of the bar of Philadelphia, it is that they do not desire to have their present courts changed in their forms of organization; and I confess, feeling thus, if any delegate on behalf of the bar of Philadelphia will offer an amendment conforming our proposed Constitution to the present condition of the courts of Philadelphia, or recognizing that elasticity which should be properly recognized, I will vote with him.

Mr. HANNA. I will do so at the proper time.

Mr. HARRY WHITE. Very well. In the absence of any proposition of the kind I shall vote against any amendment that has been offered to the section.

Mr. BROOMALL. Mr. President: With the rest of the members here I desire to do what is acceptable to the city of Philadelphia, and if the delegates from Philadelphia would present a plan satisfying all of them, I should prefer to vote for it.

I must vote, however, against this proposition, because it seems to me that a very small number of the delegates here are in favor of it, and I do not find that any considerable number of the members of the bar of the city are in favor of it.

I propose, if this is voted down, to offer a short amendment to the provision as it stands in the article, which will obviate the only objection that I have heard to the proposition before the House that has weight. That objection is this: that the system proposed by the Committee on the Judiciary and by the article as it now stands will allow the plaintiff his choice of several courts, whereas the defendant will have no such choice, thereby probably overburdening certain courts. If this proposition is voted down, I will propose to offer a short amendment remedying that evil, and when that is done I do not think the proposition that is before the House can be much further amended. What I propose to offer, if this is voted down, is to add at the end of the fifth section these words:

"All suits shall be instituted in the courts of common pleas without designating the number of said courts, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by law."

When that is done, I think the only evil that the remonstrance we have heard read complains of, that has any weight, will be remedied.

Mr. DALLAS. I withdraw my motion in order to allow the gentleman to present that.

The PRESIDENT. The motion of the delegate from Philadelphia is withdrawn.

Mr. BROOMALL. I move to go into committee of the whole for the purpose of making the following amendment to be added to section five:

"All suits shall be instituted in the said courts of common pleas without designating the number of said courts; and the several courts shall distribute and apportion the business among them in such manner as shall be provided by law."

And also striking out the entire sixth section.

Mr. BIDDLE. I should like to say just a word. Mr. Dallas and I entirely agree, (and that is saying a good deal,) about this section, in the propriety of this amendment.

Mr. ARMSTRONG. I am heartily in favor of this amendment and propose to add

to it what I believe the gentleman will accept:

"And each court to which any suit shall be thus assigned shall have exclusive jurisdiction thereof, subject to change of venue as shall be provided by law."

Mr. BROOMALL. That is right.

Mr. ARMSTRONG. So that when a cause is once assigned to a court it shall remain there and there shall be no power in one court to undo the proceedings of another.

Mr. DALLAS. I am willing to accept that.

Mr. BROOMALL. I modify my proposition by inserting that.

The PRESIDENT. The delegate from Delaware proposes to amend by striking out the sixth section and adding to the fifth section the following:

"All suits shall be instituted in the said courts of common pleas without designating the number of said courts; and the several courts shall distribute and apportion the business among them in such manner as shall be provided by law; and each court to which any suit shall be thus assigned shall have exclusive jurisdiction thereof, subject to change of venue, as shall be provided by law."

Mr. WOODWARD. Mr. President: I believe that the amendment of the gentleman from Delaware will improve the section as it stands, but I am opposed to the section with or without the amendment of the gentleman from Delaware.

As a member of the Judiciary Committee, I made it my duty to inform myself as to what the bench and bar of Philadelphia desired in the way of constitutional reform, and I satisfied myself that all that was desired, was to force upon the district court of this city chancery powers. Once or twice they have had it, but when the judges have got tired of it, they have induced the Legislature to take it away from them. We ought to put into our Constitution a provision that will prevent this tampering with an ever-willing Legislature. The district court of this city ought to have equity powers in common with the common pleas, for this vast community requires another court of chancery than the court of common pleas. And I firmly believe that is the sentiment of the bar of Philadelphia.

But as to the four-footed monster that this section proposes for the bar of Philadelphia, there is nobody here in favor of it except perhaps the two gentlemen on this floor who claim to represent the bar;

but the bar protest that they do not represent them.

Mr. BRIDDLE. I beg the gentleman's pardon. I ask to be allowed to interrupt him. I never made any such claim at all. I distinctly discarded it.

Mr. WOODWARD. When this subject was up before I told this House what I tell them now, that the bar of Philadelphia does not want this thing. They do not want their professional habits of life to be all rudely broken up by an innovation in which they see infinite difficulty and no advantage.

Mr. CAMPBELL. Does the gentleman profess to represent the bar?

Mr. WOODWARD. I do not profess to represent the bar. I have already said, and if the gentleman had attended to what I said he would not have made the inquiry, that as a member of the Judiciary Committee I made it my business to inform myself as to the wishes of the Philadelphia bar; and while I do not know that they have any exclusive jurisdiction of this subject I do not think that they, above all other men, are entitled to be consulted upon this subject, and whenever you have heard from them, by the meeting last Saturday or otherwise, you have heard nothing but a protest against this scheme.

Now, if there is to be any respect paid to those people who, of all others, are best qualified to judge in the matter, the judges and lawyers of Philadelphia, I think we ought to forebear, keep our hands off, leave the judiciary of Philadelphia as it was under the old Constitution, with the single exception of forcing upon the district court equity jurisdiction. That is as far as I would be willing to go.

I was at the commencement of this body in favor of an intermediate court, which I am happy to see the chairman of the meeting that was held on Saturday has become a convert to, for he advocates something like the plan which the chairman and I proposed, but the Convention repudiated that plan, and nobody mentions it now. I do not allude to it with any view of reviving it. We will have no intermediate court, says the majority of this Convention. Then say the Philadelphia bar, let us have the old courts just as they are; leave us as we are under the old Constitution. My firm belief is, if we will not do the only sensible thing that the occasion demands, to wit: furnish this county and the other counties of the Commonwealth an intermediate

court to relieve the Supreme Court, the best thing we can do is to leave the judiciary of Pennsylvania as we found it under the old Constitution. And therefore I am going to vote for the amendment of the gentleman from Delaware, and when it is put in, if it is put in, I am going to vote against this section; and I would rejoice if the majority would vote down the section.

Mr. HANNA. I believe the proposition now before the Convention is to go into committee of the whole for the purpose of amending by striking out the whole of section six, and adding a proviso to section five. If I could see my way clear to vote in the same way as my distinguished colleague, (Judge Woodward,) namely, that we could safely vote in favor of this amendment and then vote to strike out all these sections, I would gladly vote as he suggests; but, sir, I am afraid that we cannot strike out what we have inserted. Therefore I do not propose to vote in favor of the proposition of the gentleman from Delaware (Mr. Broomall.) I think, with due deference to him, his amendment would make the article worse than it is now. He proposes to do that which the courts themselves can do by rule of court, namely, regulate the bringing of actions in the various and different courts. That can all be regulated by a rule of court, and why insert it in the Constitution?

Again, it provides for that which is mere matter of legislation, including a large portion of this very article we have under discussion. I submit that it is entirely within the province of the Legislature. I therefore hope that the Convention will not go into committee of the whole for the purpose of receiving any such amendment, but that at the proper time, when the article itself is before us, the question will receive proper consideration upon a motion to strike out these sections and leave us in Philadelphia just as we are now.

Mr. SIMPSON. I shall vote for the amendment of the gentleman from Delaware as an improvement upon the section that we have under consideration; but I suggest that there is something yet to be provided for in this section, and that is in whose name the writs are to issue. Now, the writs are issued in the name of the president judge of the court from which issued; but in whose name are the writs to issue for these four several courts in Philadelphia, or the two courts in Alle-

gheny? There will have to be some provision to suit that case. I trust if this section is to be adopted and if this system is to be made harmonious, as is suggested, throughout the entire State, the amendment of the gentleman from Delaware will be adopted, and that the business of these several courts may be equalized by being distributed amongst them, so that one will not be over-burdened and another have nothing to do.

Mr. BIDDLE. The writs do not issue in the name of any party for the Commonwealth. It is a mere attesting in the presence of the court, which is utterly unimportant and can be arranged by legislation, but all writs, by the fundamental law, issue in the name of the Commonwealth.

Mr. SIMPSON. If the gentleman will permit me, I was going to suggest that all writs of the Commonwealth might be made in the name of the Chief Justice, as in the case of the United States in all the courts.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment indicated.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Curtin in the chair.

The CHAIRMAN. The committee of the whole have been directed to strike out section six of the article and to add to section five the following words: "All suits shall be instituted in the said courts of common pleas without designating the number of said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court, and each court to which any suit shall be thus assigned shall have exclusive jurisdiction thereof, subject to change of venue as shall be provided by law." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Curtin) reported that the committee of the whole had made the amendment referred to them.

Mr. CURTIN. I now move to go into committee of the whole for the purpose of striking out section five.

Mr. President, the amendment which has just been adopted is intended to relieve the complication into which this Convention has run by a change of the judicial system so far as the city of Phila-

delphia is concerned. Inasmuch as no change is asked for, inasmuch as the change proposed meets, according to the report read this morning, the disapprobation of the bar of Philadelphia, inasmuch as, if the press of Philadelphia be the exponent of public sentiment, it is disapproved by the people, and inasmuch as justice and law are administered in the city of Philadelphia fairly and impartially and suitors are not delayed in the assertion of their rights of property, and as change is not always progress or improvement, I propose by the amendment I offer to remit the people of Philadelphia to the jurisdiction as they now have it, which they all understand and which has proved to be ample for all their wants.

Mr. HANNA. I do not propose to discuss this matter any further, because I believe it is pretty well understood, but simply to remind the Convention of the fact that the district court which this section proposes to abolish was in existence as a separate court at the time of the adoption of the present Constitution. It was not touched then by the Convention of 1837-38, but the Constitution was then adopted in this respect just precisely as I believe the people of Philadelphia, and those who are more directly interested in the administration of justice preferred it should be; that was, that the whole question relating to the local judiciary should be left to the people, and their requests for redress and relief should be addressed to the proper tribunal, namely, the Legislature of the Commonwealth. The first section of this article proposes to leave it in that shape, just as the Constitution of 1837-38 did, and I hope it will so remain.

The PRESIDENT. The question is on the motion of the delegate from Centre, (Mr. Curtin,) to go into committee of the whole for the purpose of striking out the fifth section.

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

Mr. EDWARDS. I second the call.

The question being taken by yeas and nays, resulted as follows:

Y E A S .

Messrs. Addicks, Bailey, (Huntingdon,) Baker, Black, Charles A., Brodhead, Buckalew, Carey, Cassidy, Cronmiller, Curtin, Darlington, De France, Edwards, Ewing, Hanna, Harvey, Heverin, Horton, Hunsicker, Lawrence, Lear, Lilly, MacVeagh, M'Clean, M'Michael, Mann, Minor, Newlin, Palmer, G. W., Palmer, H. W., Porter,

Read, John R., Rooke, Ross, Smith, H. G., Smith, Henry W., Stanton, Van Reed White, David N. White, Harry, White, J. W. F., Woodward and Worrell—43.

N A Y S.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Beebe, Biddle, Bowman, Boyd, Broomall, Brown, Calvin, Campbell, Church, Clark, Cochran, Corson, Dallas, Elliott, Fulton, Funck, Guthrie, Hay, Hazzard, Howard, Landis, MacConnell, M'Murray, Metzger, Mott, Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Russell, Simpson, Struthers, Temple, Wetherill, J. M., Wetherill, John Price, Wright and Walker, *President*—44.

So the motion not was agreed to.

ABSENT.—Messrs. Ainey, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt Carter, Collins, Corbett, Craig, Curry, Cuyler, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Gilpin, Green, Hall, Hemphill, Kaine, Knight, Lamberton, Littleton, Long, M'Camaut, M'Culloch, Mantor, Mitchell, Niles, Parsons, Pughe, Purman, Reed, Andrew, Reynolds, Runk, Sharpe, Smith, Wm. H., Stewart, Turrell, and Wherry—46.

Mr. J. N. PURVIANCE. I move to go into committee of the whole for the purpose of amending section twenty-eight, by striking out all after the word "uniform," in the fourth line.

The PRESIDENT. The words proposed to be stricken out will be read.

The CLERK read as follows:

"And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts."

Mr. J. N. PURVIANCE. In the first section we retain the provision of the old Constitution that the Legislature shall have power to establish such other courts as they from time to time may deem necessary. Now, I take it that to make the article consistent, the clause which I have moved to strike out should be stricken out, because it is apparently a contradiction of the declaration in the first section.

The PRESIDENT. The question is on the motion of the delegate from Butler.

The motion was not agreed to.

Mr. BUCKALEW. I desire to call attention to section fourteen. I move to go into committee of the whole for the purpose of amending the fourteenth section by striking out in the third line the words,

"shall have the right to," and inserting the word "may," and at the end of the section inserting these words, "upon allowance of the appellate court or a judge thereof on cause shown." Then let the Clerk read the section as it would stand if thus amended.

The CLERK read as follows:

"In all cases in this Commonwealth of summary conviction or of judgment in suit for a penalty before a magistrate or court not of record, either party may appeal to such court of record as may be prescribed by law upon allowance of the appellate court, or a judge thereof, on cause shown."

Mr. BUCKALEW. I am opposed to the section in the form in which it was adopted on second reading, because it will empty into the common pleas all cases of summary conviction before magistrates throughout the Commonwealth. I take it, it also will apply to all convictions in boroughs before the chief burgess or principal executive officers for breach of a borough ordinance—in other words, all the police business of towns and cities of the State will be taken to a higher court, and this will be an enormous mass of business. It will virtually abolish the whole law of summary conviction in this State, because it might as well be understood that all these cases are to be brought in the first instance into a higher court so that the party will have an unlimited right of appeal, taking up cases from the inferior tribunal. I think this section was adopted upon second reading thoughtlessly, without full consideration of its character. Now, it is true that in certain cases there has been oppression, gross wrong has been committed by these petty convictions; and what I propose by my amendment is that a party who is complaining, and who is clearly aggrieved, shall have an opportunity to go before a judge of a higher court, at chambers, if you please, on notice to the other party, and upon showing cause that an appeal may be allowed to him by the judge or by the court itself. This will strip the section of its most objectionable features and leave it in tolerable shape.

Mr. ARMSTRONG. I hope the amendment will be adopted.

Mr. EWING. Mr. President: The first part of the amendment I think is proper and should be adopted. As to the latter part of it, if adopted, the section will be worthless in my opinion so far as remedying the evil that it was intended to

remedy. I do not imagine that as it stands it would take a very large number of cases to the courts of record. I think that a very few would go. The fact that there was the right of appeal would control the committing magistrates and would make them a little more careful in their decisions.

The evil that was intended to be remedied is this: A large number of cases are brought before committing magistrates, aldermen, mayors, justices of the peace, and without law or the shadow of law for their commitment they will convict summarily on some charge that has been made "disorderly conduct" or whatever they see fit to call it, and there is no right of appeal. The case can be *certiorated*, it is true, but while you are going to court to sue out the *certiorari* under the rules of court, the party convicted is sent to prison; he is not permitted to go and consult a lawyer or anything of the sort. Now, if there is a right of appeal, it can be entered at once, and the party committed has a remedy that is practicable. With the amendment offered, I do not think the section would be much advantage over the present right of *certiorari* that we have, and it would be practically useless. I hope and plead on behalf of the poor people who are oppressed and outraged by these petty magistrates in every city of the Commonwealth, that this section will be allowed to stand as it has been adopted.

THE PRESIDENT. The question is on the motion of the delegate from Columbia (Mr. Buckalew.)

MR. BUCKALEW. I call for the yeas and nays on this motion. It is very important.

THE PRESIDENT. Will not the Convention unanimously agree to the first amendment, striking out the words "shall have the right to" and inserting "may?" ["Aye!"]

MR. EWING. The first part is right.

THE PRESIDENT. The first part of the amendment is agreed to. Now the question is on going into committee of the whole to add the words: "Upon allowance of the appellate court or a judge thereof on cause shown."

MR. BUCKALEW. I want to know if a man taken before a city magistrate for violating a city ordinance, or one convicted of drunkenness, can by merely entering bail stay his case off for a year or two.

MR. EWING. He should have his right of appeal.

MR. HAZZARD. I hope this motion will be carried. The fact is that the cases which have been referred to by the gentleman from Allegheny are generally satisfactorily settled before the magistrates, and in our county, where magistrates have jurisdiction over fourteen of the offences that are mentioned in the code, I believe our county is saved from two thousand dollars to three thousand dollars a year in these little petty cases of assault and battery, &c. If you allow appeals under the spur of men being afflicted by these magistrates, they having the same idea of the magistracy that my friend from Allegheny has, almost every case will be appealed and you will overwhelm the courts with these little cases that ought to be settled at home and are now settled very intelligently as a general thing.

MR. ARMSTRONG. This section was proposed by the gentleman from Allegheny when the article was on second reading and adopted.

MR. EWING. In committee of the whole.

MR. ARMSTRONG. In committee of the whole; and he very forcibly indicated to the Convention certain abuses which it was proper to correct; but it strikes me that it has gone further than a remedy was required. It certainly is not wise to cut up the whole jurisdiction of summary convictions, and yet it is undoubtedly true that there are certain cases of abuse which ought to be brought to the notice of the courts and in which there should be a right of appeal.

MR. MACVEAGH. Will the gentleman allow a single question? What is the ground on which it is asked that a constitutional provision shall be incorporated with reference to these small summary convictions? Why cannot the remedy for the evil as it exists be safely left to the Legislature?

MR. ARMSTRONG. I was quite of opinion that it could be left safely to the Legislature, when this section was under consideration; and yet I did not think, as it touched the liberty of the citizens, that it was of sufficient unimportance to refer it exclusively to the Legislature, and I was quite willing it should become a constitutional provision; but I trust the gentleman from Allegheny will withdraw his objection to this amendment which seems to be a reasonable precaution and limitation against the abuse

of a rule which is intended to correct abuses; and do not let us run the risk of making the remedy worse than the disease. I believe all that the gentleman from Allegheny desires is accomplished by the section, with the amendment which the gentleman from Columbia proposes. I trust, therefore, it will be adopted.

Mr. BEEBE. Before the vote is taken I should like to have this amendment read again. Although listening to the best of my ability, I have not yet ascertained the precise language of it.

The PRESIDENT. The amendment will be read.

The amendment was read.

The PRESIDENT. The question is on the motion of the delegate from Columbia, to go into committee of the whole for the purpose of amending section fourteen, by adding the words just read.

The motion was agreed to; ayes forty-six, noes twenty-two.

The Convention accordingly resolved itself into committee of the whole, Mr. Edwards in the chair.

The CHAIRMAN. The committee of the whole have had referred to them an amendment to section fourteen, to add at the end of it the words, "upon allowance by the appellate court, or a judge thereof, on cause shown." The amendment is made and the committee will rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Edwards) reported that the committee of the whole had made the amendment to the fourteenth section ordered by the Convention.

Mr. HANNA. I move that the Convention resolve itself into committee of the whole for the purpose of amending section twenty-three, and I indicate the following amendment: To strike out in the twenty-first and twenty-second lines the words, "without expense to parties."

It will be observed that by this section it is proposed to be established in all cities where the population exceeds one hundred and fifty thousand, a separate orphans' court, and it further provides that all accounts filed in the register's office shall be audited by the court without expense to parties, except where all parties interested in a pending proceeding shall nominate an auditor.

These words I submit should be stricken out. I understand very well the object the committee had in view in reporting the clause in its present shape. I appreciate very fully their reason. It is, in

their view, to correct an evil, and while I do not agree with them that this is the proper way to do it or the proper place to do it, because I submit as I have always believed that that is a question entirely with the courts; yet while I am willing to accept the situation that the Convention have resolved upon by this plan, I beg leave to call their attention to the practical difficulties connected with the working of this section.

It is proposed in the city of Philadelphia to have a separate orphans' court. All accounts filed in the register's office are to be audited by the judges of that court, and not referred to auditors as ministers of the court, except upon request of the parties. Now, let us see how that will work, and I ask the candid and impartial judgment of my friend, the chairman of this Judiciary Committee, for I know that he has no feeling in this matter, and if I show him that what he proposes by this plan is impracticable, he will be willing, for one, to agree to any reasonable change.

I believe that in the city and county of Philadelphia there are filed annually probably two thousand accounts of administrators, executors, trustees, &c. These are all to be audited by the court. Now I believe that at least sixty percent. of the accounts filed are referred by the court to different members of the bar as auditors to examine and report upon the state of those accounts. If we retain this provision, at least one thousand or twelve hundred of these accounts must be settled by the judges of the courts, say one hundred of them a month. How many judges, I should like to know, will be required to perform the manual labor incident to the auditing and settling of these various accounts? These judges must hold the court. The counsel for the accountant and the counsel for the executors and claimants, legatees and distributees, must appear before the judges. The accountant must have his vouchers, the claimants must produce their evidence to support their claims, and it will take days, perhaps, to settle one account; perhaps it may require weeks. I recall one account filed in the city of Philadelphia which had taken months for hearing, and finally when it reached the Supreme Court, I think it consumed about two weeks in argument.

There is one practical difficulty in regard to the working of such a system. I submit it cannot be successfully carried

out by the judges unless we have a bench equal to, or greater in number, than the bench composing the court of common pleas. We propose that twelve judges shall constitute the court of common pleas, providing that if the business requires it, their number shall be increased. Now, at least twelve judges would be required to form the bench of the orphans' court; yet we provide here that all this work, all the labor incident to the settling of accounts filed in the orphans' court or the register's office, shall not only be performed by the judges of the court, but without expense to the parties. Is that right? I submit that it is wrong thus to burden the State with the vast expense of this court, with the fees of the register, the pay of his clerks, and the expense of all the machinery of the court, and to provide that the parties interested in the settlement of the various estates shall be at no expense whatever. Is that right? Should the State be made liable for all this burden? Should the city or the county pay all the expenses of the settlement of the estates? I submit not.

Then, again, if we adopt such a principle as this, it unsettles a rule of law which has been in existence in Pennsylvania probably for forty years. It uproots the system of orphans' court practice, known to every lawyer on this floor—I mean that excellent system of jurisprudence of which I might name as the founder, Judge King, the president judge of our court of common pleas for so many years, and perhaps the father of our system of orphans' court practice, together with our equity practice. Now, when an account is filed, and it is shown that an executor or administrator or guardian has been a defaulter, or has been negligent in the administration of the trust reposed in him and has used the funds he had in his hands for the benefit of others; that he has either used them in common with his own funds, or carried on his own business with the funds confided to him in a fiduciary capacity; when that account comes to be settled, upon the fact being shown, he can be made to pay back not only the funds in his hands to the parties in interest, but to pay also all the costs and expenses incident to the settlement of his account. He is compelled not only to pay the costs of court, but the counsel fees and the auditor's fees are saddled upon him, and properly so, whether he is a defaulting accountant or only a negligent or careless one. Can any such thing

be done under a system like this now proposed? I say no; we here provide that all this shall be done without expense to the party, no matter how fraudulent his account has been, no matter how negligent he has been in the keeping of his account, no matter what funds of others he has squandered, no matter what private fortune he may have amassed by using these funds for his own use, the account is to be settled without expense to him. Is that right? I submit to every dispassionate man on this floor whether such a system of practice is right.

For this reason, and for this reason alone—while I am willing to adopt this section if the Convention is resolved upon it—I make this motion for the purpose of correcting it and leaving the practice under our orphans' court system precisely as it is now, and hope that these words will be stricken out.

Mr. TEMPLE. I suppose there is no delegate on this floor more familiar with the subject of the settlement of accounts in the orphans' court than the delegate who has just taken his seat. Certainly, we could refer to him if we desired any reference upon this subject, with a good deal of confidence; but I submit that after the discussions which have taken place upon this very subject, it is unwise in this Convention to now undertake to strike out what has already been placed in this section. I cannot conceive why it is that the learned delegate, after so many votes have been taken upon this subject in this Convention, still persists in pressing this amendment which has twice before been voted down in this body.

Mr. HANNA. I rise to explain. It was only moved once, in committee of the whole.

Mr. TEMPLE. I affirm that there have been two square votes taken on this very proposition. It was first introduced by the distinguished delegate from Philadelphia, (Judge Woodwood,) after an explanation given by him showing the robbery, as he called it, of dead men's estates in Philadelphia county. This Convention in committee of the whole adopted this section. It then came up on second reading, and the learned delegate from Philadelphia, (Mr. Hanna,) with two or three others, attacked it again in this manner, but it was adopted by the Convention.

Mr. HANNA. I beg the gentleman's pardon. I believe he is correct.

Mr. TEMPLE. I understood the gentleman to say that sixty per cent. of the accounts filed in the office of the register of wills were referred to auditors for confirmation and for settlement. The learned delegate failed to notify the delegates upon this floor who are not so familiar with this subject, that it takes twenty-five per cent. of many estates in this county to settle them after they reach the hands of the auditor. He failed to state also that in some instances small estates amounting to four hundred or five hundred dollars, cost as much to have them audited as estates amounting to two hundred thousand dollars or three hundred thousand dollars.

Mr. HANNA. Oh, no! that is not the question.

Mr. TEMPLE. My friend says that is not the question. I submit that it is a reason for remedying the evil which now exists. If my friend comes before the Convention and makes the earnest appeal which he has made on two or three occasions, asking to have things exist in this county in regard to dead men's estates as they have heretofore existed, he should state the whole truth with regard to the subject. At the time he undertakes to give us a reason for not making this change, he ought to be candid enough to tell this Convention the costs attached to the settlement of these estates and the inequality of it. I took the trouble upon one other occasion, to show in detail the inequality of the entire system. That has never been presented by the gentleman who offers this amendment, or by any other of those delegates who are united with him on this subject. As I said a moment ago, it is an inequality for the reason that if a man dies worth \$400 or \$500, it costs as much to settle that estate, in many instances, as though the estate was worth \$400,000 or \$500,000.

Again, the gentleman says it will overburden the courts, and that the Commonwealth should not be saddled with this expense. I tell him that it would be better for us to tax decedents' estates to the extent of one-quarter or one-half per cent. and let the tax go into the funds of the Commonwealth in order to pay these expenses, because then there would be produced something like equality; then there would be some reason to offer to this Convention why we should retain the present system. I do not intend to speak of the system as it has existed heretofore in the city and county of Philadelphia.

The delegate at large (Mr. Woodward) who has previously reviewed this subject told this Convention, in his remarks in the early part of our session, that it was nothing less than robbery of dead men's estates in the city and county of Philadelphia from the time the accountant files his account until the distribution is finally made.

I shall not go into that subject, Mr. President, but I desire to make one other remark in answer to what the gentleman (Mr. Hanna) has said. If I understand him aright he says that the system as adopted, I believe by the late Judge King, was satisfactory to the city of Philadelphia. I think that is not a very happy illustration for him to make upon this floor. He has said that nobody in this community has asked for a change. Will the delegate from Philadelphia say that there has been a meeting of the bar which asked to have this system continued? The very moment there was a meeting of the bar called upon this subject in Philadelphia county, they could not get a corporal's guard to attend and advocate such a system as now exists, except those members who have profited directly by this system of auditing. The people of Philadelphia have been suffering from these burdens for years; and if it were possible to go before them and ask what their judgment is upon this subject, there would be almost a universal demonstration against the existing system. The people of Philadelphia look to their delegates in this Convention and to the body itself to remedy this evil. Therefore, there is nothing in that reason urged by the delegate from this city, and I do hope that the Convention will support this section as it now stands in this article on the judiciary, and that they will not, for the reasons advanced by my friend from Philadelphia this morning, undertake to strike out that portion of the section to which he refers. I say again that we are to consult the wishes of the Philadelphia bar and that we are to consult the wishes of the people of Philadelphia, and if that be done then this section will remain just as it is. I believe that the majority of the delegates who reside in this county will agree with me in that opinion.

Mr. COCHRAN. The motion which is now pending is one which under certain circumstances I would vote for and under other circumstances would oppose. The object in establishing separate orphans' courts should be to relieve the

business of those courts from the many expenses which are now connected with it, which have been spoken of in relation to the city of Philadelphia particularly. But wherever a separate orphans' court is established, it seems to me that in justice to those who are interested in the estates of decedents, all questions of exception to the accounts and disputed questions of distributions ought to be decided without expense to the parties. The difficulty that I have with the clause of the section as it stands at present is that it is ambiguous. It does not clearly appear from it, whether the provision that accounts shall be settled without expense to the parties, applies alone to counties in which these separate orphans' courts are established, or whether it applies to all the counties in the State.

To make a provision of this kind applicable to all the counties in the State is to absolutely prevent, practically, the settlement of the estates of decedents, for in those counties where there are no separate orphans' courts it is impossible for the courts to settle exception and disputed questions of distribution without the agency and assistance of auditors; and, sir, where there are such separate orphans' courts and wherever they shall be hereafter established, there a provision should be inserted in the section that the account should be settled without expense to parties. The evil does not exist in the country to the same extent, and it has not become so injurious as it is represented to be in the city of Philadelphia; but even in the country we find that this matter of auditing accounts is getting in many cases to be very oppressive to those who are interested in the estates of decedents. I would greatly prefer to so arrange this section as to make it in distinct terms applicable to those counties in which separate orphans' courts are established, and to remove the ambiguity that now exists. Let it stand so that accounts can be settled in such districts without expense to parties.

I had intended to move before this motion was made, if I had obtained the floor for that purpose, to amend the section, by striking out, in the twenty-first line, the words "as register or," and inserting after the word "said" in the same line the words "separate orphans'," so as to make it read "separate orphans' court," and after the word "shall," inserting the words "when exceptions are filed thereto, or disputed questions of distribution arise." The ef-

fect of that would be to make it clear that this provision applied only to counties in which separate orphans' courts are established and also to require the auditing to be of those accounts to which exceptions are filed or upon which disputed questions of distribution arise. Under such circumstances these should be settled without expense to the parties, and I think it is only just to make for the rural districts as they now exist a provision of this kind. I know, speaking for the district in which I reside, that it would be better for us to provide that an account shall be settled without expense to the party; without making that qualification would be to prevent the settlement of decedents' estates, for the judges of the courts cannot and would not attend to it.

I shall vote against the amendment as it now stands in the hope that it will not be agreed to, and that the amendment which I desire to offer may then be adopted.

The PRESIDENT. The question is upon going into committee of the whole for the purpose of making the amendment indicated by the gentleman from Philadelphia (Mr. Hanna.)

The motion was rejected.

Mr. COCHRAN. I now move to go into committee of the whole for the purpose of amending the section as follows: In the twenty-first line, striking out the words "as register or;" at the commencement of the line inserting the words "separate orphans'" after the word "said;" and after the word "shall," inserting "when exceptions shall be filed thereto or disputed questions of distribution shall arise."

Mr. HAY. Will the gentleman read the section as it will stand if amended as he proposes.

Mr. COCHRAN. I will read it as it would then stand:

"All accounts filed with him as clerk of said separate orphans' court shall, when exceptions shall be filed thereto or disputed questions shall arise, be audited by the court, without expense to parties."

Mr. WOODWARD. The gentleman has overlooked one thing, which I am sure he will correct. According to his amendment an account to which there were no exceptions could be referred to auditors, as now, which is a perpetuation of the abuse we intended to remedy.

Mr. COCHRAN. That is exactly what I wanted to avoid. It was only in cases where exceptions should be filed or dis-

puted questions arise that the accounts should be audited.

Mr. WOODWARD. But the amendment is, whenever exceptions are filed or a dispute arises the account shall be audited without expense to parties. In other cases, where there are no exceptions, where there are no disputes, the practice would be to refer them to auditors, of course at cost to parties for the services of those auditors.

Mr. COCHRAN. That is not at all the practice in the country.

Mr. WOODWARD. I know not how it is in the country; but in Philadelphia they refer everything, whether there is a dispute or not.

Mr. COCHRAN. There is a matter of difficulty with regard to those counties in which no separate orphans' courts may be established. Before the amendment was made it was ambiguous, because it said that "all accounts filed with him as register or;" and the accounts could only be filed with him as register where there was no separate orphans' court; but when a separate orphans' court is established the register becomes the clerk of that court and the accounts are filed with him as such clerk. The section would read, if amended as I propose:

"All accounts filed with him as clerk of said separate orphans' court shall be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint."

And I now move further to amend by adding after the word "appoint," in the twenty-third line, these words—

The PRESIDENT. The question is on the motion of the gentleman from York:

Mr. ARMSTRONG. I should like to hear it read as it stands proposed to be amended.

The PRESIDENT. The Clerk will read the section as proposed to be amended.

The CLERK read as follows:

"All accounts filed with him as clerk of said separate orphans' court shall, when exceptions shall be filed thereto or disputed questions of distribution shall arise, be audited by the court without expense to parties."

Mr. RUSSELL. I would suggest to the gentleman from York that he had better insert the words "which it is necessary to have audited."

Mr. COCHRAN. I propose to make that subject a separate amendment.

Mr. ARMSTRONG. Why strike out the words "as register or?"

Mr. COCHRAN. Because after the separate orphans' courts are established the accounts are filed with the register as clerk of the orphans' court. If no separate orphans' court is established he is the register.

Mr. WOODWARD. As I understand the amendment, I hope it will not be adopted. In itself it seems plausible enough, but I tell you and gentlemen of this Convention that the immediate effect of that amendment will be to throw open all the undisputed cases to these pets of the courts who are appointed auditors at extravagant rates. Why, sir, have you ever been before a Philadelphia auditor? I have. The first day, for which I suppose he charges ten dollars, his whole duty is in verifying the vouchers, which consists in reading over the items and checking them off on the paper. That is his first day's duty. The next day some other branch of his duty is performed, and the expense of all this is thrown on women and children at just that period of time when they are least able to bear it, soon after the death of the husband and father.

Mr. COCHRAN. The gentleman from Philadelphia will permit me to explain. I propose to offer a further amendment after the word "appoint," to insert "and no other accounts shall be audited." I propose to modify my amendment by adding after the word "appoint," in the twenty-third line, "and no other accounts shall be audited."

The PRESIDENT. The section as proposed to be amended will be read.

The CLERK read as follows:

"All accounts filed with him as clerk of said separate orphans' court shall, when exceptions shall be filed thereto or disputed questions of distribution shall arise, be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor, whom the court may in its discretion appoint; and no other accounts shall be audited."

Mr. HAY. I should like to suggest to the delegate from York the propriety of adding to the end of his amendment the words, "except at the discretion of the court." As it now stands, it would prohibit in the Constitution the auditing of any accounts unless the parties interested filed exceptions. It seems to me that there might be cases in which it would be proper for the court itself to in-

itiate an inquiry into the correctness of accounts, and we ought to leave them the authority to do so. I should vote against an amendment which would prohibit the auditing of *all* accounts to which exceptions were not filed; although as a general rule there is no necessity for its being done. I think there ought to be added to the end of this amendment, "except at the discretion of the court," and would then vote for it.

Mr. BUCKALEW. I want a separate vote on the first clause of this amendment.

The PRESIDENT. It cannot be divided.

Mr. BUCKALEW. The accounts of executors and administrators are filed with the register as register, and they are not filed with the court in any proper or technical sense. The Committee on Revision were, therefore, correct in using both expressions, "filed with the register or filed in the orphans' court." Now, the gentleman proposes to strike out all accounts filed with registers as such. It seems to me that would exclude the great bulk of accounts that are filed. Only some particular accounts are filed directly in the orphans' court. The great body of them are filed with the register as such. Therefore I think the language of the Committee on Revision is strictly accurate.

As to the other part of the gentleman's amendment, that no other accounts except those objected to shall be audited at all, I do not see that there is much importance in it. The court should have authority in case of a bill of review or otherwise. I submit, therefore, that the section had better be left as it is; but if we are to make any change I hope we shall not make the change proposed by the first part of the amendment, excluding accounts filed with the register as such.

The PRESIDENT. The question is on the motion of the delegate from York, to go into committee of the whole for the purpose of making the amendment indicated by him.

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

Mr. D. W. PATTERSON. I second the call.

The PRESIDENT. The delegate from Columbia will understand that there can be no division of a motion like this.

Mr. BUCKALEW. I shall vote against the whole proposition.

The CLERK proceeded to call the roll.

Mr. BAKER. [When his name was called.] I am paired on this question with the gentleman from Philadelphia (Mr. Campbell.) He is opposed to this motion, and I, if at liberty to vote, would vote "yea."

The CLERK resumed and concluded the call of the yeas and nays, with the following result:

YEAS.

Messrs. Achenbach, Baily, (Perry,) Bailey, (Huntingdon,) Brodhead, Calvin, Cochran, Corson, Curtin, De France, Funck, Gilpin, Hanna, Heverin, Landis, Lawrence, Lear, MacVeagh, Metzger, Mott, Patterson, D. W., Purviance, Sam'l A., Ross, White, Harry and White, J. W. F.—24.

NAYS.

Messrs. Alricks, Armstrong, Baer, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Broomall, Brown, Buckalew, Cassidy, Church, Cronmiller, Darlington, Edwards, Elliott, Ewing, Fell, Fulton, Guthrie, Harvey, Hay, Horton, Howard, Hunsicker, Lilly, MacConnell, M'Clean, M'Culloch, M'Michael, Mann, Minor, Newlin, Niles, Palmer, G. W., Patterson, T. H. B., Patton, Porter, Purviance, John N., Rooke, Russell, Smith, H. G., Smith, Henry W., Stanton, Struthers, Temple, Van Reed, Wetherill, J. M., Wetherill, John Price, White, David N., Woodward, Worrell and Walker, *President*—53.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Carter, Clark, Collins, Corbett, Craig, Curry, Cuyler, Dallas, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Green, Hall, Hazzard, Hemphill, Kaine, Knight, Lamberton, Littleton, Long, M'Camant, M'Murray, Mantor, Mitchell, Palmer, H. W., Parsons, Pughe, Purman, Read, John R., Reed, Andrew, Reynolds, Runk, Sharpe, Simpson, Smith, William H., Stewart, Turrell, Wherry and Wright—56.

Mr. HARRY WHITE. I move to go into committee of the whole for the purpose of amending the twenty-third section by inserting after the word "he," in the nineteenth line, the words, "shall be compensated by a fixed salary and."

Mr. President, I find this section so entirely different from what it was when it was originally passed that I offer this amendment in conformity with what I

desire in this respect so as to elicit some explanation. I discover that the original section as we passed it on second reading contained in the twelfth line the words, "shall be compensated by a fixed salary." I observe that those words are stricken out, and nowhere in the section can I discover a provision for a compensation by a fixed salary.

Mr. BUCKALEW. I will explain, if the gentleman will permit me. In the article upon county, township and borough officers, the salaries of the registers and recorders and all other county officers are provided for. It was struck out here because it is simply a duplicate provision, and its proper place is in the other article, where the compensation of all county officers is provided for.

Mr. HARRY WHITE. If that is the case I withdraw my motion.

Mr. HORTON. Will it be in order to move the previous question on this article? If it be in order I move it. ["No." "No."] I will withdraw it for the present.

Mr. BROOMALL. I move to go into committee of the whole for the purpose of restoring at the end of the twenty-fifth section the words, "in the same manner as in civil cases," which have been stricken out by the Committee on Revision and Adjustment.

I do not know why the committee struck out those words. The object of the section was to permit that class of criminal cases, cases of felonious homicide, to go to the Supreme Court precisely as civil cases go there, upon writs of error, which can take up exceptions to the evidence, the charge, and everything of that sort. By the striking out of those words probably it may be construed that only the record can go up as upon *certiorari* to see if everything is regular upon the face of it. I hold therefore that those words are necessary to carry out the view the Convention had when the section was inserted upon the second reading of this article; and I am the more impressed with this by the fact that those words are in the act of Assembly which the Convention then intended simply to make a part of the Constitution so that future legislation should not change it. I therefore trust that the Convention will restore these words in order to carry out the intention of the section when it was inserted.

Mr. HUNSICKER. If those words be not restored, then the section would be weaker than the act of Assembly that

now exists on this subject, and what ever induced the Committee on Revision and Adjustment to strike those words out is more than I can understand, because by striking them out, as the gentleman from Delaware has observed, they emasculate and destroy the whole purpose of it. Leaving the word "review" stand there by itself may mean to review it on *certiorari*.

Mr. C. A. BLACK. Oh, no.

Mr. HUNSICKER. Yes, sir, it may. Why is it that you say in all enactments "in the same manner as civil cases are not reviewed."

Mr. C. A. BLACK. The whole thing goes up.

Mr. HUNSICKER. No, sir, it does not. In section twenty-one, which was carefully drawn, with the assistance of four or five of the ablest lawyers of this body, to provide for a review of proceedings to test the validity of an act of Assembly, the words were, in lines nineteen and twenty: "Either party shall be entitled, within three months, and not thereafter, to a writ of error, as in other cases." Now, the committee have made this section to read in this way: "May remove the indictment, record, and all proceedings to the Supreme Court for review." They do not say "for review as civil cases are reviewed upon writs of error," but simply "for review." Therefore I say that when they struck out the words "in the same manner as in civil cases," they took the life out of the section and made it weaker than the act of Assembly.

Mr. HARRY WHITE. The remarks of the delegate from Montgomery with whom I agree entirely as to the purpose of the section, provoke me to say a word. I think the delegate is entirely mistaken. I think possibly it was transcending their power for the Committee on Revision and Adjustment to strike out these very material words, but to accomplish the purpose in view I think it was necessary to strike them out. The delegate from Montgomery and the delegate from Delaware desire to have those words reinserted so that a writ of error shall be taken in cases of felonious homicide as in civil cases. Now, Mr. President, such is not the law to-day. If delegates will refer to the act of 1780, which is known as the act of the Schœppe case, they will discover that that act authorizes writs of error in cases of homicide and enlarges the power of the court beyond anything which ever theretofore existed. It au-

thorizes the court to review the testimony, and if they do not discover certain elements existing therein as constituting the offence, to reverse the decision of the court below and send it back for another trial.

I have thus hastily stated the distinction existing between a writ of error in a homicide case as now authorized by act of Assembly and a writ of error as allowed in civil cases. Now, then, if you require in these very words a homicide case to be reviewed only in the same manner as civil cases are now reviewed, you prevent the Supreme Court, or you prevent the Legislature from passing a statute authorizing the Supreme Court to go into the testimony and review it. I apprehend no gentleman will desire a writ of error to be allowed in criminal cases which authorizes the Supreme Court to go into the testimony. We all understand how a bill of exceptions is made up. Now, if you want to make homicides exceptional cases and require the court not only to examine the record but to examine the testimony, the section should stand as it is; but I hope the motion of the delegate from Delaware will not prevail.

Mr. BUCKALEW. I do not know that strictly the committee had power to strike out these words. It was done possibly without due reflection; but I must say that the omission of these words seems to be necessary for two reasons: First, as has been stated by the gentleman from Indiana, if they are retained, they will narrow and contract the power which the Supreme Court now possesses in homicide cases and will prevent that court from reviewing a conviction in a capital case upon the merits at all. In the next place, it must be evident that there are certain provisions in the manner of taking up civil cases which would be inapplicable in criminal cases. In a criminal case you would not give bail upon your writ of error and in many other respects different regulations as to the manner will necessarily have to be prescribed by the Legislature. So upon both of the grounds which I have mentioned it is better to leave in the manner in which these cases shall be taken up and the extent of the power of the Supreme Court in such cases to be regulated by law, instead of endeavoring to fix an unchangeable rule in the Constitution of the Commonwealth. I have no desire, nor has the committee any desire to limit the privilege of a defendant in cases of

this sort, and no such effect would follow, in my judgment, from the adoption of the amendment which has been proposed by the Committee on Revision and Adjustment.

The PRESIDENT. The question is on the motion of the delegate from Delaware (Mr. Broomall.)

The motion was not agreed to, ayes, twelve—noes not counted.

Mr. J. N. PURVIANCE. I move to reconsider the vote by which the motion of the gentleman from Centre (Mr. Curtin) to strike out section five, relating to the courts of Philadelphia, was defeated.

I make this motion at the instance of members of the Philadelphia bar, some of whom allege that they desire to continue their courts—

Mr. DALLAS. I rise to a point of order. Is a motion to reconsider debatable?

The PRESIDENT. It is not.

Mr. J. N. PURVIANCE. I was not debating it. I was merely giving the reason for making the motion.

The PRESIDENT. Did the delegate vote in the majority?

Mr. J. N. PURVIANCE. I did.

The PRESIDENT. Who seconds the motion?

Mr. STRUTHERS. I second it. I voted in the majority.

Mr. ARMSTRONG. Does the Chair decide that the motion to reconsider is not debatable?

The PRESIDENT. It is not.

Mr. MACVEAGH. I think it is better to settle this matter by yeas and nays. I call for the yeas and nays.

Mr. CHURCH. We settled it a little while ago by yeas and nays.

Mr. J. PRICE WETHERILL. I second the call.

Mr. BAKER. I am paired on this question with Mr. Campbell.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Brodhead, Cassidy, Curtin, Ewing, Gibson, Hanna, Harvey, Hazzard, Heverin, Horton, Hunsicker, Lawrence, Lear, MacVeagh, McClean, McMichael, Mann, Newlin, Niles, Porter, Purviance, John N., Read, John R., Ross, Smith, Henry W., Stanton, Struthers, Wetherill, John Price, White, Harry, White, J. W. F., Woodward, Worrell and Walker.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Biddle, Black, Charles A., Bowman, Boyd, Broomall, Brown, Buckalew, Calvin, Church, Clark, Cochran, Corson, Cronmiller, Dallas, Darlington, Elliott, Fulton, Funck, Gilpin, Guthrie, Hay, Howard, Landis, Lilly, MacConnell, McCulloch, Metzger, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Purviance, Samuel A., Russell, Simpson, Temple, Van Reed, Wetherill, J. M., White, David N. and Wright—49.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Carter, Collins, Corbett, Craig, Curry, Cuyler, Davis, De France, Dodd, Dunning, Edwards, Ellis, Fell, Finney, Green, Hall, Hemphill, Kaine, Knight, Lamberton, Littleton, Long, M'Camant, M'Murray, Mantor, Mitchell, Parsons, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Runk, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Turrell and Wherry—52.

Mr. STRUTHERS. I move to go into committee of the whole for the purpose of amending the twelfth section by striking out after the word "large."

Mr. LILLY. That was struck out.

Mr. STRUTHERS. No, I think not. The motion is to go into committee of the whole for striking out all after the word "large" in the seventh line of the twelfth section to the word "they" in the ninth line of the same section. The words are:

"And in the election of said magistrates 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."

On that question I call for the yeas and nays. I have no desire to debate it.

Mr. D. W. PATTERSON. I second the call for the yeas and nays.

The yeas and nays were taken, and resulted as follows:

Y E A S.

Messrs. Beebe, Bowman, Broomall, Darlington, Edwards, Ewing, Hanna, Horton, Howard, Lawrence, Lear, MacConnell, MacVeagh, Minor, Niles, Patterson, D. W., Porter, Purviance, John N., Purviance, Samuel A., Ross, Simpson,

Stanton, Struthers, Wetherill, J. M., White, Harry, White, J. W. F. and Walker, *President*—27.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailly, (Perry,) Baker, Biddle, Black, Chas. A., Boyd, Brodhead, Brown, Buckalew, Calvin, Campbell, Carter, Cassidy, Church, Clark, Corson, Cronmiller, Curtin, Dallas, Elliott, Fulton, Gibson, Guthrie, Harvey, Hay, Heverin, Hunsicker, Lamberton, Landis, Lilly, M'Clean, McCulloch, M'Michael, Mann, Metzger, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Read, John R., Russell, Smith, H. G., Smith, Henry W., Temple, Van Reed, Wetherill, John Price, Woodward, Worrell and Wright—53.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Carey, Cochran, Collins, Corbett, Craig, Curry, Cuyler, Davis, De France, Dodd, Dunning, Ellis, Fell, Finney, Funck, Gilpin, Green, Hall, Hazard, Hemphill, Kaine, Knight, Littleton, Long, M'Camant, M'Murray, Mantor, Mitchell, Newlin, Parsons, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Runk, Sharpe, Smith, Wm. H., Stewart, Turrell, Wherry and White, David N.—53.

Mr. CALVIN. I move that the Convention go into committee of the whole for the purpose of amending section thirty-two in the first line, by striking out "forty thousand five hundred" and inserting "fifty thousand," and on that motion I ask for the yeas and nays.

Mr. CURTIN. I second the call.

The question being taken by yeas and nays resulted as follows:

Y E A S.

Messrs. Alricks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Black, Chas. A., Boyd, Buckalew, Calvin, Carter, Cassidy, Church, Cochran, Cronmiller, Curtin, Edwards, Ewing, Fulton, Gilpin, Hanna, Harvey, Howard, Landis, Lawrence, Lear, Lilly, MacVeagh, Patterson, D. W., Rooke, Ross, Russell, Smith, Henry W., Wetherill, J. M., Wetherill, Jno. Price and Walker, *President*—34.

N A Y S.

Messrs. Achenbach, Baer, Baker, Beebe, Biddle, Bowman, Brodhead, Broomall, Brown, Campbell, Corson, Dallas, Dar-

lington De France, Funck, Guthrie, Hay, Hazzard, Hunsicker, Lambertson, MacConnell, M'Clean, M'Culloch, M'Michael, Mann, Metzger, Minor, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purviance, John N., Purviance, Samuel A., Read, John R., Stanton, Struthers, Temple, Van Reed, White, David N., White, Harry, White, J. W. F., Woodward, Worrell and Wright—48.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Carey, Clark, Collins, Corbett, Craig, Curry, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Finney, Gibson, Green, Hall, Hemphill, Heverin, Horton, Kaine, Knight, Littleton, Long, M'Camant, M'Murray, Mantor, Mitchell, Parsons, Pughe, Purman, Reed, Andrew, Reynolds, Runk, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Turrel and Wherry—51.

MR. J. N. PURVIANCE. I ask unanimous consent that we amend the section by striking out the "five hundred," so as to leave "forty thousand" as the number of inhabitants to entitle a county to be a separate judicial district.

MR. LILLY. I object.

MR. DARLINGTON. Then I move that we go into committee of the whole for the purpose of striking out the words "five hundred" in the first line of the thirty-second section, so as to read "forty thousand."

MR. BOYD. I call for the yeas and nays.

MR. DARLINGTON. I second the call.

MR. MACVEAGH. Before the vote is taken, let us be told why five hundred was put in. It looks like special legislation.

MR. LILLY. It was put in by the persistency of certain people. Forty thousand was voted down, and so was forty-five thousand, and they could not change the ground until they got it to forty thousand five hundred.

MR. DARLINGTON. Forty thousand is the true figure.

THE PRESIDENT. The yeas and nays will be taken on the motion of the delegate from Chester.

MR. HARRY WHITE. May I inquire if the motion is to go into committee of the whole to strike out the words "five hundred?"

MR. DARLINGTON. That is it.

MR. HARRY WHITE. I hope it will be done.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Baker, Beebe, Biddle, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Buckalew, Campbell, Carter, Church, Darlington, De France, Gibson, Hanna, Hay, Hazzard, Horton, Lambertson, Lawrence, Lear, MacVeagh, M'Clean, Mann, Metzger, Minor, Niles, Patterson, T. H. B., Porter, Purviance, John N., Purviance, Samuel A., Russell, Stanton, Struthers, Wetherill, J. M., Wetherill, John Price, White, David N., White, Harry, White, J. W. F., Woodward, Worrell and Wright—45.

NAYS.

Messrs. Achenbach, Alricks, Baily, (Perry,) Boyd, Calvin, Cassidy, Cronmiller, Curtin, Dallas, Edwards, Ewing, Fulton, Funck, Gilpin, Guthrie, Harvey, Howard, Hunsicker, Landis, Lilly, MacConnell, M'Culloch, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Read, John R., Rooke, Ross, Smith, Henry W., Temple, Van Reed and Walker, *President*—34.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Carey, Clark, Cochran, Collins, Corbett, Corson, Craig, Curry, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Finney, Green, Hall, Hemphill, Heverin, Kaine, Knight, Littleton, Long, M'Camant, M'Michael, M'Murray, Mantor, Mitchell, Newlin, Parsons, Pughe, Purman, Reed, Andrew, Reynolds, Runk, Sharpe, Simpson, Smith, H. G., Smith, William H., Stewart, Turrel and Wherry—53.

The Convention accordingly resolved itself into committee of the whole, Mr. Beebe in the chair.

THE CHAIRMAN. The committee of the whole have before them an amendment to section thirty-two and have directed the striking out of the words "five hundred" in the first line. The amendment will be made.

The committee rose, and the President having resumed the chair the Chairman of the committee of the whole (Mr. Beebe) reported that the words indicated by the House had been stricken out in the thirty-second section.

Mr. CALVIN. I move to go into committee of the whole for the purpose of amending the eighteenth section by inserting in the fifth line after the words "in office," the words "but which may be increased."

The PRESIDENT. The words "in office" are not there. They have been stricken out by the House.

Mr. MACVEAGH. The whole subject is stricken out.

Mr. CALVIN. I do not propose to strike out anything. I merely propose to insert after the word "office" the words "but which may be increased," so as to leave that power to the Legislature in regard to the judges' salaries.

The PRESIDENT. The word "office" is not here.

Mr. CALVIN. Then leave the word "office" out, but insert the words, "but which may be increased." I desire to say that in the fifteenth section of the article on legislation we have declared that no law shall extend the term of any public officer or increase or diminish his salary after his election or appointment, and this section provides that 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, which shall be fixed by law and paid by the State and which shall not be diminished during their continuance in office.

The PRESIDENT. The words "and which shall not be diminished during their continuance in office" have been stricken out.

Mr. FULTON. I move—

Mr. CALVIN. I withdraw my amendment at present, for I see it would not be congruous.

Mr. ARMSTRONG. I desire to know how this question stands.

Mr. FULTON. I think I have the floor.

Mr. ARMSTRONG. The former amendment was not disposed of.

The PRESIDENT. It was withdrawn.

Mr. ARMSTRONG. This is a question of great importance, and I want to know the conclusion about it in the mind of the Convention. I ask the Clerk to read the section as it stands.

The CLERK. In the fourth and fifth lines the words, "and which shall not be diminished during their continuance in office" have been stricken out. In the article on legislation, fifteenth section, that matter is provided for.

Mr. ARMSTRONG. How is that provided for? I should like to hear it read in connection.

Mr. H. W. SMITH. It is provided for that the salaries shall be neither increased nor diminished after their election or appointment.

Mr. CALVIN. The fifteenth section of the article on legislation is that their salaries shall not be increased or diminished.

The CLERK. The fifteenth section of the article on legislation reads as follows:

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

Mr. ARMSTRONG. Now, Mr. President, I think that as to the judges of the Supreme Court, if not as to any other judges, there ought to be a provision that their salaries may be increased, and I call the attention of the Convention to it. It is an anomalous case and should be met by special provision.

Mr. MANN. I rise to a question of order. The Convention have already voted upon that precise question. The only portion of it we have considered—

Mr. ARMSTRONG. May I rise to a point of order? The Convention have not voted upon the question. They voted as to all officers and all judges. My amendment relates to the Supreme Court. I will withdraw the amendment, however, at present.

Mr. FULTON. Mr. President: I move to go into committee of the whole for the purpose of striking out the thirty-second section and substituting the following:

"The judicial districts of the State, except Philadelphia and Allegheny, until otherwise provided by law shall continue as at present organized. A district having over seventy thousand population shall be entitled to an additional law judge. The Legislature shall provide additional judges for districts as the business may require."

On this amendment, I desire to make but a very few remarks. Though in the Convention this question has been discussed at different times and at considerable length, yet there seem to be many members who are not satisfied with the present section, and I must confess that to me the section seems very ambiguous, besides not being that which I think will meet the approbation of the people of the State.

Mr. President, when we come to read this section closely, it is at least very questionable, and many of the best lawyers in this body have given it as their opinion that it authorizes the Legislature to make a separate judicial district of every county in this State, it matters not how small. If this is the meaning of the section, I ask the members of the Convention to stop and consider whether they mean to incorporate that into the State Constitution. We have counties in this State with but four, or five, or six, or ten thousand population. Do gentlemen mean to say that each of these small counties shall be made a separate judicial district and shall have a president judge?

Mr. J. N. PURVIANCE. No.

Mr. FULTON. But if there is any doubt on that subject, there can be no possible doubt but that any two of those counties of the State may be made a judicial district. Then you may have judicial districts with a population of not more than fifteen thousand, and from that to twenty thousand—some eight or ten such judicial districts in the State. Do gentlemen of this Convention mean to say that? Do they mean to incorporate that into the Constitution of the State? I trust they will say by their vote that they do not.

We are told that the business of the State in the present judicial districts has been increasing to such an extent that there must be a very large increase of the judicial force. Now, how is this? A petition was presented here but the other day from one of the counties of the judicial district from which I come, the county of Armstrong, purporting to be signed by all the members of the bar of that county, asking that the county be made a separate judicial district. But when we hear from the delegate of that county, what does he say? He tells you that not one-half of the members of that bar signed that paper, and of those who did sign it all but two were led to do so by misrepresentation and fraud. We are told that the business in the adjoining county of Butler has so increased that they must have a separate judge there. Now, the organization of the Convention on this subject, I have gone to a little trouble to ascertain the facts relative to the increase of judicial business in that district. I am sorry to say that I did not succeed in getting the information relative to Butler county, but I succeeded in getting it for Armstrong, and the facts do not bear out this statement.

In 1840, in one of the counties of that district—there were four counties in the judicial district up to 1850, but the county of Cambria was afterwards stricken off, and everybody said that the judicial force was ample in the remaining three counties to attend to all the business of the district after the loss of Cambria county—I find from the statement of the prothonotary of Armstrong county that in 1840, at the March term, there were seventy-three causes brought, outside of the judgments entered on warrants of attorney or judgment notes. In 1845, when there were still four counties in the district, there were one hundred and forty-six triable cases at the March term.

In 1850 there were one hundred and thirty cases.

In 1855, one hundred and thirty-nine cases.

In 1861, one hundred and thirty cases.

In 1865, one hundred and three cases.

In 1870, only three years ago, after all the railroads that are now operated in that county were built, and when there were as many oil wells sunk in the county as there are to-day, there were eighty-seven cases, about two-thirds as many cases as were brought in March term, 1845, when there were four counties in the district!

In 1873, from some accident—as these things go up and down year after year—there were one hundred and fifty-five cases, but eleven cases over the number brought in 1845, thus showing in one of the counties, which, from all its surroundings must have had as large an increase in business as any other county in the State, that it has only increased ten cases out of one hundred and forty-five since 1845.

That there is such an increase demanded in the State of Pennsylvania, as is here asked for to-day, is a mistake. The gentlemen of this Convention, however, voted the other day to put a clause in the Constitution giving every one of these small counties in the State a representative in our State Legislature. What effect will that have upon this section if we pass it here? It will have the effect of having about forty votes from these small counties that are under forty thousand five hundred in population. They will demand to be made separate judicial districts, and every gentleman who has any large experience in our State Legislature knows what forty votes can do when cast solidly on one side, as they will be when this local matter comes up in that body.

You are proposing here by this section to cut up the present judicial districts and to make every county that has over forty thousand five hundred population a separate judicial district. Then you throw the question open by allowing the representatives of those smaller counties that have only five thousand or six thousand population to come in and demand for their small counties a separate judicial district and a judge. Gentlemen, do we mean that; or shall we leave the districts as they are and leave the power in the members of the Legislature, after breaking up the whole judicial system of the State, leave it to the Legislature to settle these matters as the exigencies of the case may require and to provide judicial force as it may become necessary in the State?

MR. LILLY. I think this is the most sensible proposition that has been made on this subject since we have been on third reading. I contend that population is no measure for a judicial district, and I believe that every sensible man in the body will agree with me in that view. I can pick out counties containing 100,000 people, and even 125,000, where the judicial business of the courts would not employ a judge one-fourth of his time. Yet here you want to have a judge for every 40,500 population. If that be applied generally throughout the State you will create judicial districts in some cases which will not employ a judge fifteen days in the year. If that be so, what under heavens do we want with a president judge in such a district as that?

I believe that all will agree in my proposition that population is not the measure by which to make a judicial district, and if we propose to make population the measure of a district it will be something that we cannot control and that we shall know nothing about. I fully agree in the argument of the gentleman from Westmoreland and I shall vote for his amendment which will leave the matter in the Legislature where it ought to be. Where ever the people can go to the Legislature, from any quarter of the State, and say that their courts are behind hand and that they want the judicial force increased, if we leave it to the Legislature to provide a proper increase in such a case that body will relieve to the fullest extent the wants of any portion of this Commonwealth. When, however, you attempt to state in the Constitution that the Legislature is to make a judicial district of any county that may have a population of

40,500 the provision becomes obligatory and the separate judicial district must be formed whether the people or the business of that community require it or not. There are three counties in the State—Clarion, Elk and Forest, that would probably, judging from their geographical position be joined together, in one district. Their population does not amount to 17,000 and yet you will put a judge over them and a president judge at that; what has he got to do? He certainly will have nothing to do except to make an expense for the State to pay; and I hope that the motion to go into committee of the whole will prevail.

MR. J. N. PURVIANCE. I think the whole Convention will see the wisdom in not undoing now what has been done by this body after thorough consideration. We had this question agitated fully in committee of the whole and on second reading. There is no subject which has been more fully discussed than the proposition that a county containing a population of forty thousand should form a separate judicial district and be entitled to a president judge, and that the associate judges in those counties should be dispensed with. That has been voted on in this Convention as many as five or six times, on the questions that have been distinctly presented.

The proposition has received the opposition of the gentleman from Carbon (Mr. Lilly) every time it has been brought up, and it has received, also, the antagonism of the gentleman from Armstrong (Mr. Gilpin.) I presented to this Convention, a few days since, a petition from the members of the bar and from the officers of the court of Armstrong county, praying that this Convention should erect that county into a separate judicial district. It is said here to-day by the gentleman from Westmoreland (Mr. Fulton)—I know not by what authority he makes his assertion that it was only signed by two of the members of that Bar, and that the others purporting to sign it never signed it.

What is that petition? It is this, and it is to be found on page 1061 of the Journal, in the proceedings of Monday the twenty-second of last month:

To the Honorable the President and Members of the Constitutional Convention of the Commonwealth of Pennsylvania:

The undersigned officers of the court and members of the bar of Armstrong county, humbly represent, that the busi-

ness of said county is at present, and has been for some years, wholly beyond the ability of the existing judicial force of the district; and that in our opinion, the due and speedy administration of justice in said county demands a change in the present judicial district. We would, therefore, pray that the county of Armstrong may be erected into a separate judicial district, as the only proper remedy under the circumstances.

That is the petition and by whom is it signed? It is signed by

EDWARD S. GOLDEN,
F. MECHLIN,
J. G. HENRY, *Prothonotary*,
JEFF. REYNOLDS, *Dist. Att'y*,
CH. PHELPS,
G. E. BROWN,
J. V. PAINTER,
HENRY J. HAYS,
J. B. GATES,
B. W. SMITH,
JACKSON BOGGS,
J. C. GOLDEN,
J. O. BARRETT,
BARCLAY NULTON,
JOHN G. PARK, *late Proth'y*,
JOHN W. ROHRER,
A. J. MONTGOMERY, *Sheriff*,
J. B. FINLEY."

These are the members of the bar of Armstrong county, at least the leading members of the bar, and the officers of the court of that county, who, it is supposed, know something of the business of that county.

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

Mr. J. N. PURVIANCE. Certainly.

Mr. GILPIN. Are those all the members of the Armstrong county bar?

Mr. J. N. PURVIANCE. Very nearly so. The gentleman from Armstrong knows it to be so.

Mr. GILPIN. I neither know them to be nearly all the members, nor the leading members.

Mr. J. N. PURVIANCE. Your impression may be correct as to the members; but to this petition is signed the name of the late prothonotary, the present prothonotary, district attorney and sheriff, and fourteen of the leading lawyers of the county.

Under these circumstances can it be possible that this Convention will reverse their action at this late day, after the section has passed through the committee of the whole and in Convention some two

or three times, and fall back upon the proposition of the gentleman from Westmoreland, (Mr. Fulton,) which is merely the old proposition that the Convention has already rejected several times. After the gentleman from Carbon and the gentleman from Armstrong have exhausted their efforts in this matter, they have turned the subject over to the gentleman from Westmoreland to bring up the matter. I trust that this Convention will adhere to its action so far, and that every county containing a population of 40,000 inhabitants will be a separate judicial district and entitled to a president judge.

Now, in the county of Armstrong there are many cases on that docket untried, and yet at issue, and which have been at issue for four or five years, and cannot be reached. The same applies to the county of Westmoreland, and the same applies to the county of Indiana, as stated on this floor by Mr. Clark, a representative from that county, and I believe by General White. Why, then, present this to the Convention at this time, as it has taken us by surprise, and bring in a proposition which has never been discussed in this body, although we have been in session nearly a year.

I hope the Convention will adhere to its action, and pass the section as it has been modified by striking out "five hundred."

Mr. FULTON. Allow me to ask a question?

Mr. J. N. PURVIANCE. As many as you please.

The PRESIDENT. The gentleman from Butler has had his time.

Mr. FULTON. In this body the same matter has been voted on twice.

Mr. J. N. PURVIANCE. I do not understand the gentleman's question.

Mr. MACVEAGH. I submit that if this is retained, as I suppose the Convention has decided to retain it, it will expose us alone to the only well grounded complaint of this body by reason of the preponderance of lawyers in it. It adds thirty-five to our judges. It gives every third lawyer in this House an excellent chance of almost a life office. It adds one hundred and fifty thousand dollars a year at least—and I trust more, if it is to be added at all—to the taxes of the people of the State, because one or two judicial districts happen to be overburdened when there are innumerable other districts with their population and their

business whose trial lists are in most excellent condition to-day.

But it is not upon the pecuniary ground, it is not upon the ground of the inevitable unpopularity of this measure, that I oppose it; but it is because I believe in my heart it strikes at the very root of one of the best and most conservative institutions in Pennsylvania, and that is the character of the country bar. It is difficult enough now, with the enterprises of the country calling off the ability of the country into other walks in life, to persuade men of first-class ability to remain in the country in the practice of their profession; and just as you lessen the size of the districts, just as you diminish the jurisdiction of the judge, so you lessen the character and the capacity of the man who will undertake to discharge the trust and you will not find Blacks and Woodwards on your common pleas benches ten years from now, if you limit them to determining the controversies of small districts in these days.

The times have changed; the inducements to other lines of action and of enterprise have changed; and I do believe it would be wise on the part of this Convention to adopt the proposition of the gentleman from Westmoreland, (Mr. Fulton,) or something equivalent to it. I do not wish additional law judges by population. I want them where they are necessary or I want a new district where it is necessary; but I do not believe because you have seventy thousand people, therefore you require an additional law judge. That depends upon the efficiency of the judge you have, and upon the character of the population and the quantity of litigation it produces. But I shall vote for this in preference to the section.

The PRESIDENT. The question is on the motion of the gentleman from Westmoreland, (Mr. Fulton,) to go into committee of the whole to make the amendment indicated by him.

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

Mr. MACVEAGH. I second the call.

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

YEAS.

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Boyd, Buckalew, Calvin, Carter, Cochran, Curtin, Ewing, Fulton, Funck, Gibson, Gilpin, Horton, Howard, Landis, Lawrence,

Lilly, MacVeagh, M'Clean, M'Culloch, Patterson, D. W., Ross, Smith, Henry W., Wetherill J. M., Wetherill, Jno. Price, White, David N., White, W. F., Woodward and Walker, President—32.

NAYS.

Messrs. Achenbach, Andrews, Baer, Beebe, Biddle, Bowman, Brodhead, Broomall, Brown, Campbell, Church, Clark, Darlington, De France, Edwards, Elliott, Guthrie, Harvey, Hay, Hazzard, Hunsicker, Lamberton, Lear, MacConnell, M'Murray, Mann, Metzger, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Sam'l A., Read, John R., Russell, Simpson, Smith, H. G., Stanton, Struthers, Temple, White, Harry, Worrell and Wright—46.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Armstrong, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Carey, Cassidy, Collins, Corbett, Corson, Craig, Cronmiller, Curry, Cuyler, Dallas, Davis, Dodd, Dunning, Ellis, Fell, Finney, Green, Hall, Hanna, Hemphill, Heverin, Kaine, Knight, Littleton, Long, M'Camant, M'Michael, Mantor, Mitchell, Newlin, Parsons, Porter, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Runk, Sharpe, Smith, Wm. H., Stewart, Turrell, Van Reed, and Wherry—55.

Mr. J. M. BAILEY. Mr. President: I move that we now go into committee of the whole for the purpose of amendment as follows: Striking out the whole article and inserting in lieu thereof article five of the Constitution now in force. And on that I call for the yeas and nays.

Mr. TEMPLE. I second the call.

Mr. MACVEAGH. Let the substitute be read.

The words proposed to be substituted for the article are as follow:

ARTICLE V.

OF THE JUDICIARY.

SECTION 1. The judicial powers of this Commonwealth shall be vested in the Supreme Court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, registers' court and 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.

**ELECTION OF JUDGES—THEIR TENURE—
HOW COMMISSIONED AND REMOVED—
FIRST ELECTION—VACANCIES—COMPEN-
SATION—RESIDENCE.**

SECTION 2. The judges of the Supreme Court, or of 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: The judges of the Supreme Court by the qualified electors of the Commonwealth at large; 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, 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. The judges of the Supreme Court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well, (subject to the allotment hereinafter provided for subsequent to the first election. 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 reported 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 grounds of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature. The first election shall take place at the general election of this Commonwealth next after the adoption of this amendment; and the commissions of all the judges who may then be in office shall expire on the first Monday of December following, when the terms of the new judges shall commence. The persons who shall then be elected judges of the Supreme Court shall hold their offices as follows: One of them for three years, one for six years, one for nine years, one for twelve years and one for fifteen years, the term of each to be decided by lot by said judges as soon after the election as convenient, and the result certified by

them to the Governor that the commissions may be issued in accordance thereto. The judge whose commission will first expire, shall be chief justice during his term, and thereafter each justice whose commission shall first expire shall in turn be the chief justice; and if two or more commissions shall expire on the same day the judges holding them shall decide by lot which shall be chief justice. Any vacancies happening by death, resignation or otherwise in any of the said courts shall be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election. The judges of the Supreme Court and the presidents of the several courts of common pleas shall, at stated times, receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth or under the government of the United States or any other State of this Union. The judges of the Supreme Court during their continuance in office shall reside within this Commonwealth, and the other judges during their continuance in office shall reside within the district or county for which they were respectively elected.

COMMON PLEAS.

SECTION 3. Until otherwise directed by law the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.

JURISDICTION OF THE SUPREME COURT.

SECTION 4. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall by virtue of their offices be justices of oyer and terminer and general jail delivery in the several counties.

JURISDICTION OF JUDGES OF COMMON PLEAS.

SECTION 5. The judges of the court of common pleas in each county shall by virtue of their offices be justices of oyer and terminer and general jail delivery for the trial of capital and other offenders therein; any two of the said judges, the president being one, shall be a quorum, but they shall not hold a court of oyer and terminer or jail delivery in any county

when the judges of the Supreme Court or any of them shall be sitting in the same county. The party accused as well as the Commonwealth may under such regulations as shall be prescribed by law remove the indictment and proceedings or a transcript thereof into the Supreme Court.

CHANCERY POWERS VESTED IN COURTS.

SECTION 6. The Supreme Court and the several courts of common pleas shall, beside the powers heretofore usually exercised by them, have the power of a court of chancery so far as relates to perpetuating of testimony, the obtaining of evidence from places not within the State and the care of the persons and estates of those who are *non compos mentis*, and the Legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary, and may from time to time enlarge or diminish those powers or vest them in such other courts as they shall judge proper for the due administration of justice.

QUARTER SESSIONS, ORPHANS' AND REGISTER'S COURTS.

SECTION 7. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace and orphans' court thereof and the register of wills, together with the said judges or any two of them, shall compose the register's court of each county.

WRITS OF CERTIORARI.

SECTION 7. 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.

CRIMINAL POWERS.

SECTION 9. The president of the court in each circuit, within such circuit, and the judges of the court of common pleas within their respective counties, shall be justices of the peace so far as relates to criminal matters.

REGISTERS AND RECORDERS.

SECTION 10. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds shall be kept in each county.

STYLE OF PROCESS.

SECTION 11. The style of all process shall be "The Commonwealth of Penn-

sylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

The **PRESIDENT.** The Clerk will call the roll on this motion.

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

YEAS.

Messrs. Bailey, (Huntingdon,) Cochran, Curtin, Edwards, Ewing, Fulton, Funck, Gibson, Gilpin, Harvey, Howard, Hunsicker, Lawrence, Lear, Lilly, MacVeagh, M'Clean, Mann, Niles, Patterson, D. W., Smith, Henry W., White, David N., White, Harry, White, J. W. F., Woodward and Walker, *President*—26.

NAYS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Beebe, Biddle, Black, Charles A., Bowman, Boyd, Brodhead, Brown, Buckalew, Calvin, Carter, Church, Clark, Dallas, Darlington, DeFrance, Elliott, Guthrie, Hay, Hazzard, Horton, Lamberton, Landis, Littleton, MacConnell, M'Murray, Metzger, Minor, Mott, Palmer, G. W., Palmer, H. W. Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Russell, Simpson, Smith, H. G., Stanton, Struthers, Temple, Wetherill, J. M., Wetherill, John Price, Worrell and Wright—52.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Broomall, Bullitt, Campbell, Carey, Cassidy, Collins, Corbett, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Ellis, Fell, Finney, Green, Hall, Hanna, Hemphill, Heverin, Kaine, Knight, Long, M'Camant, M'Culloch, M'Michael, Mantor, Mitchell, Newlin, Parsons, Porter, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Runk, Sharpe, Smith, William H., Stewart, Turrell, Van Reed and Wherry—55.

Mr. **BAER.** I move to go into committee of the whole for the purpose of amending section nine in the first line, by inserting after the word "pleas" the "words "learned in the law," so that it will read:

"Every judge of the court of common pleas learned in the law 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 offences," &c.

I call the attention of members to the fact that the section as it stands now would authorize the holding of a court for the trial of capital cases by an associate judge not learned in the law. I do not think that is contemplated by this Convention.

SEVERAL DELEGATES. Let it be done by unanimous consent.

Mr. BAER. I ask unanimous consent to make that amendment.

The PRESIDENT. Will the Convention unanimously agree to that amendment? ["Aye."] It is agreed to.

Mr. S. A. PURVIANCE. I move that the Convention go into committee of the whole for the purpose of striking out section twenty-seven.

The PRESIDENT. That motion is before the Convention.

Mr. S. A. PURVIANCE. I wish merely to observe that this section, with the exception of the first two lines, is legislation entirely. Besides that, if the members of the Convention will turn to section eleven, they will find that that section as reported by the Committee on the Judiciary and as carried in committee of the whole and on second reading, makes ample provision for all that is necessary in reference to justices of the peace and aldermen. On the other hand, I wish further to observe, that the section which I now move to strike out was not reported from any committee, but was put in upon second reading merely. This section is a lengthy one; it encumbers the Constitution, and unless it is absolutely called for, and I believe it is not by any of the delegates from Allegheny, except perhaps Mr. Hay, and one or two others, it ought not to be left there, but should be stricken out. I hope the motion will prevail.

Mr. MACCONNELL. I will merely add to what my colleague states that this section has been received with very great disapprobation in the cities of Pittsburgh and Allegheny by the people generally, so far as my information goes. I have been informed by persons who are acquainted with the population there that if it remains in it will cost the Constitution ten thousand votes in those cities.

The PRESIDENT. Is the Convention ready for the question?

Mr. EDWARDS and Mr. T. H. B. PATTERSON called for the yeas and nays.

Mr. HAY. I hope the Convention will not agree to the motion to go into committee of the whole to strike this section

out. It is true that this proposition was incorporated in the article upon second reading; but, sir, in my opinion it is very essential that it should be retained. The eleventh section, which has been referred to, provides for a system of aldermen for the different cities of the Commonwealth; but the city of Philadelphia has secured from the Convention a separate system for itself, and unless some relief is afforded to Pittsburgh in the Constitution of the State none can ever be obtained. I desire to call the attention of the Convention to the fact that in the tenth section of the article upon legislation we have prohibited the Legislature from making any change in the aldermanic system of any single city, so that unless the change is agreed to here, Pittsburgh can never have any different system from that under which she is now suffering, or a different system from that existing in the smaller cities of the State.

I believe further that this change is one which is commended by the citizens of Pittsburgh, who are informed upon the merits of this subject. As far as my information goes, the only persons who have seriously opposed the adoption of the provision which is contained in section twenty-seven are the persons who are holding these offices now, the aldermen of the city. As a matter of course, they will be opposed to any change that would effect their holding such positions in the future; but I do not think that the opinions of persons who are so much interested in the question ought to be very seriously considered by this body. The best of our aldermen would probably be elected to the new positions. As for the newspapers of the city—the ordinary organs of public opinion, which usually reflect it with some degree of accuracy—one newspaper, and one which has been very friendly to the action of this Convention and to the adoption of the work of this body, strongly advocated the adoption of this change and strongly recommended it. I refer to the *Evening Telegraph*, of Pittsburgh. The *Pittsburg Post* also approved the proposed change.

I have had repeated conversations with gentlemen of the bar of the county of Allegheny, who commend the section and hope it will be adopted by this body, and their opinions are entitled to some weight. The section lessens the number of aldermen in the city very considerably; it puts them upon a fixed salary; it thus takes away from them the temptation

to encourage mischievous and malicious litigation, and I have no doubt would be largely promotive of the peace and good order of the community, as well as largely lessen the petty business of our criminal courts.

I desire to read, as a part of my remarks, a communication which I received this morning from some well-known members of the bar of Allegheny county in favor of this section. It is as follows:

PITTSBURG, October 4, 1873.

Malcolm Hay, Esq.:

DEAR SIR.—We are in favor of a material change in the aldermanic system in Pittsburg and Allegheny, and believe that section twenty-seven of the judiciary article of the proposed Constitution will, if adopted, effect a vast improvement.

Very truly yours,

THOS. J. KEENAN,
W. B. RODGERS,
C. C. TAYLOR,
J. R. LARGE,
STEPHEN WOODS, Jr.,
JNO. H. HAMPTON,
D. F. PATTERSON,
A. H. MILLER,
JOHN DALZELL.

In addition to this communication, as I have said, other members of the bar of our county have communicated with me personally, as well as by letter, on this subject—unfortunately I have none of their letters here now—urging the adoption of this section or of something equivalent thereto.

Mr. T. H. B. PATTERSON. I wish merely to say a word, for I do not desire to detain the Convention. So far as I can find out from inquiry and from articles in the newspapers this section is not wanted and not needed in Allegheny county. Its provisions are already in our new city charter in the city of Pittsburg, and it is an experiment which the people universally have expressed themselves that they do not want stereotyped into the Constitution; and accordingly section eleven of the judiciary article was modified by inserting the word "district," in order to give the Legislature full power to legislate upon this subject, and in order that we might not be bound hand and foot by a legislative section in the Constitution such as this is. I ask members of the Convention to vote with us in voting out this section as one that is not needed, and which unnecessarily burdens this article.

Mr. HAY. I desire to say a word by way of explanation. The delegate from Allegheny who has last spoken has, no doubt unintentionally, misrepresented the exact situation of this question. Section eleven of the judiciary article does provide, it is true, for the election of aldermen in "districts," but the article upon legislation prohibits the Legislature from enacting any special or local law upon this subject or any other relating to the affairs of cities; so that unless a provision can be made by the Legislature for all cities, large and small alike, we shall never get any change; and then none suited to the peculiar wants and necessities of Pittsburg. We must get the requisite system from the Convention, or we must remain without it.

Mr. GUTHRIE. I am very sorry to differ with my colleague on my left (Mr. Hay) in regard to this section; but, unless it can be amended, I certainly shall be compelled to vote against it, because principally, if it is adopted, these offices will unquestionably become mere sinecures. It provides for paying the aldermen salaries instead of paying them by fees. The principle of paying officers by salaries is a very good one generally; but in the case of aldermen I am satisfied that it will not work well.

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

Mr. GUTHRIE. Yes, sir.

Mr. MACVEAGH. Did not the gentleman vote to apply that principle to the aldermen of the city of Philadelphia?

Mr. GUTHRIE. No, sir. That was in relation to police courts.

Mr. MACVEAGH. That they shall be compensated only by fixed salaries?

Mr. GUTHRIE. They were courts with judges learned in the law. That is a very different matter.

Mr. MACVEAGH. No; they were not required to be learned in the law.

Mr. GUTHRIE. That is as I understand it. However, the people of Philadelphia asked for it and I was willing to give it to them on their representation; but in our case I am perfectly satisfied that it will not work well and I do not believe it will work well anywhere. Unless the section can be modified so as to take that feature out of it, I shall have to vote against it.

The question being taken by yeas and nays, resulted as follow:

YEAS.

Messrs. Achenbach, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Beebe, Black, Charles A., Bowman, Brown, Calvin, Campbell, Carter, Cassidy, Cochran, Curtin, Darlington, De France, Edwards, Ewing, Funck, Guthrie, Horton, Hunsicker, Lamberton, Lawrence, Littleton, MacConnell, M'Clean, Mann, Minor, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Simpson, Smith, Henry W., Stanton, Struthers, Wetherill, John Price, White, David N., White, Harry, White, J. W. F., Worrell, Wright and Walker, *President*—45.

NAYS.

Messrs. Alricks, Andrews, Armstrong, Biddle, Boyd, Brodhead, Broomall, Buckalew, Church, Dallas, Elliott, Gibson, Gilpin, Hay, Hazzard, Howard, Knight, Landis, Lilly, MacVeagh, M'Murray, Metzger, Mott, Niles, Palmer, H. W., Patton, Read, John R., Russell, Smith, H. G., Wetherill, J. M. and Woodward—31.

So the motion was agreed to.

ABSENT—Messrs. Addicks, Ainey Baer, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Carey, Clark, Collins, Corbett, Corson, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Green, Hall, Hanna, Harvey, Hemphill, Heverin, Kaine, Lear, Long, M'Camant, M'Culloch, M'Michael, Mantor, Mitchell, Newlin, Parsons, Porter, Fughe, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Turrell, Van Reed and Wherry—57.

The Convention accordingly resolved itself into committee of the whole, Mr. Simpson in the chair.

The **CHAIRMAN**. The committee of the whole have had referred to them the article with directions to strike out section twenty-seven. That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman of the committee (Mr. Simpson) reported that the committee of the whole had struck out section twenty-seven.

Mr. LAMBERTON. I move to go into committee of the whole for the purpose of striking out section nine and inserting in lieu thereof the following :

"Judges of the courts of common pleas learned in the law shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery, and of the orphans' court, and within their respective districts shall be justices of the peace as to criminal matters."

Mr. CURTIN. I move that the Convention adjourn.

Mr. ARMSTRONG. One moment. We can get a vote this afternoon on this amendment.

Mr. CURTIN. We have not time to vote. There are only five minutes left. However, I will not press the motion.

Mr. ARMSTRONG. This section has been carefully prepared by the gentleman from Dauphin, and it has been submitted to a number of gentlemen on the Judiciary Committee and others, and they approve of it as being better phraseology. I hope it will be adopted.

Mr. HUNSICKER. Let it be done by unanimous consent.

The **PRESIDENT**. Will the Convention unanimously agree to this amendment? ["Aye."] The amendment is agreed to.

Mr. BUCKALEW. One important amendment is necessary at the end of section twenty-eight with regard to such counties as Luzerne and Cambria, where there is a separate administration of justice in certain towns and cities. I move to go into committee of the whole for the purpose of adding the following to that section :

"The judges of the courts of common pleas and quarter sessions may hold courts at such places in their respective districts, other than the county seats, as may be directed by law."

Mr. ARMSTRONG. There is difficulty in Luzerne county in respect to the organization of their courts, and this amendment has been prepared by the consent, I believe, of all parties in that county with a view to obviate that difficulty.

Mr. MACVEAGH. Do not let us go into special legislation of that kind. We have denounced it in the Legislature here week after week, and now we are asked to legislate to suit some peculiar circumstances of Luzerne county.

Mr. H. W. PALMER. The present Constitution will probably take away all the foundation that the courts in Carbondale and Scranton ever had to stand upon, and in order to meet that difficulty the members of the bar and judges there have been endeavoring to adopt something or other to meet the case, and this has been

agreed upon by them as a remedy for the difficulty. It provides that the courts may be held at other places than the county seat whenever the Legislature shall so direct. It is not the case of special legislation, but is a case that applies to the whole State; but, of course, no county need have it unless they get an act of Assembly to provide for it.

Mr. MACVEAGH. And every town in the State will insist upon having it.

Mr. H. W. PALMER. It will meet this difficulty to allow the judges of the court of common pleas to pass upon —

The PRESIDENT. In order to give delegates time to consider whether we shall go into legislation or not, the Convention will now adjourn, the hour of three having arrived, until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FIFTY-NINTH DAY.

TUESDAY, October 7, 1873.

The Convention met at half-past nine o'clock, A. M., Hon. John H. Walker, President, in the Chair.

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

LEAVE OF ABSENCE.

Mr. DE FRANCE. I ask leave of absence for our Doorkeeper, Mr. Bentley. Mr. Lawrence is very sick and does not like to travel home alone, and I ask leave of absence for Mr. Bentley for a few days, in order that he may accompany him.

The PRESIDENT. Shall leave be granted? ["Aye."] Leave is granted.

Mr. BRODHEAD asked and obtained leave of absence for himself for Thursday and Friday of this week.

Mr. DARLINGTON asked and obtained leave of absence for Mr. Hemphill for a day or two from to-day.

JUDGE BLACK'S RESIGNATION.

Mr. WOODWARD. I move that the motion which I made last week, for the reference of the resignation of Judge Black to the appropriate committee, be taken from the table and considered by the Convention.

Mr. LILLY. I think I have heard that motion made once or twice before. [Laughter.]

Mr. ALRICKS. I move that the question be postponed for one week.

Mr. ANDREW REED. I second the motion.

Mr. BOYD. I move to amend that motion by moving that the Sergeant-at-Arms be sent for Judge Black. If he is a member of this Convention, he ought to be here, and if he is not here we ought to send the Sergeant-at-Arms for him. I should like to see those gentlemen who think he is a member of this body, and act in this way, and decline to have his vacancy filled, vote in favor of sending the Sergeant-at-Arms for him.

The PRESIDENT. The Chair must rule that motion out of order as not germane to the pending motion before the House.

Mr. HAY. Has the Convention yet agreed to take up and consider the reso-

lution offered by the delegate from Philadelphia? I do not understand that it has.

The PRESIDENT. The question now is on the motion to postpone.

Mr. HAY. I do not see how a motion to postpone could be made until the Convention agreed to consider the subject.

Mr. WOODWARD. There was no vote taken on my motion that I heard of, and I suppose that motion cannot be postponed. The subject can be postponed after it is taken up; not till then.

The PRESIDENT. It is a very unusual motion, but the Chair does not see how he can decide it to be out of order. The question is on the motion to postpone for one week the motion to take from the table the resignation of Judge Black.

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

Mr. BRODHEAD. I second the call.

Mr. M'CLEAN. I desire to state that I had a conversation with Judge Black on Saturday last in regard to this matter of his resignation —

Mr. BOYD. I call the gentleman to order.

Mr. ALRICKS. It is a question of privilege.

Mr. BOYD. Not his privilege. It is Judge Black's privilege.

Mr. DARLINGTON. I am sure we shall all be very glad to hear what Judge Black himself says.

Mr. BOYD. I object to it.

Mr. M'CLEAN. I simply desire to state that from what Judge Black said in that conversation, I understood he was not altogether unwilling to return to the Convention.

Mr. BOYD. I have heard that before, but I do not believe a word of it.

Mr. BRODHEAD. We have got the words of Judge Black over his own signature to this Convention that he does not want to return.

The question being taken by yeas and nays, resulted as follow:

Y E A S.

Messrs. Ainey, Alricks, Bailly, (Perry,)

Bardsley, Beebe, Biddle, Broomall, Brown, Calvin, Carter, Cochran, Davis, Edwards, Ewing, Finney, Fulton, Funk, Guthrie, Hanna, Harvey, Hazzard, Horton, Howard, Knight, Lilly, MacVeagh, McClean, McCulloch, Mann, Metzger, Minor, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Rooke, Russell, Struthers, Turrell, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Wright—49.

N A Y S.

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Baker, Black, Charles A., Bowman, Boyd, Brodhead, Clark, Corson, Cronmiller, Curtin, Dallas, Darlington, De France, Dunning, Gilpin, Hall, Hay, Hunsicker, Lamberton, Landis, Lear, M'Michael, M'Murray, Mott, Patton, Porter, Pughe, Purman, Ross, Runk, Smith, Henry W., Stanton, Van Reed, Woodward and Walker, *President*—37.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bannan, Barclay, Bartholomew, Bigler, Black, J. S., Buckalew, Bullitt, Campbell, Carey, Cassidy, Church, Collins, Corbett, Craig, Curry, Cuyler, Dodd, Elliott, Ellis, Fell, Gibson, Green, Hemphill, Heverin, Kaine, Lawrence, Littleton, Long, MacConnell, M'Camant, Mantor, Mitchell, Newlin, Parsons, Read, John R., Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple, Wetherill, John Price, Wherry and Worrell—47.

REPORTS OF REVISION COMMITTEE.

Mr. KNIGHT. I am instructed by the Committee on Revision and Adjustment to report article number twelve, on officers and incompatibility of office; article number thirteen, on new counties; article number fourteen, on county, township and borough officers; article number fifteen, on cities and city charters, and article number sixteen, on private corporations. I move that they be laid on the table and printed.

The motion was agreed to.

REPORTER'S ACCOUNTS.

Mr. HAY submitted the following report:

The Committee on Accounts and Expenditures of the Convention respectfully report the following resolution, and recommend its adoption, to wit:

Resolved, That a warrant for the sum of \$1,626 92 be drawn upon the State Treasurer in favor of D. F. Murphy, Official Reporter of the Convention, in full payment for all services and demands up to and including the fifteenth day of July, 1873.

The resolution was read twice and adopted.

THE ARTICLE ON THE LEGISLATURE.

Mr. HOWARD. **Mr. President:** I should like to inquire whether the Committee on Revision and Adjustment are ready to report the special matter referred to them in regard to the apportionment of the State. It was referred to them to be reported the next morning at nine and a half o'clock. After that the time was extended, but no special time fixed. It has now been some eight or ten days since that matter was referred to them. It ought to be reported back to the Convention.

The PRESIDENT. The chairman of the committee can probably answer.

Mr. KNIGHT. The committee have reported all the articles that are ready.

Mr. HOWARD. For myself I am not satisfied with that. I know they have reported all they have got ready; they say so; but I want to know what reason can be given for keeping that back this length of time. Certainly it is one of those subjects on which the Convention has had the most controversy, and to test the sense of the Convention I move that the committee be instructed to report to-morrow morning at nine and a half o'clock.

The PRESIDENT. It is moved that the Committee on Revision and Adjustment be instructed to report to-morrow morning at nine and a half o'clock the article on the Legislature.

Mr. CLARK. I will state that the article was referred to the Committee on Revision and Adjustment in my absence, and since my return here we have never yet been able to secure a full attendance of our committee; and inasmuch as it was an important matter it has been adjourned from day to day until we could have a full attendance of the members of the committee. So far as I can inform the gentleman, that is the reason it has not been reported.

Mr. H. W. PALMER. I might further add, for the information of the delegate from Allegheny, that the individual members of the Committee on Revision

and Adjustment have been devoting most of their leisure moments to trying to rewrite that section, but have not been able to do it yet. They would like to get a little assistance from the gentleman from Allegheny or anybody else to put that section into English and preserve the sense the Convention intended. As soon as we are able to accomplish that, either by our own genius or by the help of any of the other gentlemen of the Convention, we shall report it. We are not holding it back for any other purpose. I should like to have the delegate from Allegheny try it.

Mr. EWING. If that be the fact, I think it is time the committee should report back that they are unable to accomplish the duty assigned them.

Mr. HOWARD. I have no doubt the subject is too heavy for the committee, as it has been for the Convention, and the sooner they give it back to us the better, and the sooner we shall get through with it.

I have no idea that the committee will make any report that this Convention will accept. We are only losing time. The sooner we get back to it and begin and have our controversy over again here, the better, and then we shall get rid of it. Therefore it is that I insist upon the motion that the committee be instructed to report to-morrow morning to the Convention.

Mr. MACVEAGH. I should like to ask the gentleman, if it meets the views the Committee on Revision and Adjustment, to modify that motion, or to substitute a motion to discharge that committee from the further consideration of the question, and refer it to the special committee constituted in obedience to the motion of Judge Woodward, and direct them to report to-morrow morning. We are now nine days without any report from the Committee on Revision and Adjustment.

Mr. HOWARD. One moment. I do not believe I understand the suggestion of the delegate from Dauphin.

Mr. MACVEAGH. It was a suggestion that you should withdraw this motion, and move to discharge the Committee on Revision and Adjustment, and refer this article to the special committee appointed on the motion of Judge Woodward heretofore on the same subject.

SEVERAL DELEGATES. The committee will be ready to report to-morrow morning.

Mr. MACVEAGH. If the Committee on Revision say they will report to-morrow morning that will answer our purpose, and the motion had better be withdrawn.

The PRESIDENT. Does the gentleman from Allegheny withdraw his motion?

Mr. HOWARD. I do, for that purpose.

The PRESIDENT. The motion is withdrawn.

SEVERAL DELEGATES. Orders of the day.

Mr. HOWARD. I understand that my motion was withdrawn for the purpose of discharging the present committee from the further consideration of the subject and referring it to the special committee.

Mr. MACVEAGH. No, sir; they state that they will probably report to-morrow morning. That is what the gentleman desires, and so we may as well let it go.

Mr. HOWARD. Very well.

THE JUDICIARY.

Mr. CALVIN. I move that we proceed to the consideration on third reading of the article on the judiciary.

The motion was agreed to, and the Convention accordingly resumed the consideration of the article.

The PRESIDENT. When the Convention adjourned yesterday there was pending a motion to go into committee of the whole for the purpose of adding to the twenty-eighth section an amendment offered by the delegate from Columbia (Mr. Buckalew.)

The amendment will be read.

The CLERK. The proposed amendment is to add to the twenty-eighth section the following words:

"The judges of the courts of common pleas and quarter sessions may hold court at such places in their respective districts, other than the county seats, as may be directed by law."

Mr. BUCKALEW. I desire to say that that amendment was handed to me by another gentleman, and I offered it without much consideration. On reflection I am satisfied that I shall consult the convenience of the Convention by withdrawing it. I ask leave therefore to withdraw the amendment.

The PRESIDENT. If there be no objection, the amendment will be regarded as withdrawn.

Mr. HANNA. I move that the Convention resolve itself into committee of the whole for the purpose of amending section twelve by inserting after the word "crimi-

nal" in the tenth line the words "within such districts."

Mr. President, I offer this amendment in pursuance of a communication addressed to the Convention in regard to this section, by Mr. Henry Carey Lea, of the Reform Association of this city. He calls attention to the fact that under this section the aldermen or justices of the peace of the city of Philadelphia will be elected upon a general ticket, but no provision whatever is made that they shall exercise their jurisdiction within any particular district of the city. He reminds us of the fact that if we elect a body of local magistrates to be composed of one for every thirty thousand inhabitants, we shall have some twenty-five aldermen or justices of the peace, and these gentlemen, instead of directing their attention to the wants of separate localities in the city, will locate their offices in those portions of the city where business is more brisk and where they will obtain a larger practice.

Mr. HUNSICKER. I should like to ask the gentleman how these aldermen or magistrates elected on general ticket are to be assigned to districts?

Mr. HANNA. By general law. My friend from Montgomery will notice the words in the thirteenth line, "as may be made by law." I propose that the section shall read, "and shall exercise such jurisdiction, civil and criminal, within such districts, except as herein provided as is now exercised by aldermen, subject to such changes, not involving an increase of civil jurisdiction or conferring political duties, as may be made by law." We all know that under the present system the city is divided into wards; but certain portions of the city, a large portion of which is entirely rural, will not have the advantage of this local magistracy unless we provide that they shall hold or keep their offices within certain districts.

Now, we have such a provision. The city being divided into wards, in some wards we have two, in some three, in some four, and in the rural sections, for instance in the Twentieth-third ward, we have some eight or ten justices of the peace. I submit unless we make some such provisions as this, these magistrates will select their own locations, and will not thereby be that convenience to the people in regard to matters of minor importance that they are intended to be, and which I understand to be the object

of providing justices of the peace throughout every county and in all the cities.

This amendment is intended to provide a remedy against the evils to which Mr. Lea calls our attention. We all know that the Legislature in passing acts on the subject of notaries public provide in the law that the notary shall reside and hold his office within a certain ward or township, and therefore I propose that we shall say that these magistrates shall hold and keep their offices within such districts as may be provided by law.

The PRESIDENT. The question is on the motion of the gentleman from Philadelphia (Mr. Hanna).

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Temple in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the twelfth section of the article on the judiciary for the purpose of inserting after the word "criminal" in the tenth line the words "within such districts." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Temple) reported that the committee of the whole had made the amendment referred to them.

Mr. DARLINGTON. I move to go into committee of the whole for the purpose of amending the same section, by striking out all after the word "judge," in the seventh line, down to and including the word "chosen" in the ninth line, in these words:

"And in the election of said magistrates, 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."

Mr. ARMSTRONG. I will inquire whether that motion was not made yesterday and voted down? If so, it is out of order?

Mr. DARLINGTON. If that is so, I will not renew it.

The PRESIDENT. It was voted upon yesterday.

Mr. DARLINGTON. If that is the case I withdraw that amendment, and move another, to strike out in section two, line three, the word "twenty-one," and insert "fifteen."

The PRESIDENT. That motion is before the Convention.

Mr. DARLINGTON. The object of this motion is, of course, to reduce the term of

the judge of the Supreme Court to fifteen years. That question has not been distinctly presented in a separate and unconnected form to the body. At all events, I ask the attention of the Convention to it for a moment, and then I shall be content with recording my vote upon it.

The purpose, I presume, of the Committee on the Judiciary in inserting the term twenty-one years, was to carry out the then favorite project of the committee of having seven judges elected for twenty-one years each, one going out at the end of every three years after having become chief justice the last three years of the term. The term twenty-one years was no doubt inserted with a view of making it work smoothly, in some rotation or other, or in the application of a minority principle of voting, I know not which; but I submit to the members of this Convention that to increase the term of the judges to twenty-one years is most unwise. Those who are of sufficient age to remember, will be able readily to call to mind the difficulty that was experienced under the Constitution of 1789 in getting rid of judges who had passed their days of usefulness. Impeachment was entirely out of the question; removal by address was found to be impossible, owing to their being friends, political or otherwise, in the Legislature, of the judges proposed to be removed; and thus the people were absolutely without remedy to remove judges who had become incapable by age to perform the duties of their office.

Hence it was that the term was reduced from the good behavior tenure—which was generally then esteemed to be tenure for life—to a term limited by years. What should be that term was matter of careful consideration. In New York at that period every man was obliged to leave the bench at the age of sixty; but it was thought that would work unevenly; and it was nevertheless deemed right that a term should be fixed, and that if a man had not passed his usefulness at the expiration of the term he might be re-elected and continued in office; but if he had passed the age of usefulness, then let him retire and another take his place. Thus it was that the period of fifteen years was then fixed, and it has been in operation for the last thirty-five years without objection, so far as I know, from any quarter. And now, without any attempt having been made by anybody to have it in-

creased and without any call having been made by any citizens from any part of the State for the increase of the term of the judges of the Supreme Court, why should we run the risk of getting into the same difficulty in which our forefathers were by increasing the term and thus occasionally having upon the bench a man who should have lost his usefulness, but who would not voluntarily leave the bench?

Fifteen years, I submit, is ample time. It is better not to increase it; and gentlemen need only look to those who have been on the bench of the Supreme Court—I speak not now of those members of this body who have been there, because they were there in the prime and vigor of life and were able to give another term to the service of the public—but we well know that other gentlemen have retired from the bench of the Supreme Court within the memory of all of us, and in a year or two or three afterward have become totally incapable of performing further duty. Thus the wisdom of the period which had been fixed, and within which every one was required to retire was vindicated. I think we have all known such instances. I think we know such instances now when, if the term of a gentleman was prolonged for six or seven years more, all would agree in denouncing it as an unwise provision. We had better, therefore, I submit, Mr. President, adhere to the tried, experienced, and well-considered term of fifteen years, and not make a charge which has been uncalled for by any person in any quarter of the State.

MR. WOODWARD. Mr. President: There was so much noise and confusion in the Hall that I do not know whether I apprehended the amendment of the gentleman from Chester correctly or not. I suppose that it is a motion to strike out "twenty-one" years, as the tenure of the judges of the Supreme Court, and insert "fifteen."

MR. DARLINGTON. That is it.

MR. WOODWARD. Well, sir, I rise to support that motion, and I sincerely hope the Convention will seriously consider it, and I should be glad if they would favorably consider it.

MR. President, I remember that in the Convention of 1837 it was with the greatest difficulty that the reformers in that body carried fifteen years as the tenure of the judges of the Supreme Court. The tendency of the reformers' minds in that body was to a much shorter

period; but fifteen years was in proportion to ten years for the common pleas and it prevailed. So far as I know there is not a State in this Union that has since 1837 assigned to its highest court as long a term as fifteen years; but, on the contrary, their terms are generally shorter.

Now, sir, the proposition is made to increase that term to twenty-one years. The choice between fifteen years and good behavior was decided in that Convention, as I have said, with difficulty, and it was carried by the people of Pennsylvania by an extremely meagre majority, and but for elements that I could explain, it could not have been carried at all; for while the people of Pennsylvania were opposed to good behavior tenure, they were also opposed to so long a term as fifteen years. That feeling has gained strength by the example of all the States around us ever since; so that this proposition now to increase that tenure to twenty-one years, without a request from any judge in the State, without a request on the part of the people, establishing a disproportion between the common pleas and the Supreme Court, and violating the precedent and example of all the States around us, is untimely, and it ought not to be adopted, in my opinion.

Mr. President, I want this Constitution carried, because while we have done things which we ought not to have done, and have left undone things which we ought to have done, there are some good things in it, and I want to see it adopted by the people; but I tell gentlemen that the people of Pennsylvania never will adopt the tenure of twenty-one years for any of their judges. And if gentlemen expect to provide a place for themselves—I know that nobody here ever expects to be a twenty-one year's judge—but if there be any such in this body, I am sorry to say that they are going to be disappointed. It will not be done. I think I could name one hundred thousand voters in Pennsylvania, if I were required to do so, who will never vote for twenty-one years for any public officer in this State, and without those one hundred thousand voters you cannot carry your Constitution.

Now, "to this complexion" this thing comes: Shall we gratify the ambition of lawyers outside of this Convention by extending this term to twenty-one years and thus defeat the Constitution; or, shall we leave it where the Constitution of 1837 fixed it and where all the surrounding

States have followed our example, or at least not exceeded it? I am in favor of the amendment proposed by the gentleman from Chester and sincerely hope it will be adopted.

Mr. ARMSTRONG. The gentleman from Philadelphia (Mr. Woodward) has become a sort of chronic prophet. It has happened that whenever he is earnestly in favor of any proposition—it does not matter much what it is—his advocacy is always followed by a prediction that if his precise views are not adopted this Constitution will be sure to fail. I well remember that it was sure to be defeated by 100,000 majority if every judge in the State was not to be made an appointed officer, and I do not know for how many other reasons the Constitution is going to fail in the judgment of my friend. But it seems very remarkable that a man who has so continually avowed and persistently pressed the necessity of a life-long tenure of judges during good behavior, should be so extremely anxious to diminish their tenure now. It is forgetting the circumstances in which the Constitution now stands. The Convention have adopted, as a policy, that no judge of the Supreme Court shall be again eligible to the office, either by appointment for a short term, or by election for a full term. It is very clear that the principle thus incorporated into the Constitution is of exceeding great value. It has been voted upon in this Convention some two or three times successively upon this same question, where all the members, I presume, who desired to do so, put themselves on record, and has been as often affirmed. What the gentleman meant by saying that this is to make places for ambitious men, I do not know. I know of no man of larger ambition, nor any one more entitled to speak by experience on that question, than my friend himself; but I do not know any man whose ambition, or whose desire, leads him in any degree to vote for this question from any private consideration. If my friend were younger in the profession he might mean himself.

Now, Mr. President, in the face of the distinct affirmation by the Convention that fifteen years is too short a term to take out of a well-learned judge all the judicial experience and the judicial life that may be well bestowed to the advantage of the State, and that in the absence of a provision which extends the term to twenty-one years, the judge is dropped out of office in the very midst of his use-

fulness, the proposition is again renewed, and to avoid that difficulty it is provided in the existing Constitution that they might be re-eligible, and it followed as a consequence, that instead of their terms being fifteen years, they became possible terms of thirty years, which is more and longer than the judicial service of any man ought to be required, because, before the end of a thirty years' term they would be, in many cases, imbeciles on the bench. A term of fifteen years turns the judge out of office unfitted, in all ordinary cases, to resume an active business. He would be turned out with no occupation or practice, and in most cases poor in purse and exhausted in body; whereas, under the term of twenty-one years he would still, for the difference in terms, render to the State much judicial service with full vigor and strength. The term of twenty-one years is long enough to exhaust the judicial ability of any ordinary man, but it does not run into the length of years that would make him an imbecile. It does procure and demand the services of judges for a length of term which is sufficient, and yet does not retain them after such period as, in ordinary cases, has exhausted alike the measure of their years and of their usefulness.

However, Mr. President, this question has been discussed before at length. Every man is upon the record, and I do not see the necessity of this reiteration of the same proposition after the Convention has expressed their judgment so decidedly as it has done on this question. I trust we may now come to a vote.

THE PRESIDENT. The question is upon going into committee of the whole upon the motion to strike out "twenty-one years," and insert "fifteen years."

MR. BOYD. Upon that motion I call for the yeas and nays.

MR. AINEY. I second the call.

The question being taken by yeas and nays, resulted as follow:

Y E A S.

Messrs. Ainey, Alricks, Beebe, Black, Charles A., Buckalew, Corson, Cronmiller, Darlington, Dunning, Edwards, Ewing, Gibson, Hanna, Harvey, Howard, Landis, Lear, Littleton, MacConnell, McClean, Mott, Newlin, Patterson, D. W., Patton, Porter, Purviance, John N., Rooke, Ross, Smith, H. G., Smith, Henry W., Stanton, Temple, Turrell, Van Reed, White, David N., White, J. W. F., Woodward and Worrell—38.

N A Y S.

Messrs. Achenbach, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Bardsley, Biddle, Boyd, Brodhead, Broomall, Brown, Calvin, Carter, Clark, Cochran, Dallas, Davis, De France, Elliott, Finney, Fulton, Funck, Gilpin, Guthrie, Hall, Hay, Hazzard, Heverin, Horton, Hunsicker, Knight, Lamberton, Lilly, MacVeagh, McCulloch, Michael, M'Murray, Mann, Minor, Niles, Palmer, G. W., Patterson, T. H. B., Pughe, Purman, Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Runk, Russell, Simpson, Struthers, Wetherill, J. M., White, Harry, Wright and Walker, *President*—57.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bartholomew, Bigler, Black, J. S., Bowman, Bullitt, Campbell, Carey, Cassidy, Church, Collins, Corbett, Craig, Curry, Curtin, Cuyler, Dodd, Ellis, Fell, Green, Hemphill, Kaine, Lawrence, Long, M'Camant, Mantor, Metzger, Mitchell, Palmer, H. W., Parsons, Sharpe, Smith, William H., Stewart, Wetherill, John Price and Wherry—38.

MR. BROOMALL. I move to go into committee of the whole for the purpose of striking out, in the thirteenth section, the fourth, fifth and sixth lines, and inserting in lieu thereof the words, "and the final judgment therein shall be subject to writ of error, as in other cases."

The reason I propose to do that is this: The provision itself was voted down and was afterwards, inadvertently, I think, put in in the shape in which it is now. The committee originally had it in the shape in which I propose to amend it. The difference is that as it was originally adopted it allows the cases to go up precisely as other civil cases, not as equity cases go up. By the section as it is now, if the facts all go up, it would be a deviation from the ordinary practice in civil cases, and would make a great deal of trouble, and it seems to me, would be very objectionable, and would really be what the committee, and I think, the Convention, who are in favor of that measure, would not adopt.

MR. MACVEAGH. Mr. President: I trust the Convention will not agree to go into committee of the whole for that purpose. I think that takes away the benefit of this section entirely, as I understand it. That leaves the absolute decision of the facts with the judge below—the whim,

accidental prejudice (and I do not mean that in an offensive sense) of one man in stead of twelve for a final judgment of the facts of the cause. I do not think that is what we desire. We want to have the opportunity of getting the judgment of the court upon the entire record, as I understand it.

Mr. C. A. BLACK. That is the idea.

Mr. MACVEAGH. That is certainly the notion I have entertained about it, that you should try your cause before the judge below, and the Supreme Court is certain to give quite weight enough to his finding. You will have to show, at best, as you do now upon the review of a master or auditor, a clear mistake in fact; but certainly the suitor ought to be allowed to have his record reviewed as he does now in a question of equity, and this clause will be mainly applied to equitable causes, causes of a *quasi* equitable nature, causes that can be better heard in equity than in law; and therefore the same measure of relief, it seems to me, ought to be accorded, and the evidence as well as the questions of law arising upon the decision of the facts should be brought up for review.

Mr. S. A. PURVIANCE. When this section was before the committee of the whole, I offered, I believe, precisely the same amendment that is now offered by the gentleman from Delaware, which will be found in the Journal, page four hundred and fifty-seven. I did it because it strikes out of the present section the words declaring that the evidence shall be sent up to the appellate court.

In my judgment, the section as it at present stands, will result in converting every case of this kind into a case in equity. It not only does that, but it certainly encumbers the Supreme Court beyond what any one perhaps would conceive at first blush. Strike out this term "evidence," because that is the only question on this amendment; and then leave these cases which are simply submitted to the court on the agreement of parties to go up to the Supreme Court on a writ of error, and not in the shape of an appeal. It seems to me the amendment ought to be made.

Mr. ARMSTRONG. The gentleman from Delaware fell inadvertently into error. The section as it stands now is precisely as it was reported by the Committee on the Judiciary originally. The purpose of this section is to meet that class of cases

of a *quasi* equitable character which may not be precisely within the equitable jurisdiction, and yet are not entirely suitable to ordinary common law actions. The whole value of the section depends on the right which it secures to the parties by agreement filed in the case to submit their cause, both upon the law and the facts, to the judgment of the court. But if the facts may not be reviewed by the Supreme Court, it takes from it very largely, if not entirely, the advantage to be derived from the section. I fully recognize that it will add somewhat to the labors of the courts of common pleas; it will also add something to the labors of the judges of the Supreme Court; but the equity practice is growing very rapidly in the estimation of the people and of the profession, and is becoming more and more a mode of adjusting conflicting rights. The section as it stands, with the right of review both upon the law and the facts, I regard as an exceedingly valuable provision. Nor do I believe that it would result in so large an increase of the labors of either court as should deter the Convention from adopting it. I am far more concerned to provide for the people an easy, prompt and efficient mode of adjusting their disputes upon property than I am concerned as to the amount of labor that may be thrown upon the courts, for if the method be a right one independent of the consideration of the labor it imposes, we can increase the judicial force just to the point of necessity; and it is to be borne in mind that we have already increased the judges by about thirty under that provision which provides a judge for every county of forty thousand of inhabitants. I think there is no difficulty in easily meeting all the requirements which this section would impose. I trust, therefore, that the amendment will not be adopted.

Mr. S. A. PURVIANCE. Let me ask, would it be necessary to take up any more of the evidence in any case than would simply be requisite to enlighten the court as to the point upon which the cause turned in the court below? Why take up the whole evidence, when it might be very voluminous and nine-tenths of it might not relate to the point upon which the case turned?

Mr. ARMSTRONG. The same thing might be said precisely of any case either at law or in equity, for the counsel never think of taking up to the court that which wholly and admittedly superfluous. Bu

who shall determine, I inquire of the gentleman, what evidence is essential and what is not? It would not do for us by constitutional provision to undertake to limit the discretion which shall judge of the amount and character of the evidence which is to be brought up to raise the points of law and fact. I think it is better to leave the section stand as it is.

Mr. HUNSICKER. The section itself is one of questionable propriety. I voted for it every time it was up, but I never had any idea that the friends of the section meant that the parties should have what is equivalent to two jury trials. If the parties see fit themselves to waive a jury trial, they certainly mean by that that the finding of the court shall be equivalent to the verdict of a jury. It ought to be, and therefore the amendment of the gentleman from Delaware is entirely proper, because this is a novelty in the Constitution, it is a novelty in legal practice, to submit a question of fact to the determination of the court, and it can never be done unless all parties by agreement submit it to the finding of the court. If the section remains as it is, the consequence will be that you will have a jury trial in every civil case before the Supreme Court, and every particle of evidence must be read there and commented on by counsel. I think, therefore, that the amendment offered by the gentleman from Delaware is essential to carry out the real intention of the section.

Mr. ALRICKS. Mr. President: I rose at least half a dozen times to attempt to get the eye of the Chair in order to move to strike out this whole section. I am very glad gentlemen have opened this discussion. I apprehend that the whole proceeding is revolutionary, and therefore that it ought not to be adopted. For centuries the law has been for the court and the facts have been for the jury; and although we are told that in equity cases the master in chancery decides the facts, yet it is because we have not paid strict attention to chancery practice. In chancery practice, where a party asks that a question of fact shall be passed upon by a jury, it is the duty of the master to report the matter to the court, and then the court certifies it to the common pleas, where that fact is tried by a jury.

The objection to this whole section is that it will overburden the courts. I remember very well on more than one occasion hearing that intellectual giant, the man who above all others gave us our

jurisprudence; that judge of our court who, in my humble opinion, was never equalled by any judge who sat upon the American bench and who was the peer of Mansfield and of Hale—I refer to the late Chief Justice Gibson—it was common for him to say that he hated this grubbing; he hated delving into a case for the purpose of ascertaining what were the facts upon which he was to pronounce the law. I appeal to every lawyer in this House who practiced before the court when Chief Justice Gibson was on the bench and Judge Rogers was at his side, whether Chief Justice Gibson did not at all times take his facts from his brother Rogers. He would say, "If you tell me what the facts are we will soon decide the law."

Now, may it please the members of the Convention, if when those facts were found by a jury of the country and were placed before the Supreme Court upon the paper book, they had difficulty in ascertaining what the facts were on which they were to pronounce the law, will not the difficulty be incomparably greater when they have to go in pursuit of the facts? Why, sir, the labor that will be thrown upon the court will be immense. You will convert your court into a board of auditors who are to settle questions of fact.

I maintain with great respect before the Convention, that the education of a judge does not qualify him to pass upon questions of fact. The jury are from the world; they are acquainted with the business and every-day affairs of life, and therefore they are qualified to decide questions of fact; whereas, the judge passes his time in his library and among his books and in searching out questions of law, and he is not qualified to decide upon facts.

I trust the amendment of the gentleman from Delaware will not prevail, and I hope that then the good sense of the House will reconsider this matter and that we may get rid of this whole section, for I think it would be a greater evil than any contained in the fabled box of Pandora. It would destroy our system of jurisprudence.

Mr. BUCKALEW. I believe I voted for this section, probably without fully understanding what was contained in it. I did not understand that these cases were to go up to the Supreme Court as cases in equity. I am in favor of the amendment of the gentleman from Delaware,

and if that shall not be agreed to, I shall be in favor of striking the section itself from the article.

Mr. President, at present parties can submit a cause at issue to the court upon an agreed state of facts—

Mr. BOYD. I rise to a point of order. I understand the gentleman to be discussing the merits of the section, whilst the only question before the body is the amendment of the gentleman from Delaware.

Mr. BUCKALEW. In such a case—

Mr. BOYD. Is my point of order well taken or not?

The PRESIDENT. The point of order would be well taken if it were applicable. [Laughter.]

Mr. BUCKALEW. In such a case there is a writ of error to the Supreme Court upon questions of law as in other cases; but very often it is impossible for the parties to make up a case stated, although they desire to do so, because some single question of fact is unsettled or is disputed between them, and they are, therefore, forced into a jury trial, although both know that the evidence of a single witness, or the production of a single paper, may settle the question of fact. Therefore, a section of this kind will be very useful in ordinary legal practice, by permitting parties to carry the case before the judge, and have it finally determined without the intervention of a jury. It will expedite, it will facilitate, the administration of justice. But I do not desire that these cases shall be changed altogether in their character, that they shall be changed from legal issues to equity issues. If the parties choose to take the judgment of the judge on an issue of fact, so be it; let them have his judgment in place of a verdict, and let the change we propose, stand simply on that ground.

But this section, additionally, proposes to turn the issue into one of equity; that the judge shall go over all the matters of fact and pronounce upon them, and then that either party shall have the right to take the whole record to the Supreme Court, and compel that court to proceed as if they were a court and jury, and decide over again these same questions of fact. In some cases the record will be sent back again for another trial, while in others the Supreme Court will pronounce final judgment. I am willing to vote then for a section which will allow parties to submit, voluntarily, the decision of questions of fact involved in a case to the judge, and

that his judgment shall stand in place of a verdict, and then that the parties, upon his opinion or judgment being filed, may have questions of law reviewed in the Supreme Court.

Mr. NILES. Is not that the law now?

Mr. BUCKALEW. No. The court itself cannot determine disputed issues of fact.

Mr. BEEBE. Mr. President: I do not propose to take up the time of the Convention; but I wish briefly to say, that I have been, from the beginning, a strenuous advocate of a section like this, so far as the first part of it is concerned, and I trust that the amendment of the gentleman from Delaware will be inserted. I was not, and am not, aware that the friends of this measure desire anything more, than that the judge shall merely take the place of the jury in the submission of cases in this way, by agreement of parties, and that it will be taken up to the Supreme Court precisely as any other case is taken up. I trust, therefore, that the Convention will adopt this amendment, and that the section will be saved. It is not novel, as my friend from Dauphin (Mr. Alricks) remarked. It is in use, and has been in use for years in other States, and very beneficially in cases suggested by the gentleman from Columbia.

Mr. PURMAN. Mr. President: If the section is to remain in the Constitution, I would prefer that it should remain as it stands. At present, while we may make a case stated, the parties themselves agreeing on the facts, or doing what the jury does, find what the facts are between the contending parties, and then the court pronounces the law upon those facts, and a writ of error goes up to the Supreme Court, and the law as pronounced by the court below is reviewed, and its judgment affirmed or reversed.

But by the amendment offered by the gentleman from Delaware to this new section, which substitutes the court for the jury in the finding of facts, the finding of the facts by the court below is to be conclusive, and the Supreme Court, on the examination of the cause, will be bound by it. I submit that practically we should gain by allowing the Supreme Court to look into the facts, and see whether the court below had come to the proper conclusion, and if the court below had failed to find the facts correctly, the Supreme Court would find them, and pronounce the proper judgment.

Under the section as it stands, if the court below committed manifest error in

finding the facts, the Supreme Court could reverse the finding and give the proper judgment. There would be no sending causes back for a re-hearing, unless the parties alleged that they had entirely new matter, which by due diligence could not have theretofore been discovered, but the Supreme Court would give the proper judgment both as to the law and the facts. If we are to have this section at all, I prefer that we should have it as it now stands. I am opposed to the amendment of the gentleman from Delaware.

The PRESIDENT. The question is on the motion of the delegate from Delaware.

Mr. HARRY WHITE. I call for the yeas and nays.

Mr. BOYD. I second the call.

Mr. D. W. PATTERSON. Before the yeas and nays are ordered, I should like to say one word. My friend from Columbia is opposed to the section as it stands, because he apprehends that when a case comes up to the Supreme Court, if they should happen to view the facts differently from the judge below, then the judgment would be such as to refer it back to the original court.

Mr. BUCKALEW. I desire to explain. I said in some cases. Of course in many cases it would not be necessary.

Mr. D. W. PATTERSON. It seems to me that cannot be in any case. My friend says it may be so in some cases. Now we know that when an auditor finds a special verdict or state of facts, the court in reviewing that report will not reverse the finding of facts, unless it is manifest that the auditor has made a mistake; but still they have the power, if the court think that the auditor manifestly has mistaken the facts, to reverse his finding of facts. Now, I apprehend, under this section, if a judge below tries a case and hears the facts and applies the law to them and enters his judgment, and it goes to the Supreme Court, the Supreme Court will have the same power, either on a writ of error or on an appeal, that the court below would have under exceptions to the finding of an auditor, and if they find that the court below have mistaken the facts, manifestly they will, themselves, find the facts according to their judgment, and pronounce the law upon that finding, and not refer the case back. It will not be a tedious process; and certainly, if we submit the facts under this section to the judge below, we should have the privilege of taking up those same facts to the court

above who are to pronounce the final judgment. Who ever heard of excepting to an auditor's report as to the law and the facts, without submitting the facts which were before the auditor to be reviewed by the court below. So here, it seems to me it can result in no harm, but will enlighten the court above, and the judgment, as in equity cases to-day, will be final by the court above. No harm can result, but a great deal of good will be accomplished by permitting the court above to reverse the finding of facts as well as of law, and to pronounce finally upon it. I hope it will remain in the section.

The yeas and nays, which had been required by Mr. Harry White and Mr. Boyd, were taken and were as follow, viz:

Y E A S .

Messrs. Baer, Bailey, (Huntingdon,) Baker, Beebe, Biddle, Bowman, Brodhead, Broomall, Buckalew, Carey, Clark, Darlington, Davis, Dunning, Edwards, Elliott, Ewing, Funck, Gibson, Guthrie, Hanna, Harvey, Hay, Hazzard, Heverin, Horton, Howard, Hunsicker, Lambertson, Lear, Lilly, Littleton, M'CLean, M'Murray, Mann, Minor, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Rooke, Ross, Simpson, Smith, H. G., Stanton, Struthers, Temple, Turrell, Wetherill, J. M., White, David N., White, J. W. F. and Worrell—57.

N A Y S .

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baily, (Perry,) Black, Chas. A., Boyd, Brown, Calvin, Carter, Church, Cochran, Corson, Cronmiller, Curtin, Dallas, De France, Finney, Fulton, Hall, Landis, MacConnel, MacVeagh, M'Culloch, Patterson, D. W., Purman, Read, John R., Reynolds, Runk, Russell, Smith, Henry W., Van Reed, White, Harry, Woodward, Wright and Walker, President—36.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Cassidy, Collins, Corbett, Craig, Curry, Cuyler, Dodd, Ellis, Fell, Gilpin, Green, Hemphill, Kaine, Knight, Lawrence, Long, M'Camant, M'Michael, Manto Metzger, Mitchell, Mott, Parsons, Por Pughe, Sharpe, Smith, Wm. H., Stewart, Wetherill, John Price and Wherry—40.

The Convention accordingly resolved itself into committee of the whole, Mr. J. M. Wetherill in the chair.

The CHAIRMAN. The Convention has resolved itself into committee of the whole for the purpose of making an amendment, which will be read by the Clerk.

The CLERK. The amendment is to strike out of the section these words: "The evidence taken, and the law as declared, shall be filed of record, with right of appeal from the final judgment as in other cases, and with like effect as appeals in equity;" and to insert in lieu thereof: "and the judgment therein shall be subject to writ of error as in other cases."

The CHAIRMAN. The amendment is made, and the committee will rise.

The committee of the whole rose, and the President having resumed the chair, the Chairman (Mr. J. M. Wetherill) reported that the committee of the whole had made the amendment directed by the Convention.

Mr. ANDREW REED. I now move to go into committee of the whole, for the purpose of striking out the section as amended.

The PRESIDENT. The Clerk will read the amended section.

The CLERK read as follows:

"SECTION 30. The parties, by agreement filed, may, in civil cases, dispense with the trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same, and the judgment therein shall be subject to writ of error as in other cases."

Mr. ANDREW REED. I desire the yeas and nays on this motion. I do not intend to take up the time of the Convention by discussing it.

Mr. M'CLEAN. I second the call.

Mr. COCHRAN. I wish merely to make an inquiry at this stage of the case. Is it the judgment of the friends of this section that under the amendment which has been just voted in a party under it would have the benefit of a bill of exceptions to evidence in the court below on a hearing before a judge? It seems to me very doubtful whether he would have the benefit of a bill of exceptions to evidence under this section.

Mr. EWING. Certainly he would.

The PRESIDENT. The Clerk will call the names of delegates.

Mr. ARMSTRONG. Before the vote is taken I desire to say a word. I trust that

the section will prevail even in its present form. I think there is value in it. I do not think it is as good as it ought to be made, and difficulties will arise from the amendment now put in as to whether the parties would have a right to a bill of exceptions on evidence at all. Still I think that the section in its mutilated form should be adopted.

Mr. ALRICKS. Mr. President: If I am in time—

Mr. BOYD. I rise to a point of order. I understood the Chair to order the yeas and nays to be taken, and if so debate is out of order.

The PRESIDENT. The gentleman from Montgomery is correct, and the Clerk will call the names of delegates.

The yeas and nays were taken and were as follow:

YEAS.

Messrs. Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Black, Charles A., Bowman, Brown, Clark, Cronmiller, Cuyler, Dallas, Elliott, Finney, Gibson, Harvey, Heverin, Howard, Lamberton, M'Murray, Mann, Mott, Niles, Palmer, H. W., Pughe, Purman, Purviance, John N., Reed, Andrew, Smith, Henry W., Temple, Van Reed, White, Harry, Woodward, Worrell and Walker, *President*—35.

NAYS.

Messrs. Achenbach, Armstrong, Baer, Beebe, Boyd, Brodhead, Broomall, Buckalew, Calvin, Carey, Carter, Church, Cochran, Corson, Darlington, Davis, De France, Ewing, Funck, Guthrie, Hall, Hanna, Hay, Hazzard, Horton, Hunsicker, Landis, Lear, Lilly, Littleton, MacConnell, M'Clean, M'Culloch, M'Michael, Minor, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Purviance, Sam'l A., Read, John R., Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, H. G., Stanton, Struthers, Turrell, Wetherill, J. M., White, David N., White, J. W. F. and Wright—56.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Cassidy, Collins, Corbett, Craig, Curry, Curtin, Dodd, Dunning, Edwards, Ellis, Fell, Fulton, Gilpin, Green, Hemphill, Kaine, Knight, Lawrence, Long, MacVeagh, M'Camant, Mantor, Metzger, Mitchell, Parsons, Porter,

Sharpe, Smith, Wm. H., Stewart, Wetherill, John Price and Wherry—42.

MR. CUYLER. I beg leave to move that we go into committee of the whole for the purpose of introducing a new section immediately to follow the twenty-second section. I will read it and then briefly explain its purposes :

“There shall be established by law a court to be styled the superior court of the State of Pennsylvania having three judges learned in the law, chosen by the electors of the State at large. Those first chosen shall respectively hold office for terms of five, of ten and of fifteen years, as may be determined by lot, to be drawn immediately after taking the oath of office; and those afterward chosen shall hold office for terms of fifteen years each. The judge of said court having the shortest unexpired term shall be chief justice thereof. The said court shall have and exercise all the jurisdiction in law and in equity heretofore possessed by the court of *nisi prius*, and shall also have and exercise the jurisdiction of a final appellate court in all causes in law and in equity in which the amount in controversy does not exceed — hundred dollars, or in which both parties to the record shall agree without regard to the amount in controversy to submit the same to the final judgment or decree of said court. The judgments of said court shall not be reported as authoritative evidence of the law; and it shall be the duty of the Supreme Court upon the petition of any defendant in error or appellee, if satisfied that doubtful and unsettled questions of law are involved in any cause pending in the superior court, to cause the same to be certified to the Supreme Court for its decision. The appellate jurisdiction of said court shall be exercised in convenient districts to be established by law.”

Mr. President, the existing article takes away from the city of Philadelphia one of its most important courts. It does so, notwithstanding more than one thousand six hundred untried causes are pending to-day in the district court. It takes away also a most important jurisdiction, for especially in this county, and in my own personal judgment throughout the State, but particularly in this county, a tribunal removed from local influences is a necessity. We do need in this county a bench composed of judges not dependent upon local influences, but entirely removed from them.

The objection to allowing such a court heretofore, has been that the *nisi prius* was held by a judge of the Supreme Court, and it therefore stood open to the just complaint of members of the bar, that they came here to argue their causes in the Supreme Court, and found a bench composed, perhaps, of only three judges, one of the judges being sick or absent, and another engaged in the *nisi prius*. That objection is entirely removed by the plan here proposed, while at the same time the court is continued in the city of Philadelphia, and we have judges to preside over it who are selected by the whole State, and are removed from local influences.

It has another advantage. We are all agreed, I believe, that the Supreme Court is overburdened; that last year in this district, with a list of two hundred and eighty cases, it heard but thirty; that the business of the Supreme Court is more than three years in arrear in this district, and not less than three years in arrear in the western district; and that that condition of affairs must continue and increase in the future. But how to relieve that pressure upon the Supreme Court has been the problem. There was an unwillingness existing on the part of the Convention to establish circuit courts. This scheme, by providing three judges for this court heretofore of *nisi prius*, will leave them with sufficient time to be able to sit as an appellate court in those minor causes which involve no doubtful questions of law, but which constitute a large part of the burden upon the Supreme Court. This tribunal will decide those causes, while at the same time it opens an ample door for the transfer from this court to the Supreme Court, of any causes which may seem to involve questions of a more doubtful description, and upon which the final decision of the Supreme Court in banc would be desirable.

It seems to me therefore, to meet all these difficulties. It gives to Philadelphia the additional jurisdiction stricken off by this article, always heretofore possessed by it, and necessary for the future. It gives it to us with judges selected from the body of the whole State, as we have had before and as the necessities of business in this county seem to require. It relieves the Supreme Court in banc by providing a competent and final tribunal to decide all questions that do not involve any grave and unsettled questions of law and in which small amounts are involved

while it opens the door to carry causes, no matter how insignificant the amount, if there is a doubtful question, to the court above.

These are the reasons that have influenced my judgment in the preparation of this section, and I trust it may meet with the favorable consideration of the Convention.

The PRESIDENT. The question is on the motion to go into committee of the whole to insert the section proposed by the gentleman from the city (Mr. Cuyler.)

Mr. TEMPLE AND OTHERS. Let it be read.

The CLERK read the amendment.

Mr. CUYLER. I ask for the yeas and nays.

Mr. MACCONNELL. I second the call.

The PRESIDENT. 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, Bailey, (Huntingdon,) Baker, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Brodhead, Carey, Corson, Curtin, Cuyler, Dallas, De France, Dunning, Finney, Funck, Gibson, Guthrie, Hall, Hanna, Hay, Hazzard, Heverin, Horton, Hunsicker, Lear, M'Clean, M'Culloch, M'Michael, Minor, Newlin, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Read, John R., Russell, Smith, H. G., Stanton, Temple, Van Reed, Wetherill, J. M., White, Harry, White, J. W. F., Woodward and Worrell—51.

N A Y S .

Messrs. Ainey, Alricks, Baer, Baily, (Perry,) Broomall, Brown, Calvin, Church, Clark, Cochran, Cronmiller, Darlington, Davis, Elliott, Harvey, Howard, Lamberton, Landis, Lilly, Littleton, MacConnell, M'Murray, Mann, Mott, Palmer, G. W., Patterson, D. W., Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Runk, Simpson, . Smith, Henry W., Struthers, Turrell, White, David N., Wright and Walker, President—40.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Buckalew, Bullitt, Campbell, Carter, Cassidy, Collins, Corbett, Craig, Curry, Dodd, Edwards, Ellis, Ewing, Fell, Fulton, Gilpin,

Green, Hemphill, Kaine, Knight, Lawrence, Long, MacVeagh, M'Camant, Mar-tor, Metzger, Mitchell, Niles, Parsons, Sharpe, Smith, Wm. H., Stewart, Wetherill, Jno. Price and Wherry—42.

Mr. CUYLER. I left the figure for the appellate jurisdiction blank. My object in doing so was that the members of the Convention might themselves fill it.

The PRESIDENT. The Convention have agreed to go into committee of the whole, and Mr. Littleton will take the chair.

The Convention accordingly resolved itself into committee of the whole, Mr. Littleton in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on the judiciary with instructions to insert a new section, to come in after section twenty-two. The section will be inserted accordingly.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Littleton) reported that the committee of the whole had inserted the new section in pursuance of the order of the Convention.

Mr. HUNSICKER. I now move that the Convention go into committee of the whole for the purpose of amending section twenty-five.

Mr. CUYLER. There is a blank to be filled in the last amendment, if the gentleman from Montgomery will permit me.

Mr. HUNSICKER. I merely wish to give a little jurisdiction to this court, and it will suit me best to offer it now and I do not like to give the opportunity away. My amendment is to strike out section twenty-five and insert in lieu of it:

"In every criminal case in which the accused is subjected to loss of life, imprisonment, or to a fine not less than three hundred dollars, he or she may, after conviction and sentence, remove the indictment, record and all proceedings to the superior court for review on all questions of law, including exceptions to evidence, and to the charge of the court under bills of exception, in the same manner as civil cases are now reviewed under writs of error. But no such removal shall be a *supersedeas*, except in capital cases, unless the judge before whom the case was tried shall certify the same to be proper for review."

The PRESIDENT. The question is on the motion of the delegate from Montgomery.

Mr. HUNSICKER. I had not intended to offer this proposition again, but inasmuch as the Convention has by a very decided majority created another tribunal in addition to those that already exist, and as this is a very necessary reform, I have thought that now is the proper time to offer it, in the hope that it will be adopted by the Convention.

I do not mean to weary members by going over the argument that was so well made when this question was considered in committee of the whole and when it was argued on second reading before the Convention, but I desire to draw the attention of members now, in addition to what was said then, and which will be well remembered, to the fact that a similar provision to this exists in quite a number of State Constitutions to-day. In California the Supreme Court has appellate jurisdiction in all criminal cases amounting to felony.

Mr. BEEBE. I should like to ask the gentleman if this amendment is the same as the one he submitted some time since?

Mr. HUNSICKER. Yes, sir, it is the same substantially, except that I have referred all appeals to the superior court instead to the Supreme Court.

In Florida the circuit courts have appellate jurisdiction in all criminal cases amounting to felony. In Georgia, by the amended Constitution of 1868, the superior courts have jurisdiction in all criminal cases where the offender is subjected to loss of life or imprisonment in the penitentiary. In Georgia it is further provided that all criminal cases shall be tried in the county where the crime was committed, unless the judge of the superior court shall be satisfied that an impartial jury cannot be obtained. In Illinois the Supreme Court has appellate jurisdiction in all cases. In Louisiana the Supreme Court has appellate jurisdiction in criminal cases, on questions of law only, whenever the punishment is death or imprisonment to hard labor, or a fine exceeding three hundred dollars is actually imposed. In Michigan the Supreme Court have a general superintending control over all inferior courts. In Minnesota the Supreme Court has "appellate jurisdiction in all cases both of law and equity, but there shall be no trial by jury in said court." In Missouri "the Supreme Court shall have a general superintending control over all inferior courts of law." In Nevada the Supreme

Court has jurisdiction in all questions at law alone in criminal cases in which the offence charged amounts to felony. In North Carolina the Supreme Court has jurisdiction to review upon appeal any decision of the court below upon any matter of law or legal inference, and also has a general superintending control of the inferior courts. In Oregon the circuit courts have a general supervisory control over all inferior courts. In South Carolina the Supreme Court has general supervisory power. In Texas an appeal is allowed if, upon submitting the transcript of the record, some error of law is believed to have been committed. In that State the jury fix the punishment. In West Virginia the Supreme Court has appellate jurisdiction in criminal cases where there has been conviction of a felony or misdemeanor in a circuit court, "and such other appellate jurisdiction in civil and criminal cases as shall be prescribed by law." In Virginia no appeal is allowed in a civil case where the amount in controversy is less than two hundred dollars. In Wisconsin the Supreme Court has general superintending control over all inferior courts.

It will be seen by this hasty review of the Constitutions of the various American States that those which I have stated recognize in the Constitution, in the fundamental law, the right to review the judgments of the courts below in criminal matters; and as this Convention has now established a superior court, as it will necessarily have very little to do at present, the argument of inconvenience and loss of time and the argument that the delay of civil causes would amount to a denial of justice, can no longer have any weight with this body. I therefore trust that the Convention will adopt this section by an almost unanimous vote.

Mr. BAER. I should be very glad to be able to vote for the proposition of the gentleman from Montgomery, and if he had offered it as originally printed, with the word "supreme" instead of "superior," I could heartily have voted for it; but I do not propose to vote for the amendment he offers now, and in less than an hour see it, together with the proposition which has just been passed, reconsidered and stricken out. I have not a doubt that the gentleman will find this superior court and his amendment both go out of the Constitution, and I trust members, when we come to vote on this amendment, will not commit themselves against voting

against a reconsideration of another proposition by going for this.

Mr. HUNSICKER. I will tell the gentleman what I will agree to do. If the Convention votes this in we may amend by striking out the word "superior" and inserting "supreme." Let us have a vote now on the proposition itself, and the word "superior" can certainly be afterwards stricken out and the word "supreme" inserted if the Convention prefers.

Mr. ARMSTRONG. I should be very glad if I could concur with my friend from Montgomery upon this amendment. I have given the subject a good deal of consideration, but I cannot see that the proposition adds anything which is of real value to the criminal appeal which is already provided for in the section as it stands.

I do not desire to detain the Convention by entering again into the discussion, and shall not do so unless it should become necessary. I hope we shall come to a vote, take the vote on the amendment; but if there is any danger of its passage I should be glad to detain the Convention on the subject.

The PRESIDENT. The question is on the motion of the delegate from Montgomery.

The question being put, a division was called for, and the yeas were forty-four.

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

Mr. ARMSTRONG. Before the yeas and nays are taken on this question, I desire to call the attention of the Convention—

Mr. HUNSICKER. I rise to a point of order. The gentleman has spoken once on this proposition.

The PRESIDENT. The gentleman from Lycoming has spoken.

Mr. ARMSTRONG. I have not spoken on the merits of the question.

Mr. D. N. WHITE. Mr. President: It appears to me we are bringing important questions into this Convention that we know nothing about. We have had no time to see them or consider them in print; and this on third reading, I consider an outrage on the members of this Convention.

Mr. CORSON. Allow me to say that this has been printed and laid on every member's table.

Mr. D. N. WHITE. When?

Mr. CORSON. For a week past.

Mr. D. N. WHITE. I have never seen it at any rate. Now, the very section that

has just passed contains provisions that I do not believe that members of this Convention know anything about. They voted it blind. I hope they will stop this work.

Mr. HUNSICKER. To relieve this discussion, I will withdraw my proposition for the present.

The PRESIDENT. The motion is withdrawn.

Mr. BAKER. Mr. President: I move that the Convention go into committee of the whole for the purpose of making an amendment to section eighteen by adding these words to that section:

"But that the compensation to be paid by the State shall not be less than that which is now received by the several judges of this Commonwealth."

Mr. President, when this matter was under discussion for the first time my proposition to keep out of the Constitution any language which would prevent the city of Philadelphia from supplementing the salaries of its hard and continually worked judges met with so little favor, nay with such strong marks of disapprobation, that I am forced, although reluctantly, to consider the question settled beyond any hope of reconsideration.

The amendment I now offer is not liable to any of the criticisms to which my former amendment was subjected. My learned and distinguished colleagues all agreed with me that the compensation of our Philadelphia judges is not in correspondence with the judicial labors which they must encounter almost every day in open court and every night of the year in their studies. But, in the judgment of a majority of my colleagues, it is not proper for any power but the State to be the paymaster, and that the State exclusively should provide their compensation.

I must submit to that judgment; for it is also the strongly pronounced judgment of this Convention, and ask the approbation of this honorable body in this, I suppose my last effort, to have justice done to our Philadelphia judges, by a provision which will run counter to no principle, no interest, and I trust no conscience, and with respect to which no judicial construction will be necessary.

By judicial construction I mean this: The Legislature some years ago, in view of the very large amount of business transacted in our courts, made provision for the payment of two thousand dollars from the city treasury to each of the judges. Upon the adoption of the new

Constitution this extra compensation may not be considered as included in the salaries now paid by the State, and will not, therefore, be protected by the provision that the salaries of the judges shall not be diminished during their respective terms, and any judicial construction of the meaning of the section in this respect ought, if possible, to be avoided.

The adoption of my amendment will prevent all difficulty and will be general in its application.

Mr. HARRY WHITE. Mr. President: I trust the Convention will not vote hastily on the proposition of our friend from Philadelphia. It is an exceedingly important matter and those delegates who have not paid attention latterly to the annual appropriation bill, providing for the expenses of government will understand that the city judges receive an appropriation of five thousand dollars each from the State, and two thousand dollars additional from the city treasury. Now, the practical effect of the amendment offered by the delegate from Philadelphia will be to make a constitutional provision that the present salary or allowance which the city judges receive shall be permanent; in other words, no judge in Philadelphia, hereafter, can receive a salary less than seven thousand dollars, and that entirely from the State Treasury. I trust we shall not insert a section of that kind in the Constitution, but leave this matter of compensation under the rule we have established, with the Legislature, from time to time.

Mr. CUYLER. The remark of the gentleman from Indiana is true in a qualified sense. It does do that only in so far as the existing incumbency of a judge for his present term is concerned, and it so results because of our provision that the compensation of a judge shall not be diminished during his term of office. It is not to be expected, with the large expenses of living and the severe labors of a judge in the county of Philadelphia, that the same salary should provide competent judges there that would do it in some other districts of the State. There must be a larger salary in Philadelphia, and that salary must have some reasonable adaption to the expenses of living that necessarily attend judicial life in a city like this. We have inserted a provision into this article that all the salaries of judges shall be paid from the Treasury of the State. It is but reasonable that they should be so, because a judge is a

State officer, and therefore it is not proper that counties, which are created and exist for other purposes and have no judicial relations or characteristics, should be called upon to pay any portion of the compensation of a judge. But why take from the judges in our city the little additional salary which now comes from the treasury of the city instead of the Treasury of the Commonwealth? It is hard when we have inserted a provision requiring the entire payment to be by the State, because of our deference to the preferences of other gentlemen, that the judges of our courts should be made to suffer in diminished salaries by reason of that fact. That is the reason upon which the amendment of the gentleman from Philadelphia (Mr. Baker) is founded, and which I think ought to commend it to the friendly consideration of every member of the Convention.

Mr. CURTIN. I trust it will be the policy of this Convention not to turn any incumbent out of office, but that we will provide that all officials shall remain in office during the term for which they were appointed. It seems to me, also, only fair and just that we shall provide that we will not take away any of the compensation which has been allowed to any of the officials of the State, and I therefore think the amendment offered by the delegate from Philadelphia ought to be agreed to and incorporated in this section, which otherwise would take away part of the compensation of a number of the judges of the State.

Mr. DARLINGTON. I should deem it extremely unwise to fix in the Constitution any sum to be paid to any officer of the State for any services whatever. If gentlemen will but reflect for a moment they will see that the purchasing value of money varies up and down with each succeeding year. If we fix any sum we may make it a great deal too high, or it may be a great deal too low for the future. Just now currency is abundant and specie scarce; but when specie payments are resumed the purchasing value of a dollar may be much greater than it is now, or than it has been in former years; and while seven thousand dollars may not be too much for the salary of a judge this year, it may be too much next year or may be not enough the year after.

I am unwilling by a constitutional provision unalterably to fix the salary of the judges of the common pleas or of the district court of Philadelphia at seven thou-

sand dollars per annum, as I am unwilling to fix the compensation of the judges of the Supreme Court or of any other court at any sum whatever. Let us say here only that the judges shall receive an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office.

What will be the effect of the adoption of this Constitution upon the judges now in office, it is not for me to say; but I apprehend that we are under no obligations whatever to continue in office any gentleman longer than he chooses to serve. If we provide that a judge of any court shall not have from the State Treasury more than a given sum, we cannot control the incumbent to keep him in his office as a judge. We cannot prevent him from resigning if his salary is inadequate, or if he thinks any other employment more profitable.

I certainly would not agree, by any constitutional provision, to legislate any judge out of office, nor will I agree by any extravagance, to open any door to the State Treasury.

MR. BIDDLE. It was with very great reluctance that I voted in favor of the amendment offered by the gentleman from Philadelphia, (Mr. Littleton,) the effect of which was to deprive a very meritorious and hard worked class of officials of a portion of their income. I voted for it, as I said at the time, because, believing that the judges were State officers, I thought they should be paid exclusively out of the State Treasury. If I could have avoided that vote, certainly I would have done so, because I felt that the effect of it was practical injustice to those gentlemen, but from my standpoint the vote was inevitable. Now, all that this amendment contemplates is to give the present incumbents that which they have been enjoying for three or four years, little enough in all conscience for the equivalent they return to the community. The additional tax upon the treasury is but small. It affects but a very few. It is not designed, as the gentleman from Indiana seems to think it is, to cover all the judges in Philadelphia for all time. It merely covers seven or eight incumbents, and hereafter, as the present incumbents drop out of office, if their salaries are supposed to be too high, as new ones are elected the Legislature will do what it thinks right on the subject. You are merely, by adopting this amendment, keeping these judges where they

have been in regard to salary, and I trust that this measure of justice will be accorded.

I say this much, because I wish to explain why I was compelled, on the proposition which was up before, to vote as I did.

MR. LILLY. When the proposition was up before, I opposed taking away the power from the city of Philadelphia or any other county in the Commonwealth of giving additional compensation to their judges. I opposed it, because I thought it was wrong to pay all the judges in all parts of the State the same salary. I shall now vote for the motion to go into committee of the whole to make this amendment, because I think that, while it may appear hard to pay Philadelphia judges twice as much as we pay judges in Lancaster, we must remember that it costs as much money to rent a house in this city as it does to support a family in many other parts of the State. I will vote for this motion to go into committee of the whole, because I think the amendment is only just and proper. I believe, however, that the eighteenth section should be stricken out entirely.

MR. D. N. WHITE. I think gentlemen will see from a careful reading of this amendment that under it we never can reduce these salaries while this Constitution lasts.

MR. BIDDLE. You ought not to reduce them.

MR. ARMSTRONG. That part of this section which proposes to limit the right of counties to pay additional salaries to their judges was put in upon full consideration, for substantial reasons. There are very many questions involving the municipal rights of cities or counties which come before the judges for adjudication. They ought never to be subjected to such temptations or to such suspicions as would necessarily lie around the case when they are called to pass upon the rights of a party that can give or take away their salary. It is eminently right that the State and the State only, should pay whatever salary the judges ought to receive. I do not think our judges receive more salary anywhere than they earn; but I think it would be a much wiser provision that this whole subject should be left to the discretion of the Legislature. There is no danger of the Legislature giving the judges more than they ought to receive in any district. I trust the amendment, as it is now offered, will not

prevail, because it contravenes the policy which this Convention has adopted after full deliberation of this question.

Mr. WORRELL. Before the gentleman sits down, I should like to ask him a question, whether the language of the eighteenth section that the compensation shall not be diminished during their continuance in office does not fix the minimum compensation of the judges.

Mr. ARMSTRONG. I understand that the eighteenth section was stricken out. I may be misinformed.

Mr. BIDDLE. No; it was not stricken out.

Mr. HOWARD. I ask that the amendment proposed by the gentleman from Philadelphia be now read.

The CLERK read as follows:

"But that the compensation to be paid by the State shall not be less than that which is now received by the several judges of this Commonwealth."

Mr. MACVEAGH. Oh, that will not do at all.

Mr. HOWARD. I do not think that is a proper matter to go into the Constitution, because if we put it in the Constitution we should of course make it apply to all the officers of the State. I do not see why the judges should be selected as the only class of officials to whom the benefits of this section should apply. I do not see why we should say that their salaries shall not be made any less, when we do not say that the salaries of other officers of the Commonwealth shall not be made any less than they are now. As it seems to me, this would not be uniform.

Mr. LITTLETON. I desire to say only one word. I had the fortune, or the misfortune, perhaps, to present to the Convention the amendment which is now in the present section prohibiting the payment of any compensation by any county or by any other source than the State Treasury to the judges in this Commonwealth. I offered that amendment simply from a sense of duty, because I had seen some of the evils of the present legislation on that subject. I believe that the judiciary is a department of the State government and as such should be supported by the State alone. The amendment now offered does not, however, contravene that principle in the least, and therefore I shall vote for it; but I cannot agree with the gentleman from Carbon that we should strike out a clause which was adopted after such careful considera-

tion as has been given this eighteenth section.

For the very reasons which the gentleman from Lycoming has stated, I shall vote for the amendment of the gentleman from Philadelphia, because I think it does not contravene the section.

Mr. SIMPSON. The present Constitution of the State provides that the salaries of judges shall not be diminished during their continuance in office; but by the language of the section before us, without the amendment now proposed by my colleague, the effect will be that in Philadelphia alone of all the counties of this broad Commonwealth, a portion of the salaries received by the judges shall be taken away from them. Unless this amendment be adopted that will be the effect of the section to which the amendment is proposed to be added. I trust the Convention will not determine that the judges of Philadelphia shall be selected out of all the judges of the Commonwealth to be deprived of a portion of their salary.

Mr. MACVEAGH. Let me point out another consideration in the amendment, if it be adopted, which was foreshadowed by the gentleman from Lycoming. That is the inequality which the city of Philadelphia chooses to establish between her judges and the judges from the remaining part of the State must continue. The Legislature allowed certain moneys to be paid out of the treasury of the State to the judges of this city.

Mr. SIMPSON. The gentleman will permit me just to say that the Legislature did not allow, but directed the payment—directed that the city councils should pay it.

Mr. MACVEAGH. Then at the instance of the Philadelphia delegation the Legislature directed a payment from the county treasury of the county of Philadelphia. That was an inequality which was supported distinctly by the argument that it did not concern the rest of us, and we did not pay any of it, and we had nothing to do with it. Philadelphia proposed to settle it and pay it, and it was not our concern.

Mr. CUYLER. The Legislature voted it.

Mr. MACVEAGH. Philadelphia did propose it, and came there by delegations and petitions asking for it.

Mr. NEWLIN. Oh, no.

Mr. MACVEAGH. Now it is proposed to put this inequality on the State Treas-

ury and to harden it in the Constitution, to say that no matter whether they multiply their judges here twenty-fold, though no one of them does as much as a dozen judges in the country districts, still the fact that they live in the city of Philadelphia shall be the ground, and the constitutional ground, for an inequality of two thousand dollars a year of salary forever. If the members of the country bar think that is just, out of the State Treasury, they will vote for this amendment, and if not, not.

Mr. SIMPSON. I desire to correct the gentleman in one instance, and that is this: The Legislature can by law provide after the expiration of the term what shall be the salary.

Mr. MACVEAGH. Yes, after the expiration of the term.

Mr. MACCONNELL. Gentlemen speak of this being confined to Philadelphia. Allegheny county is in precisely the same position. We pay our judges a thousand dollars a year out of the county treasury. I, for one, have always been opposed to the principle. I shall be glad to see it cut up by the roots. I want to see the judges all paid out of the State Treasury.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Baker.)

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

Mr. NEWLIN. I second the call.

Mr. JOSEPH BAILY. The proposition ought to be read again. Some of us were out.

The CLERK. The amendment is to add at the end of the eighteenth section these words: "But that the compensation to be paid by the State shall not be less than that which is now received by the several judges of this Commonwealth."

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

Y E A S .

Messrs. Baker, Biddle, Boyd, Calvin, Carey, Cassidy, Curtin, Cuyler, Dallas, Gibson, Hanna, Heverin, Lilly, Littleton, M'Michael, Newlin, Read, John R., Simpson, Stanton, Temple, Wetherill, John Price and Worrell—22.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Bowman, Brodhead, Broomall, Brown, Buckalew, Carter, Church, Clark, Cronmiller, Darling-

ton, Davis, De France, Dunning, Edwards, Elliott, Finney, Fulton, Funck, Guthrie, Harvey, Hay, Hazzard, Horton, Howard, Hunsicker, Lamberton, Landis, MacConnell, MacVeagh, M'Clellan, M'Culloch, M'Murray, Mann, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, Jno. N., Purviance, Samuel A., Reynolds, Rooke, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Struthers, Turrell, Van Reed, Wetherill, J. M., White, David N., Woodward, Wright and Walker, *President*—66.

So the motion not was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Bullitt Campbell, Cochran, Collins, Corbett, Corson, Craig, Curry, Dodd, Ellis, Ewing, Fell, Gilpin, Green, Hall, Hemphill, Kaine, Knight, Lawrence, Lear, Long, M'Camant, Mantor, Metzger, Mitchell, Niles, Parsons, Pughe, Reed, Andrew, Sharpe, Smith, Wm. H., Stewart, Wherry, White, Harry, and White, J. W. F.—45.

Mr. HARRY WHITE. I rise to a privileged question. I move to reconsider the vote by which the Convention resolved to go into committee of the whole to insert the amendment offered by the delegate from Philadelphia (Mr. Cuyler.)

Mr. T. H. B. PATTERSON. I second the motion.

The PRESIDENT. Did the gentleman from Indiana vote with the majority?

Mr. HARRY WHITE. I voted with the majority. My motion is also seconded by the delegate from Lebanon (Mr. Funck.)

Mr. PRESIDENT. The question is on the reconsideration of the vote by which the Convention resolved to go into committee of the whole to insert the amendment offered by the gentleman from the city, (Mr. Cuyler,) relative to a superior court.

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

Mr. TEMPLE. I second the call.

Mr. MACVEAGH. I desire to have the original proposition read before the yeas and nays are called.

The PRESIDENT. It will be read.

Mr. MACVEAGH. And I would like to hear it discussed.

The PRESIDENT. The Chair understands that it is not debatable, and he is going to enforce the rule.

Mr. CUYLER. It will be debatable if the Convention decide to reconsider.

The PRESIDENT. Of course; the Clerk will read the amendment.

The amendment was read.

The PRESIDENT. The Clerk will call the names of delegates on the motion to reconsider.

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

YEAS.

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Bowman, Broomall, Brown, Buckalew, Calvin, Campbell, Cassidy, Church, Clark, Cochran, Cronmiller, Darlington, Davis, Edwards, Elliott, Fulton, Funck, Harvey, Hazzard, Horton, Howard, Lamberton, Landis, Lilly, Littleton, MacConnell, M'Clellan, M'Culloch, M'Murray, Mann, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, Henry W., Struthers, Turrell, White, David N., White, Harry, Woodward, Wright and Walker, *President*—62.

NAYS.

Messrs. Baker, Beebe, Biddle, Boyd, Brodhead, Carey, Carter, Cuyler, Dallas, De France, Ewing, Gibson, Guthrie, Hall, Hanna, Hay, Hunsicker, MacVeagh, M'Michael, Minor, Patton, Read, John R., Smith, H. G., Stanton, Temple, Van Reed, Wetherill, J. M., Wetherill, John Price, White, J. W. F. and Worrell—39.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Collins, Corbett, Corson, Craig, Curry, Curtin, Dodd, Dunning, Ellis, Fell, Finney, Gilpin, Green, Hemphill, Heverin, Kaine, Knight, Lawrence, Lear, Long, M'Camant, Mantor, Metzger, Newlin, Niles, Parsons, Pughe, Reed, Andrew, Sharpe, Smith, Wm. H., Stewart and Wherry—41.

The PRESIDENT. The question recurs on the amendment of the gentleman from Philadelphia (Mr. Cuyler.)

Mr. CUYLER. I now move to print this amendment and postpone the further consideration of it until to-morrow morning.

Mr. HOWARD. That is right.

The PRESIDENT. It is moved that the amendment be printed, and that the further consideration of the article be postponed until to-morrow morning.

Mr. CUYLER. Not the article, but simply this particular section.

Mr. MACCONNELL. I call for the yeas and nays on that motion.

Mr. EDWARDS. I second the call.

The PRESIDENT. The Clerk will call the roll.

Mr. LILLY. I should like to ask one question before the yeas and nays are ordered. Does not this motion, if agreed to, carry the whole article over?

Mr. BOYD. I rise to a point of order. The yeas and nays have been ordered by the President, and the gentleman from Carbon is not entitled to speak.

Mr. HUNSICKER. And he is not in his seat.

The PRESIDENT. The delegate from Carbon is not in his place, and therefore is not in order.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Alricks, Armstrong, Baker, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Brodhead, Campbell, Carey, Cronmiller, Cuyler, Dallas, Darlington, De France, Ewing, Finney, Gibson, Guthrie, Hanna, Harvey, Hay, Hazzard, Horton, Howard, Hunsicker, Lamberton, Landis, Littleton, M'Michael, Minor, Newlin, Palmer, H. W., Patton, Porter, Purman, Ross, Runk, Simpson, Smith, H. G., Stanton, Temple, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, White, J. W. F., Woodward and Wright—50.

NAYS.

Messrs. Achenbach, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Brown, Buckalew, Calvin, Carter, Church, Clark, Cochran, Davis, Dunning, Edwards, Elliott, Fulton, Hall, Lilly, MacConnell, MacVeagh, M'Clellan, M'Culloch, M'Murray, Mann, Mitchell, Mott, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, John N., Purviance, Sam'l A., Reynolds, Rooke, Russell, Smith, Henry W., Struthers, White, David N., White, Harry, and Walker, *President*—39.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Broomall, Bullitt, Cassidy, Collins, Corbett, Corson, Craig, Curry, Curtin, Dodd, Ellis, Fell, Funck, Gilpin, Green, Hemphill, Heverin, Kaine, Knight, Lawrence, Lear, Long, M'Camant, Mantor, Metzger, Niles,

Parsons, Pughe, Read, John R., Reed, Andrew, Sharpe, Smith, Wm. H., Stewart, Wherry and Worrell—44.

Mr. HANNA. I move to reconsider the vote whereby the Convention resolved to go into committee of the whole upon my motion, for the purpose of amending section twelve in the tenth line.

Mr. LILLY. I raise the point of order, that the article is not now under consideration.

The PRESIDENT. Under the vote just taken, the article goes over until to-morrow morning.

Mr. MACVEAGH. The article does not necessarily go over. I understood the Chair to rule that the section would go over, although I do not see myself that we can go on with the article now to any practical advantage.

Mr. BUCKALEW. You cannot postpone a fragment of an article.

The PRESIDENT. The Chair is compelled to rule that the whole article goes over under the postponement.

Mr. TEMPLE. Then I move to reconsider the vote by which the article was postponed and the amendment ordered to be printed.

Mr. LITTLETON and Mr. HORTON second the motion.

Mr. DALLAS. Mr. Cuyler has left the room.

Mr. MACVEAGH. Very well; he should have stayed.

The PRESIDENT. It is moved to reconsider the vote to postpone and print.

Mr. LITTLETON. I do not understand that Mr. Cuyler had left the room. If he has, I should decline to second the motion.

Mr. MACVEAGH. Is not that an additional reason why we should reconsider it?

Mr. HARRY WHITE. I raise the point of order that the motion is not debatable.

The PRESIDENT. A motion to reconsider is not debatable.

Mr. TEMPLE. Inasmuch as Mr. Cuyler has left the Hall, I withdraw the motion.

The PRESIDENT. Then the article goes over.

Mr. MACVEAGH. Would it be in order to move that to-morrow he stay here until the vote is taken and the question disposed of? [Laughter.]

IMPEACHMENT AND REMOVAL FROM OFFICE.

Mr. BUCKALEW. I now move to proceed to the consideration of article num-

ber six, on impeachment and removal from office, which has been ordered to a third reading.

The motion was agreed to, and the article was read the third time, as follows:

ARTICLE VI.

IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. The House of Representatives shall have the sole power of impeachment.

SECTION 2. All impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

SECTION 3. The Governor and all other civil officers under this commonwealth shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth; the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

SECTION 4. All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or any infamous crime.

All officers elected by the people except Governor, Lieutenant Governor, members of the General Assembly and judges of the court of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate.

Mr. BIDDLE. Mr. President: In the second line of the fourth section members will observe that the Committee on Revision have stricken out the two first lines: "Appointed officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they are appointed."

I think the committee transcended their power when they did that, but I do not care about it. What I mean to call attention to is that as the article stands now, no provision for the removal of appointed officers is made. I move now to go into committee of the whole to bring the subject before the House for the purpose of amending the fourth section by striking

out in the sixth line the four words "elected by the people."

The section now assumes that all officers removable by the Governor in the way pointed out here are merely elected officers. What I want to call the attention of the House to is that there must be some provision for removing appointed officers, and this reaches all if amended as I propose.

Mr. BUCKALEW. For one I am entirely agreed to the amendment of the member from Philadelphia. I desire to remark that the action of the committee striking out the first division at the top of page two was a necessity because that provision was in conflict with the commencement of the same section four on the previous page. The commencement of the section makes officers hold their offices on the condition that they shall behave themselves well; and then this provision, which was struck out, makes them hold their offices at the pleasure of the Governor or any other power which shall have appointed them. The two were in utter antagonism to each other. And, besides, this provision should be struck out, to be consistent with the provision in the executive article with reference to appointments and removals from office. I agree that it will be perfectly proper that this power of removal by the Governor upon the address of two-thirds of the Senate shall apply to an appointed as well as to an elected officer. There is no reason for any distinction between them.

The PRESIDENT. Perhaps the Convention will unanimously consent to the amendment.

Mr. BIDDLE. I was going to suggest that to save time.

The PRESIDENT. Will the Convention unanimously agree to the amendment? ["Aye." "Aye."] It is agreed to.

Mr. HARRY WHITE. I had the honor of being a member of the Committee on Impeachment and Removal from Office, and without referring specially to anything that occurred there, I recollect that, whether it was expressed or not, it certainly met the assent of the minds of the members of that committee individually, to insert the words: "Appointed officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they are appointed." I am in favor of that provision, and I desire to have the privilege of voting to retain it in the Constitution.

The PRESIDENT. The delegate from Indiana moves to go into committee of the whole for the purpose of inserting in the fourth and fifth lines of section four the words: "Appointed officers, other than judges of courts of record, may be removed at the pleasure of the power by which they were appointed."

Mr. HARRY WHITE. In support of that proposition, I will say that I believe it is the accepted interpretation generally that the appointing power also has authority to remove when it sees fit; and of course that power will only be exercised with proper discretion, and when proper ground is shown therefor. For that we have to trust to an enlightened public sentiment. If that be proper, to avoid all confusion, let us have a constitutional rule on this subject, and not leave it to the uncertain opinion which has hitherto obtained in that regard. The Governor has the appointing power of a number of officers, bark inspector, harbor master and a number of officers in this city, and in Allegheny county, and all over the Commonwealth, sealers of weights and measures and other officers of that kind, and it is not desirable, when such officers commit malfeasance or neglect in the performance of the duties of their office, that we shall wait for a request from two-thirds of the Senate. Summary action may be required, and I would retain in the Governor the power. It was in the minds of the committee that reported this article to relieve that question of all doubt. Hence, I am in favor of retaining these words in the article, as they were agreed upon by that committee.

Mr. BUCKALEW. This question was debated once before, but I suppose gentlemen have forgotten some of the points. It is the question of the power of the Governor to remove at his pleasure, or of the mayor of a city or any other appointing authority. The distinction between cases where this power should exist and where it should not exist is perfectly plain. Where an officer is appointed to hold at the pleasure of the Governor or other appointing power, the power of removal of course exists; it is reserved virtually in the very commission which issues; as in the case of officers of the United States, before the tenure-of-office law, when commissions were issued to members of the cabinet to hold their office during the pleasure of the President for the time being; and commissions for all other appointments made by

the President of the United States, where fixed terms were not prescribed by law, were issued in the same form. In all those cases, the President has, of course, the absolute power of removal; it is expressed, in fact, in the appointment or in the commission which is issued.

And just so the Governor of this Commonwealth, with reference to appointments of that description, will have the power of absolute removal, but where the law has provided a fixed term for a public officer, as where the particular officer shall hold his office for the term of three years, a commission issued to him in accordance with the law, and in that case always in this State, and I suppose in every other State, the officer holds a title to his office for the period of three years upon the condition that he shall forfeit it by misconduct. That constitutional principle the gentleman from Indiana wants to change, and to sweep away the rights of those officers whose terms are fixed and defined by law, and to which the incumbents have a legal and constitutional title at present. He desires apparently to wipe all that away, and have every officer in this State, except the specific and particular ones here mentioned, hold at the pleasure of the Governor or other appointing power. Really I do not suppose the gentleman from Indiana means that. If he wants any particular officers of this State to be removable by the Governor, all he has to do is to make a law accordingly, give them a tenure at the pleasure of the Governor not exceeding a certain period of time; but it is intolerable that all the offices that are filled for fixed terms should have their character entirely changed, so that when a Governor wants a judge to make a particular decision after he is commissioned, and the judge says, "I will not do it," he is to be put out of office and somebody else put in; and so as to almost all other officers.

I hope that the action of the Convention on this subject will simply retain the ordinary constitutional action of our State.

Mr. LITTLETON. The term of several officers are three years. There should certainly be some power of suspension, because an officer might commit the most flagrant breach of morality, and yet there is no power to reach him until the Senate convenes; and it is to sit but once every two years. I only throw out the suggestion; I have not paid special attention to the article.

Mr. BIDDLE. I feel bound to say that I concur with the gentleman from Indiana. I gave way before because I thought the House desired to strike out these two lines. I think all the arguments are in favor of giving the appointing power the power of removal. There may be, as we have said before in the discussion, cases of gross incompetency not amounting to crime, such as drunkenness, general worthlessness, where it would be very cumbersome, very inconvenient, and great delay might occur before you could get an address of two-thirds of the Senate, with biennial sessions especially. Nor do I see any reason to fear that the appointing power is going to do harm by exercising this power of removal. I think the section was a great deal better with these two lines in.

Mr. DALLAS. There is a single practical objection to this absolute power of removal in the Governor that I think should be stated in this connection; and that is this: A Governor whose term, you will say, is within one year of expiration may fill several of these offices throughout the State, and they are filled for three years. That is the term of office. A new Governor coming in, having his personal favorites, political friends and otherwise, would clear them all out. That I think would be a great objection.

The PRESIDENT. The question is on the motion of the delegate from Indiana.

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

Mr. GIBSON. I second the call.

The question being taken by yeas and nays, resulted as follow:

Y E A S .

Messrs. Ainey, Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Boyd, Calvin, Carter, Church, Darlington, Davis, Edwards, Finney, Fulton, Funck, Gibson, Hanna, Horton, Howard, Hunsicker, Lamberton, Lear, Littleton, MacConnell, Mann, Minor, Newlin, Patterson, T. H. B., Purman, Purviance, Samuel A., Reynolds, Rooke, Smith, Henry W., Struthers, Turrell, Van Reed, White, Harry, Woodward and Walker, *President*—41.

N A Y S .

Messrs. Armstrong, Black, Charles A., Buckalew, Cassidy, Cronmiller, Dallas, De France, Elliott, Ewing, Guthrie, Hall, Harvey, Hazzard, Landis, Lilly, Mac-

Veagh, M'Clean, M'Culloch, M'Michael, Mitchell, Mott, Palmer, H. W., Patton, Porter, Purviance, Jno. N., Read, John R., Ross, Runk, Stanton, Wetherill, J. M., Wetherill, John Price, White, J. W. F. and Worrell—33.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Bowman, Brodhead, Broomall, Brown, Bullitt Campbell, Carey, Clark, Cochran, Collins, Corbett, Corson, Craig, Curry, Curtin, Cuyler, Dodd, Dunning, Ellis, Fell, Gilpin, Green, Hay, Hemphill, Heverin, Kaine, Knight, Lawrence, Long, M'Camant, M'Murray, Mantor, Metzger, Niles, Palmer, G. W., Parsons, Patterson, D. W., Pughe, Reed, Andrew, Russell, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple, Wherry, White, David N. and Wright—59

The Convention accordingly resolved itself into committee of the whole, Mr. Porter in the chair.

The CHAIRMAN. The committee of the whole have had referred to them an amendment to insert in section four the words: "Appointed officers, other than judges of courts of record, may be removed at the pleasure of the power by which they were appointed." The amendment will be made and the committee rise.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Porter) reported that the committee of the whole had inserted in the fourth section the amendment directed by the Convention.

Mr. BIDDLE. It will be necessary now to restore in the sixth line the words, "elected by the people." I ask unanimous consent to have that amendment made. ["Agreed." "Agreed."]

The PRESIDENT. Is unanimous consent granted to make that modification? ["Aye." "Aye."] The modification will be made. If no further amendment be proposed, the question is on the final passage of the article.

The article was passed.

OATHS OF OFFICE.

Mr. BUCKALEW. I ask that the Convention now proceed to the consideration of the report of the Committee of Revision and Adjustment upon article number seven, in relation to oaths of office.

The motion was agreed to.

The amendments reported by the Committee on Revision were read.

Mr. BUCKALEW. I move that the amendments made by the committee be adopted.

Mr. ARMSTRONG. I move to amend the motion, so as to avoid two votes, by adding, "and that the House proceed to the consideration of the article on third reading."

Mr. BUCKALEW. That follows.

Mr. ARMSTRONG. It has heretofore required two votes.

The PRESIDENT. It is moved that the Convention adopt the report of the Committee on Revision and Adjustment.

The motion was agreed to.

Mr. D. W. PATTERSON. I now move that the article be transcribed for third reading.

The motion was agreed to.

The PRESIDENT. The article is now before the Convention on third reading, and it will be read.

The article was read the third time as follows:

ARTICLE VII.

OATHS OF OFFICE.

SECTION 1. 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, except for necessary and proper expenses expressly authorized by law; that I have not 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 compensation 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.

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.

SECTION 2. 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 candidate; 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 knowingly swore or affirmed falsely, he shall be deemed guilty of perjury and also be disqualified as aforesaid.

Mr. LITTLETON. I move to go into committee of the whole for the purpose of amending the article, by striking out section two.

Mr. FUNCK. I call for the yeas and nays on that motion.

Mr. H. W. PALMER. I second the call. The question being taken by yeas and nays, resulted as follow:

Y E A S .

Messrs. Armstrong, Baer, Bailly, (Perry,) Baker, Biddle, Black, Chas. A., Bowman, Brown, Cassidy, Church, Cronmiller, Curtin, Darlington, Davis, Elliott, Ewing, Hall, Horton, Hunsicker, Lear, Lilly, Littleton, MacConnell, M'Michael, Mann, Minor, Patterson, D. W., Porter, Pughe, Reynolds, Rooke, Runk, Stanton, Struthers, Turrell, White, Harry, White, J. W. F. and Walker, *President*—38.

N A Y S .

Messrs. Achenbach, Alricks, Bailey, (Huntingdon,) Beebe, Boyd, Buckalew, Calvin, Dallas, Finney, Fulton, Funck, Gibson, Guthrie, Harvey, Howard, Lambertson, Landis, MacVeagh, M'Clean, M'Culloch, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purvance, John N., Purvance, Samuel A., Ross, Smith, H. G., Smith, Henry W., Van Reed, Wetherill, J. M., Wetherill, John Price, Woodward, Worell and Wright—37.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Brodhead, Broomall, Bullitt, Campbell, Carey, Carter, Clark, Cochran, Collins, Corbett, Corson, Craig, Curry, Cuyler, De France, Dodd, Dunning, Edwards, Ellis, Fell, Gilpin, Green, Hanna, Hay, Hazzard, Hemphill, Heverin, Kaine, Knight, Lawrence, Long, M'Camant, M'Murray, Mantor, Metzger, Mitchell, Newlin, Niles, Parsons, Read, John R., Reed, Andrew, Russell, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Wherry and White, David N.—58.

The Convention accordingly resolved itself into committee of the whole, Mr. Hunsicker in the chair.

The CHAIRMAN. The committee of the whole have referred to them the article on oaths and oaths of office, for the purpose of amending it by striking out section two, which will be read.

The CLERK read as follows:

SECTION 2. 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 candidate. 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 Representatives 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 knowingly swore or affirmed falsely, he shall be deemed guilty of perjury and also be disqualified as aforesaid.

The CHAIRMAN. The amendment is made and the committee of the whole rises.

The committee accordingly rose, and the President having resumed the chair, the Chairman (Mr. Hunsicker) reported that the committee of the whole had stricken out section two, as directed by the Convention.

Mr. J. M. WETHERILL. I move to go into committee of the whole for the purpose of striking out in the twenty-seventh line of the first section the words, "learned in the law," so as to make the clause read:

"The oath of 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, in the hall of the House to which the member is elected."

I desire to say only one word on this subject. The Convention has agreed to abolish the office of associate judge at the expiration of the present term of the incumbents. If at the same time we leave those words "learned in the law" in the Constitution, they are a very serious reflection upon the character of the associate judges now in office.

Mr. HUNSICKER. I would remind the gentleman that the judiciary article is not finally passed.

Mr. HARRY WHITE. If the delegate will allow me, I will state that he is mistaken in the statement he makes concerning the abolition of the associate judges. They are abolished only in those counties which form single districts.

Mr. J. M. WETHERILL. That does not interfere with the remark that I made. By leaving these words "learned in the law" where they are now, they imply a reflection that the associate judges are not competent to administer the oath of office to members of the Legislature. I do not believe that the associate judges are not competent for that purpose; I believe they are fully competent and that an oath of office administered by them would be as effective as one administered by judges learned in the law. I hope the words will be stricken out. Their retention will serve no useful purpose.

The PRESIDENT. The question is on the motion of the delegate from Schuylkill.

The motion was not agreed to.

Mr. DARLINGTON. I move to go into committee of the whole for the purpose of amending the section, by striking out, in the fourth line, the words "obey and defend" so as to make the section read in this particular:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this Commonwealth."

The words "obey and defend" are not to be found in any previous Constitution of the State, and convey no more meaning than the word "support" which has been used.

Mr. LITTLETON. Does the gentleman want to secede?

Mr. DARLINGTON. No; I do not propose to secede. [Laughter.] I propose to restore the old oath "to support the

Constitution." That is all. I want to strike out the words "obey and defend."

The motion was rejected.

Mr. MANN. I move to go into committee of the whole for the purpose of amending the first section, by striking out all after the word "fidelity," in the sixth line, to the word "law," at the end of the fifteenth line.

The PRESIDENT. The Clerk will read the part proposed to be erased.

The CLERK read 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 or election, (or appointment,) except for necessary and proper expenses expressly authorized by law; that I have not 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 compensation allowed by law."

Mr. MANN. Delegates will notice, if they will look at this section, that my amendment seeks to restore the old Constitution in this particular. I propose to stop with the word "fidelity," where the oath in the present Constitution stops. These remaining words are indefinite, have no present applicability, and if they are adopted we shall have to wait for the action of the Legislature to provide for them. They seem to me to be harsh and unreasonable and unworthy to be inserted in the Constitution.

However, I do not desire to take up the time of this Convention with discussing the subject. I leave it without further remark at this time, simply desiring the yeas and nays upon the amendment.

Mr. FUNCK. I second the call.

Mr. D. W. PATTERSON. I hope this amendment will pass, and for the following reasons:

First, because with the amendments now made to the article on the Legislature we can have no corrupt legislators.

In the second place, I consider this portion of this section, if adopted as it now stands, a libel upon every citizen of the Commonwealth of every party, without exception.

Third, because when this oath passed it passed by the votes of some two or three gentlemen, whose names I will not

mention, but who, after it had passed, admitted that the oath was of such a character that they would not consent to be candidates for the Legislature under it. They held that it was so discriminating and so minute that an innocent man might, in an unguarded moment, do something included in it or in violation of it which might subject him to criminal prosecution, aye to be deprived of holding any office in this Commonwealth. I put the plain question to those gentlemen: "Would you like to be a candidate, or could you expect to be a candidate, for the Legislature under that oath?" And the answer was: "No, you would not catch me being a candidate as long as that oath stands in the fundamental law." Has it not a tendency to keep out of the Legislature conscientious, timid men, but men who at the same time are the best men we can get to go to that body, men whom their fellow-citizens would select to go on account of their uniform, upright, honest character? I say it has that tendency, and it will drive out of the Legislature the very best and most conscientious men we can find in all parties.

Without wishing to delay this Convention any further, I hope that this amendment will prevail, and that we shall not put into our fundamental law a calumny and a libel upon every citizen of every party in this State, and a clause that will tend to keep out of the Legislature the best elements of every party in the Commonwealth.

Mr. ARMSTRONG. I should like very much to vote to strike out a part of this section, that which relates to the payment of money directly or indirectly for the procurement of nominations. To that part of it I think there is objection. I think there is much value in the part of it which is left after removing the objectionable clause to which I have referred, viz:

"That I have not 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 compensation allowed by law."

I think that is valuable, but when you turn to the other part of it, "that I have not paid or contributed, or promised to contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election, (or ap-

pointment,) except for necessary and proper expenses expressly authorized by law," I think we might safely leave it out of this article.

I do not think that public sentiment has yet attained to that point where it is ready to regulate primary elections. I hope it may come some time, and if it does such regulation will necessarily involve a prohibition of the improper use of money or other considerations for procuring nominations. But what will be the position of the candidate before the Legislature act upon it by the enactment of a law, or if they should decline to enact a law at all? We have then a provision in the Constitution which would be open to construction whether it had any meaning at all or not, and probably would be held to have no meaning.

I hope the gentleman from Potter will modify his amendment. If not I shall personally feel constrained to vote against it, with the intention to move afterward to strike out that part of the oath which I have indicated.

Mr. CALVIN. It appears to me that a very large portion, if not three-fourths, of all the corruption of politics, in this State, originates in the nominations. In majority counties or majority districts the important thing is to obtain the nomination. Everybody knows, who knows anything about the present condition of politics throughout this State, that not only in this city but throughout the country nominations are openly and shamefully bought. Now, if we want to purify the political atmosphere and promote political morality, let us strike at the fountain source of this corruption, and that is found in the procurement of nominations.

This would not be an idle and vain provision, because the man who would be defeated for a nomination would be very apt to look after the successful candidate, and if he had violated the law or a constitutional provision, prosecute him. And again, the candidate of the opposite party would be very apt also to look after him, and see whether he had violated this constitutional provision. I have no doubt that this provision would be enforced and that under its action no man would dare openly to buy a nomination. Everybody knows that nominations are bought to-day just as cattle are bought in the market. If a man can only get his nomination—and he will give as much for his nomination as the office is worth—it is calculated that the party will support him,

and they generally do support him, and the consequence is that we have the most corrupt and unworthy men nominated as a general rule.

Mr. BOWMAN. I cordially agree with the remarks made by my friend from Lycoming, and I hope that the gentleman from Potter will so modify his amendment that we can retain a portion of this section and dispense with the residue. I will indicate what I think will be the proper course to pursue. If the gentleman will strike out all after the word "fidelity," in the sixth line, down to the word "law," in the tenth line, and then insert "and I further swear that I have not knowingly violated any election law of this Commonwealth," we can retain the rest of the section, and I can vote for his motion to go into committee of the whole for the purpose of making that amendment. I hope the gentleman will modify his amendment in that respect. I think the latter part of the clause he now moves to erase should be retained.

The objectionable part of the section which I propose to dispense with is in the ninth line. We have there, and I wish to call special attention to this fact, the expression, "except for necessary and proper expenses expressly authorized by law." When have we ever had a law which authorized the payment of expenses incurred by a candidate for office in seeking a nomination? I know of no such law as that, and I do not believe the Legislature will ever pass a law providing when a man goes before the people soliciting a nomination for an office what are proper, necessary and legitimate expenses that he shall pay. We ought not to put this thing into the Constitution, it seems to me, and I hope the gentleman from Potter will modify his amendment as I have indicated. If he will do that I will vote for it; otherwise, I cannot.

Mr. MANN. In deference to the remarks of the gentlemen who have spoken on this question, I will modify my amendment so as to strike out from the word "fidelity," in the sixth line, down to the word "law," in the tenth line, 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 or election, (or appointment,) except for necessary and proper expenses expressly authorized by law."

Mr. BOWMAN. That will do.

Mr. ARMSTRONG. That will do.

Mr. H. W. PALMER. The words which it is now proposed to strike out were inserted on the motion of the gentleman from Columbia (Mr. Buckalew.) Of course there is no law at the present time in Pennsylvania which expressly authorizes the payment of any election expense by a candidate; but this oath contemplates that in the future a law will be passed on this subject, such a law as now exists in England, passed by the English Parliament, and under which the members of the House of Commons have been elected for many years. The proposition to strike out from this oath the part in which the officer swears that he has paid or contributed no money to secure his election or nomination is, in my judgment, a proposition to strike out, if not the most valuable part of the oath, at least one of its most valuable features. The time has come in this country when no poor man can be elected to high office. It is only he whose coffers are stuffed with money who can secure the high places of honor or profit. *

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

Mr. H. W. PALMER. No, sir. I will go on. If the purpose of the delegates in this Convention is to allow this state of things to continue, and it does continue them in my judgment, the years will not be many before there will be no officers to elect in the Commonwealth of Pennsylvania. Upon the purity of the ballot-box depends the perpetuity of our institutions; and what, I ask, so fouls the fountain head as the bribery and corruption of electors by candidates. The men who have money seek office, and they go to the fountain head, and by corrupting the voter with bribes foul the very origin of free government. Again, I say, the days are numbered, and the time is nigh at hand, unless this great rolling, seething tide of corruption is stemmed, when we shall have no government in which to elect officers.

This oath may not be the remedy, but it will be some little barrier. It may become some small obstruction in the way, and I appeal to the lovers of the republic here, to those who desire to transmit to their posterity the blessings of this great and glorious free government, to stand up for this provision. We put it here three times by the vote of this Convention; let us not strike it out for the benefit of the rich and powerful, but leave it for the benefit of multitudes of poor men whose

talents fit them to adorn and elevate the places of honor and profit in the State.

The PRESIDENT. On this question the yeas and nays have been ordered, and will be taken.

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

YEAS.

Messrs. Armstrong, Baker, Biddle, Bowman, Broomall, Corson, Darlington, Edwards, Ewing, Gilpin, Hanna, Harvey, Horton, Littleton, M'Clellan, M'Michael, Mann, Minor, Newlin, Patterson, D. W., Porter, Pughe, Purviance, Samuel A., Reed, Andrew, Reynolds, Ross, Runk, Stanton, Turrell, Wetherill, J. M., White, Harry, White, J. W. F., Worrell and Walker, *President*—34.

NAYS.

Messrs. Achenbach, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Black, Charles A., Boyd, Brodhead, Brown, Buckalew, Calvin, Carter, Cassidy, Church, Clark, Cronmiller, Curtin, Dallas, Davis, De France, Dunning, Elliott, Finney, Fulton, Funck, Gibson, Guthrie, Hall, Hunsicker, Lambertson, Landis, Lear, Lilly, MacConnell, M'Culloch, M'Murray, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Read, John R., Rooke, Smith, H. G., Smith, Henry W., Struthers, Van Reed, Wetherill, Jno. Price, Woodward and Wright—53.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews Bannan, Barclay Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Cochran, Collins, Corbett, Craig, Curry, Cuyler, Dodd, Ellis, Fell, Green, Hay, Hazzard, Hemphill, Heverin, Howard, Kaine, Knight, Lawrence, Long, MacVeagh, M'Camant, Mantor, Metzger, Mitchell, Niles, Parsons, Russell, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Wherry and White, David N.—46.

Mr. D. W. PATTERSON. I move to amend the first section by striking out all after the third line to the end of the twenty-eighth line and inserting the oath found on pages nine and ten of the pamphlet, under the article on the Legislature included in sections nine and ten.

The PRESIDENT. The amendment will be read.

The CLERK. It is proposed to insert the following :

"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 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."

"The foregoing oath shall be administered by one of the judges of the Supreme Court, or a president judge of the common pleas court, in the Hall of the House to which the member is elected, and the Secretary of State shall read and file the oath subscribed by such member. Any member who shall refuse to take said oath shall forfeit his office, and every member who shall be convicted of having sworn falsely to, or of having violated his said oath, shall forfeit his office, and be disqualified thereafter from holding any office of profit or trust in this State."

Mr. BIDDLE. I would just call the attention of the gentleman from Lancaster to the fact that this applies in terms to members of the Legislature, not to other officers.

Mr. D. W. PATTERSON. I have left in the upper part of the existing article, which makes it apply to all State, county and judicial officers.

I will merely state that this oath was inserted in the article on the Legislature, after a great deal of discussion and by a very large vote on second reading. It is a reasonable oath, one which no man need hesitate to take. While it embraces everything that will bind an honorable man, a man of any character, and preserve him pure and incorruptible, it is without those stringent requirements which the oath under consideration in this article contains. It seems to me that if we adopt an oath at all, we ought to substitute this.

Mr. MACCONNELL. I would remind the gentleman that it applies only to members of the Legislature; look at these words:

"For any vote or influence I may give or withhold on any bill, resolution or appropriation."

Mr. W. D. PATTERSON. It applies to Senators and Representatives in the terms of the oath, but I leave in the first three lines:

"Senators, 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 leave that portion of this section in.

Mr. J. M. BAILEY. I should like to ask the gentleman from Lancaster how the last two lines of the oath proposed to be substituted by him would apply to a prothonotary, or a sheriff, or a judge:

"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."

Mr. D. W. PATTERSON. It would not apply well to judicial officers. [Laughter.] If it is the voice of the Convention to insert this, the Convention can further amend it to meet that case.

Mr. BAER. Lest there be any more eloquence spent—and we have had all we want—I now move the previous question.

The PRESIDENT. The previous question, if sustained, will apply to the article.

Mr. HARRY WHITE. I rise to a parliamentary inquiry. If the previous question is persisted in—

Mr. H. W. PALMER. Oh, no, he does not insist upon it.

Mr. HARRY WHITE. Very well.

Mr. DARLINGTON. If the previous question should be ordered, will it not cut off all amendment?

Mr. BAER. I withdraw the call for the previous question.

The PRESIDENT. The question is on the motion of the delegate from Lancaster, (Mr. D. W. Patterson.)

Mr. H. W. SMITH. I merely rise for the purpose of asking a little information. This section as it now stands requires an oath to be taken that a candidate elected has not used, directly or indirectly, money or other valuable thing to procure his nomination or election. I think certain officers may be elected who will find it

impossible to take this oath. In the district which I represent one party is largely in the majority, and yet I have known there candidates who were independent and ran independent of all parties, running as volunteers and never had a nomination, to be elected by respectable majorities. Now, how is a candidate who is elected as a volunteer, or who is not nominated at all, to take an oath that he has paid no money to procure a nomination, when he never was nominated? [Laughter.]

Mr. H. G. SMITH. He could do it easier than anybody else.

The PRESIDENT. The question is on the motion of the delegate from Lancaster (Mr. D. W. Patterson.)

The motion was not agreed to.

Mr. HARRY WHITE. I move that the Convention go into committee of the whole for special amendment, by striking out the words, "except for necessary and proper expenses expressly authorized by law," in the ninth and tenth lines.

Mr. President, a word of explanation. I am not at all hostile to the oath as I find it in this article. On the contrary, it occurs to me that it is very proper to adopt some oath of this kind, some provision which shall be more particular and more searching than the ordinary oath of fidelity in office. Doubtless those who have been members of the Legislature for any length of time have known cases of individuals who were elected as honest men going to Harrisburg and there being approached by individuals who had particular local interests. For instance, some gentlemen representing a western constituency may be elected as representative and go to Harrisburg, and find a gentleman of the county of Chester or the southern part of the State seeking a railroad incorporation. There are conflicting interests there; one interest desires the road to be so constructed that the location shall be in a particular direction, and another interest the other way. That is an entirely local matter, and individuals who are entirely honest in regard to appropriations of public money and the passage of general laws have been approached from time to time, doubtless, and felt justified in accepting \$100 from Mr. A. because he wanted the road to run in a particular direction and it did not interfere at all with the prosperity of their constituents or the prosperity of the Commonwealth at large.

It has often occurred to my mind that if those things do exist, as doubtless they do, by some direct oath of this kind by which a party is compelled to swear that under no circumstances did he receive, directly or indirectly, anything to influence his vote, the conscience of the man would make him hesitate to refuse this act of corruption, and would be strong against other attempts. Instances of that kind may seem to justify a man and make wise this particular oath which we propose to adopt. I do not object to it, but I do object to this expression, this saving clause, "except for necessary and proper expenses expressly authorized by law." It occurs to me that that is inconsistent with the antecedent part of the sentence, which requires the candidate to swear "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." That is an explicit declaration. I would stop there. I can conceive how "necessary and proper expenses" can be used for corrupt purposes, and can be so distributed and so made as to influence a particular paper or a particular individual to favor the party from whom the money is received.

Then, again, we have no law on this subject other than the common law which regulates contracts between parties. I may be met by the argument that it will necessitate the passage by the Legislature of some law recognizing and defining what are necessary expenses. That may or may not be so. I would not leave this open to the uncertainty of the future. I would make those requisites in the oath which reach certain evils of which we are aware, and I would stop there and go no further.

Mr. J. W. F. WHITE. I cannot vote for the motion of the delegate from Indiana. It seems to me it would make the section worse than it is now, and in my judgment, it is now about as bad as it can well be. I suggest to the delegate from Indiana that he simply strike out the words "expressly authorized by law," and then the clause will read: "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 for necessary and proper expenses."

Mr. HARRY WHITE. Very well; if the

delegate will allow me I will modify my amendment accordingly.

Mr. J. W. F. WHITE. Then I shall vote for the amendment as it now stands.

We may as well look at this question as sensible, rational men, men of common sense. As the oath stands now no honest man in the State of Pennsylvania could take it or accept office. The section is not intended to prohibit the corrupt use of money; but no candidate is to use any money whatever for necessary and proper expenses in his nomination or election unless those expenses be expressly authorized by law.

Mr. J. M. BAILEY. I should like to ask the gentleman who would decide what expenses are necessary and proper?

Mr. J. W. F. WHITE. That must rest in the conscience of the candidate himself. If you let this section stand as it is now no honest man, I repeat, can accept office or take that oath.

Mr. H. W. PALMER. Why?

Mr. J. W. F. WHITE. Just because no man can be elected to any office whatever in this State who is not at some expense connected with it. I venture to say that not a delegate on this floor was elected to this Constitutional Convention without paying something for expenses. No officer, from Governor of the State down to the lowest county, township or borough officer in the State of Pennsylvania, is elected without having to pay something, and very properly, to meet the ordinary, necessary expenses of an election. Your section strikes at that. Dishonest man will evade such a section if you have it in your Constitution. They are the very men who will get around the section in some way, but the truly conscientious man would not take that oath and would not accept office.

There are various expenses connected with elections that are not provided for by law. They must be met in some way. Under this section a candidate would not be allowed even to print his own tickets and distribute them at the election polls unless there was an express law authorizing that to be done. And if you have to refer it to the Legislature to say what expenses a candidate shall pay, what protection have you? They may pass a law that will suit some localities; it will not suit others. It would be utterly impossible for the Legislature to frame a general law defining what would be necessary and proper expenses for a candidate to pay, either for his nomination or his

election. I say you must trust it to the conscience of the man himself. I am willing to vote for the section if you strike out those words, as the motion now stands, and let the officer swear that he has contributed nothing except for necessary and proper expenses. That oath honest, upright men can take. It will bind such men, and it will do good. A rascal or a scoundrel, you may say, will swear falsely; he will take that oath with mental reservations and qualifications, and he would take this oath, and spend money disregarding the oath. I say that this section, as we have it before us, would only enable bad men to get into office, and be a most terrible stumbling block in the way of honest, conscientious upright men holding office in this State. I therefore shall vote for this amendment as it now stands, and hope it will be carried.

Mr. ARMSTRONG. I desire to add but a word which I could not express when this question was before the Convention a moment ago. The iron-clad rule which forbids that a man shall answer an argument which is thrust upon the House is doing an immense amount of harm in this Convention, I believe; but I am not complaining of the rule. I propose to adhere to it as long as it is the rule of the Convention.

Now, look at this section for a moment. I trust somebody will move to reconsider the vote that was taken. "Except for necessary and proper expenses expressly authorized by law." The moment necessary expenses are authorized by law, it becomes a part of the election law necessarily, and is then fully and completely covered by this next phrase: "I have not knowingly violated any election law of this Commonwealth," and the whole previous clause becomes unnecessary, for it is inoperative until the law is passed, and when it is passed it becomes a part of the election law and is within the whole scope and letter, as well as meaning of the oath.

But, again, I fully agree with the gentleman from Allegheny (Mr. J. W. F. White) on this question. I believe that this thing of spreading nets around honest men is the very way to fill the Legislature with dishonest men. We know of some striking instances, and we can lay our hands upon them, and if it were necessary could mention names where nominations have been openly purchased; but have they been purchased by the

candidate or by the person who wanted to use the candidate? Mr. A wants a particular measure passed in the Legislature. He looks around to see whether Mr. B, or C or D, will suit his purpose, and Mr. B, C or D stands perfectly silent and does nothing, whilst Mr. A may pay hundreds of dollars for the purpose of getting that man into the Legislature.

The methods of evasion are so many, so complete and so universal, that I do not believe an oath of this kind will in any degree protect the integrity of the Legislature. If it comes down to an oath requiring fidelity in the officer himself, and swearing him to fidelity with particularity, as is expressed in this oath, I find no objection to it; but I do most earnestly believe that that part of this section which undertakes to say that a man shall not pay anything for a nomination is not only useless because so easily and so certainly evaded, but because all that is valuable in it is fully covered by the clause which requires the person to swear that he has not violated any election law of this Commonwealth, for the moment the provision is made efficient by a law defining what are necessary and proper expenses, that moment it becomes an election law and is then within the full letter and scope of this provision.

Mr. H. W. PALMER. As I understand it, the motion now is to strike out the words, "expressly authorized by law."

The PRESIDENT. Yes, sir.

Mr. H. W. PALMER. Mr. President: I am quite familiar with the methods that prevail in deliberative bodies of so amending a proposition as to kill it; in other words, of amending it to death. Such an amendment I apprehend this one to be, and therefore suppose the friends of this oath will not vote for the amendment. If the question was left open for each candidate to decide for himself what would be proper and necessary election expenses or what it would be proper and necessary for him to pay for his nomination, then this provision would be useless and might as well be omitted altogether. When a candidate goes in to his convention and finds that he lacks two delegates of a nomination, the proper and necessary amount of expense for him to pay is what those two delegates cost. If the market price is ten dollars, ten dollars is the proper amount. If it is one thousand dollars, which amount has been paid in the past and will be paid in the future unless some such provision as this be

adopted, then one thousand dollars will be the proper and necessary expenses. So it is utterly idle to strike out these words and retain this provision.

We are told by the gentleman from Lycoming, (Mr. Armstrong,) and certainly I have a great respect for his interpretation of any law, that whenever an act of Assembly on this subject is passed, it will then become a part of the election law, and that if not complied with the subsequent portion of the oath cannot be taken by any officer. Does he suppose the Legislature will ever pass an act requiring a candidate to spend any particular amount of money? Does he argue here that it will be required by law that a candidate for the Assembly, for instance, shall expend a certain sum to get his office, and if he does not disburse the money that he cannot take the oath?

Mr. ARMSTRONG. I will inquire of the gentleman if he thinks that would be an interpretation of the clause: "I have not knowingly violated any election law?" The violation of the law may be as well a violation of what it commands as what it forbids.

Mr. H. W. PALMER. I do not apprehend that the Legislature will ever pass any such act. I suppose when the act contemplated in this section is passed, it will permit a certain sum of money to be expended by candidates for proper and necessary expenses, if they choose to expend it. If they do not choose to expend it, and if the expenditures are optional, I suppose they can take the residue of this oath without violating conscience.

Mr. ARMSTRONG. I inquire whether such a law would not be a part of the election law?

Mr. H. W. PALMER. It undoubtedly would, and if a candidate spent the five hundred dollars, he could take the oath, and if he did not spend the five hundred dollars he could take the oath. He would not violate any election law either in spending or not spending. I do not apprehend that the Legislature would put upon candidates the necessity of spending any particular amount of money. On the contrary, some amount would be fixed to cover the proper and necessary expenses, such as printing and distributing the tickets in the townships, procuring teams to bring voters to the polls, traveling expenses and such other proper and necessary expenses as a candidate is expected to incur; but a sum of money will be designated by the Legislature

which he may expend or not, just as he sees fit.

Now, as to the rest of his argument, that some man may evade the law, and that a law should not be passed because some rogue will get around it, seems to me about the last and poorest reason that can possibly be urged against its passage. Suppose we were prohibiting theft or arson or burglary by a stringent statute, and some gentleman, like the gentleman from Lycoming or the gentleman from Allegheny, should rise in his place and say, "Oh, do not pass this; this would be a bridle upon honest men; do not pass this because some rogue or other in the Commonwealth of Pennsylvania, some time or other, will steal, or will set fire to a building, or will kill a man," what would any assemblage of intelligent legislators think of a proposition of that sort?

This is, in some sense, a penal act. It is a prohibition on the crimes of bribery and corruption. It is an attempt to take away the occupation of a set of men in this Commonwealth who make politics a business and who live from year to year upon the money that they filch from candidates for office—black-mailers who levy their tribute on every man who runs for an office. The purpose of this oath is to break up their business and punish their corruptors.

But we are told by the gentleman who oppose it that some rogue will get around it, and therefore, it ought not to be passed. Mr. President, I have only one answer to make to that argument, when the gentleman from Lycoming, (Mr. Armstrong,) whose ability we know, and the gentleman from Allegheny, (Mr. J. W. F. White,) whose talents we respect can find no better reason than that for opposition to a wholesome provision, it argues a pitiful lack of better arguments, painful to contemplate in the case of gentlemen so distinguished.

Mr. MANN. Mr. President: The gentleman from Luzerne, with all his ability has failed to break the force of the point raised by the gentleman from Lycoming, that this part of the oath which says "I have not knowingly violated any election law" will include all that is in that law. If the law provides that but one hundred dollars will be expended in the nomination and election, and he spends two hundred dollars, does he not violate the law? Clearly the point of the gentleman from Lycoming is unanswerable, that it will cover all that is in the law, and

therefore it will cover a great deal more than this oath does.

Mr. J. M. BAILEY. Will the gentleman allow me to ask him a question on that point?

Mr. MANN. No. I have always been shut down upon the very moment my time was up, and it always seemed to be gone before I have spoken any thing like ten minutes. [Laughter.]

Mr. President, in addition to the argument of the gentleman from Allegheny, that rogues may evade this law, I say that every rogue in the Commonwealth can evade it with ease, and that a law which a rogue can easily evade should never go upon the statute book, much less go into the Constitution. This section requires the candidate to swear that he has not paid any money for a nomination or election. How very easy it will be for his friends or for a friend to pay it for him! Why, sir, a rogue can drive a four-horse coach through this oath and never flinch from it; and that shows the folly of trying to make men honest by oaths. That was a folly that was introduced in this Convention by a most distinguished gentleman, I grant, and it seems now to have been taken up by the gentleman from Luzerne. It is as clear a folly as ever was broached in any legislative assembly. The British Parliament did not undertake to purge itself by oaths, but it undertook to purge itself by the enactment of penal laws. If it should be a penal offence in Pennsylvania to pay money for a nomination, say so, and punish all persons who pay money—not the candidates, because they are a very small number—but punish every man who offers money for a nomination, and then there will be some sense in the act of Assembly. But this attempt to purge by an oath the candidate will be as futile as to say that the north wind shall never blow in the winter time. There is no strength in this oath whatever, and it is, as has been said here, a bar, a stumbling block to honest men, and it will be of no particle of terror to evil men. In all history you cannot find a record of purifying men by oaths. It comes from penal enactments that fall upon the guilty parties. It is the business of this Convention to frame such provisions as shall in the first place take away from candidates the temptation to commit crime, and to punish men who do commit crime by the most severe penalties you can impose.

CONSTITUTIONAL CONVENTION.

I concede that this question of paying money for nominations and to influence elections has come to be a serious evil, and it ought to be corrected. What I object to in this section is that it will do nothing of the kind. It is a mere straw. It will accomplish nothing, but be a stumbling block to such honest men as shall continue to be nominated. There are not too many of them, and it certainly is unwise to attempt to decrease their number.

Now, to come back to the point raised by the gentleman from Lycoming, let any man answer, if he can, if there is a law passed and a man is obliged to swear that he has not knowingly violated that law, have you not got all that you can get? Answer it, any man who can. I say that it is unanswerable, that it will include everything in the law, and therefore these words are idle, as they are offensive.

MR. HOWARD. Mr. President: I rather like this section. I do not know how it may be in the rural districts, but it is very troublesome sometimes to be a candidate in a large city. I know how it is myself. After contributing nearly twice as much as the office was worth, I have jumped out of my back window many a time to get rid of committees and single individuals and companies that I saw coming in.

MR. EWING. How high was that window? [Laughter.]

MR. HOWARD. Just about high enough to make a jump, so as to get rid of them, and then I was compelled to contribute more than enough to have papered my office, front room and back room, in buying tickets and all sorts of things, because I was a candidate for office. This is levied upon you when you are a candidate. As the delegate from Luzerne says, you are black-mailed from the time your name is even mentioned. There is a kind of seedy gentleman, threadbare, who prowls around every ward of the large cities—I presume they are not up in Potter where my friend (Mr. Mann) resides—and the moment a man's name is mentioned for office he is about to sell the influence of himself and his friends. If we had such a provision as this, we could ask him, "My dear sir, have you read the Constitution? Do you know the tremendous peril in which you would put me, if I should happen to be successful in this matter, or anybody should call upon me, or I should have to swear in regard to this matter?" You see you could bluff

him off. It would be a very good way to get rid of all such kind of seedy scoundrels who live and make a living actually by selling their political influence to every man that is a candidate. They sell it every day, and when they get out they go back and sell it to the same man over again.

Then the delegate from Potter did not read this section aright. It is stronger than he thought it was. He says that a man cannot do it himself; but he might do it by his friends; that is, he could spend money they contributed; but this section says he shall not do it "either directly or indirectly." Then if the candidate cannot do it himself he cannot do it indirectly by anybody else; so that is an answer to all that part of the argument of the delegate from Potter.

Mr. President, this is a good section. There is no doubt that one of the very worst corruptions in American politics is the fact that a man knows before he consents to be a candidate for office, especially in any of the large cities, that he must begin by spending money, and a man that will not do that, who will not commence by corrupting his fellow-citizens, is really practically excluded from office in the large cities. Therefore it seems to be a matter absolutely necessary if you mean that hereafter a man can be a candidate without being dogged to death to start with, or that he voluntarily must come into the market and buy his way through as candidates have been doing and will do in the future unless protected by some such provision as this. We cannot of course reach the higher officers of the government; but we understand that places in the Senate of the United States are being sold regularly every year, and that body is only reached now by bargain and sale, with rare exceptions, perhaps, but when we know this great evil, it seems to me that we ought to adopt some provision like this to protect candidates in the future, if for no other purpose.

MR. MACCONNELL. Mr. President: I am not going to make a speech on this question. I rise to appeal to gentlemen to let us vote. The miserable matter of this oath was discussed in committee of the whole for a day or two, discussed again on second reading I do not know how many days, and now we are just going over the same thing. There has not been an idea uttered here to-day that was not uttered in both those discussions. I do appeal to gentlemen to stop talking

and let us vote. ["Question." "Question.""]

The PRESIDENT. The question is on the motion of the delegate from Indiana to go into committee of the whole to make the amendment which has been indicated.

Mr. HARRY WHITE. I call for the yeas and nays on my motion.

Mr. D. N. WHITE. I second the call.

The PRESIDENT. The Clerk will call the yeas and nays.

Mr. T. H. B. PATTERSON. I ask what is the vote being taken on?

The PRESIDENT. On going into committee of the whole to strike out the words "as expressly authorized by law."

The question being taken by yeas and nays resulted as follow:

Y E A S.

Messrs. Ainey, Alricks, Armstrong, Baker, Biddle, Black, Charles A., Bowman, Broomall, Corson, De France, Dunning, Edwards, Ewing, Hall, Hanna, Horton, Knight, Lamberton, Lear, M'Clean, Mann, Minor, Newlin, Pughe, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Ross, Smith, Henry W., Stanton, Struthers, Turrell, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Walker, *President*—38.

N A Y S.

Messrs. Achenbach, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Boyd, Brodhead, Brown, Buckalew, Calvin, Carter, Clark, Cochran, Curtin, Darling-ton, Elliott, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Landis, Lilly, MacConnell, MacVeagh, M'Culloch, M'Murray, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Purman, Read, John R., Runk, Russell, Smith, H. G., Wetherill, John Price, Woodward and Wright—43.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Cassidy, Church, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Dallas, Davis, Dodd, Ellis, Fell, Finney, Green, Harvey, Hazzard, Hemphill, Heverin, Kaine, Lawrence, Littleton, Long, M'Camant, M'Michael, Mantor, Metzger, Mitchell, Niles, Parsons, Porter, Rooke, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, Wherry and Worrell—52.

The PRESIDENT. The question recurs on the passage of the article.

Mr. J. W. F. WHITE. On that I call for the yeas and nays.

Mr. NEWLIN. I second the call.

Mr. MACVEAGH. Is it desirable to have the roll called on that? There is nothing in it but the oath which we have already voted on.

The PRESIDENT. The Clerk will proceed with the call.

The yeas and nays were taken with the following result:

Y E A S.

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bartholomew, Beebe, Black, Charles A., Boyd, Brodhead, Brown, Buckalew, Calvin, Carey, Church, Clark, Cochran, Curtin, Davis, De France, Elliott, Finney, Funck, Gibson, Guthrie, Hall, Hay, Howard, Hunsicker, Lamberton, Landis, Lear, Lilly, MacConnell, MacVeagh, M'Culloch, M'Murray, Mott, Newlin, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Russell, Smith, H. G., Smith, Henry W., Turrell, Wetherill, John Price, Woodward and Wright—58.

N A Y S.

Messrs. Baker, Biddle, Bowman, Broomall, Corson, Darlington, Dunning, Edwards, Ewing, Fulton, Gilpin, Hanna, Horton, Knight, M'Clean, Mann, Minor, Patterson, D. W., Pughe, Reynolds, Ross, Stanton, Struthers, White, David N., White, Harry, White, J. W. F. and Walker, *President*—27.

So the article was passed.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bardsley, Bigler, Black, J. S., Bullitt, Campbell, Carter, Cassidy, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Dallas, Dodd, Ellis, Fell, Green, Harvey, Hazzard, Hemphill, Heverin, Kaine, Lawrence, Littleton, Long, M'Camant, M'Michael, Mantor, Metzger, Mitchell, Niles, Parsons, Porter, Rooke, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and Worrell—48.

Mr. BUCKALEW. I ask unanimous consent of the Convention to make a verbal correction in the article just passed. In the twenty-sixth line I desire the language to read after the words "Supreme

Court," "or of a court of common pleas." I think those words must have dropped out.

Unanimous consent was given and the correction was made.

THE MILITIA.

Mr. S. A. PURVIANCE. I move that the Convention now consider the report of the Committee on Revision and Adjustment on article number eleven, on the militia.

The motion was agreed to.

Mr. S. PURVIANCE. I move that the Convention agree to the report of the Committee on Revision and Adjustment, and transcribe the article for a third reading.

The motion was agreed to.

The PRESIDENT. The article will now be read the third time.

The CLERK read as follows:

ARTICLE XI.

MILITIA.

SECTION 1. The freemen of this Commonwealth shall be armed, organized and disciplined in such manner as may be directed by law, and the Legislature shall provide for maintaining the militia by appropriation from the Treasury of the Commonwealth; but the Legislature may exempt from military service those persons having conscientious scruples against bearing arms.

Mr. BOYD. I move to go into committee of the whole for the purpose of amending the article, by striking out all after the word "Commonwealth" where it occurs the second time.

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

The CLERK read as follows:

"But the Legislature may exempt from military service those persons having conscientious scruples against bearing arms."

Mr. BOYD. I do not propose to make any remarks on this motion; but I call for the yeas and nays.

Mr. CHURCH. I second the call.

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

Y E A S.

Messrs. Boyd, Church, Edwards, Hunsicker, M'CLean, M'Murray, Reynolds and Wetherill, J. M.—8.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Hunting-

don,) Baker, Beebe, Biddle, Black, Chas. A., Bowman, Brodhead, Broomall, Brown, Buckalew, Calvin, Carter, Clark, Cochran, Corson, Curtin, Darlington, Davis, De France, Elliott, Ewing, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Hay, Horton, Howard, Knight, Lamber-ton, Landis, Lear, Lilly, MacConnell, MacVeagh, M'Culloch, Mann, Minor, Mott, Newlin, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Stanton, Struthers, Turrell, Wetherill, John Price, White, David N., White, Harry, White, J. W. F., Woodward and Walker, *President*—71.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullit, Campbell, Carey, Cassidy, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Dallas, Dodd, Dunning, Ellis, Fell, Green, Hanna, Harvey, Hazzard, Hemp-hill, Heverin, Kaine, Lawrence, Littleton, Long, M'Camant, M'Michael, Mantor, Metzger, Mitchell, Niles, Parsons, Patterson, D. W., Porter, Pughe, Rooke, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, Wherry, Worrell and Wright—54.

Mr. BUCKALEW. I ask consent to strike out the word "these" in the fourth line, before the word "persons."

The PRESIDENT. Will the Convention unanimously agree to strike out the word "those?" ["Aye!"] It is agreed to.

Mr. M'CLEAN. I move to strike out all after the word "Commonwealth," in the fourth line, and insert in lieu thereof the words contained in the present Constitution, viz:

"Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. President, after our articles were published as passed second reading my attention was particularly called to this article on the militia in the shape in which it is now, by some very respectable members of the denomination of German Baptists in my county. They believe that the government owes them protection, and that they owe the government something in return. They prefer the provision as we have it in the Constitution of 1838. They are not satisfied that in time of peril they shall do nothing

for the government which has afforded them protection, but wish to make some return for that by an equivalent in money.

MR. MACVEAGH. Will the gentleman allow me to suggest that under this provision the Legislature may fix the price of exemption? The Legislature may fix the terms of exemption, and it may be the payment of a pecuniary substitute.

MR. McCLEAN. I prefer that it should be made explicit. I have risen in my place to make this motion to give expression to the sentiment of a very respectable class of people. There are more than fifty churches of the German Baptists in this State, and in addition to that there are Menonites and other similar denominations who, I believe, desire some such provision as this in the Constitution of the State; and I do not think it meets with the approval of the people that the old provision should have been erased at the instance of the Society of Friends alone, as was done.

THE PRESIDENT. The question is on the motion of the gentleman from Adams, (Mr. McClean.)

The motion was not agreed to.

MR. MANN. I move to go into committee of the whole for the purpose of striking out the word "shall," in the first line, and also in the second line, and inserting "may" in lieu thereof in each place.

I will not make a speech, but I desire to ask why should we say that "the freemen of this Commonwealth *shall* be armed," and why should we insert this provision that the Legislature *shall* pay out of the treasury? Why not leave that matter to the regulation of the Legislature without tying them up in this way?

MR. GIBSON. I should like to remark here that the reason the word "shall" is used in this section is because it was used in the article of the present Constitution. But the freemen of the Commonwealth under that Constitution were to be armed, organized and disciplined for a very different purpose, it would seem, from that proposed in this Constitution. The language of the old Constitution is:

"The freemen of this Commonwealth shall be armed, organized and disciplined *for its defence.*"

The word "shall" is perfectly proper taken in connection with those words, and such provisions ought to be imperative. I do not understand why those words have been stricken out of this Constitution. I know, when this subject was up before, that something was said with regard to the late war; but the Federal government can call for volunteers or can draft if necessary. The militia of the Commonwealth essentially means, the citizens organized for its defence. That is the meaning of the word; it was so intended. Therefore they "*shall* be organized for its defence." But now, sir, it seems as if there was a general surrender of all the freemen of the Commonwealth to the Federal government for its purposes. It is enough that the organized, armed volunteers of the day are called "National Guards," a term borrowed from the French monarchy, without expunging from the Constitution sacred words. The words "for its defence" are left out of the proposed article, and therefore the gentleman from Potter does not understand why the word "shall" is used. I shall move, if this change is not made, to insert the words "for its defence," which are the words that belong to the old Constitution, and they ought to remain as they are.

THE PRESIDENT. The question is on the motion of the delegate from Potter (Mr. Mann) to go into committee of the whole to strike out "shall" and insert "may."

The question being put, a division was called for, which resulted: Ayes, thirty-four; noes, thirty-one.

MR. HARRY WHITE. I call for the yeas and nays.

THE PRESIDENT. The delegate from Lancaster (Mr. H. G. Smith) will take the chair as chairman of the committee of the whole.

MR. HARRY WHITE. I called for the yeas and nays, and I insist upon my call.

THE PRESIDENT. The confusion was so great that the Chair did not hear the delegate from Indiana. I have no objection to withdrawing the decision.

MANY DELEGATES. Orders of the day.

THE PRESIDENT. The hour of three o'clock having arrived, the Convention now stands adjourned until to-morrow at half-past nine o'clock A. M.

ONE HUNDRED AND SIXTIETH DAY.

WEDNESDAY, October 8, 1873.

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, in the chair.

Prayer by Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. Ross asked and obtained leave of absence for himself for Thursday and Friday of this week.

Mr. FULTON asked and obtained leave of absence for himself for a few days from to-morrow.

Mr. BAER asked and obtained leave of absence for Mr. Mott for to-day.

Mr. ACHENBACH asked and obtained leave of absence for himself to-morrow.

Mr. T. H. B. PATTERSON asked and obtained leave of absence for Mr. Campbell for the residue of the week.

ADJOURNMENT SINE DIE.

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

Resolved, That this Convention from and after to-morrow will sit from nine o'clock A. M. till one o'clock P. M., and from three o'clock P. M., till seven o'clock P. M., daily, except Sunday, and will adjourn *sine die* on Friday, October seventeenth.

The PRESIDENT. What order will the Convention take on the resolution?

Mr. CUYLER. Let it be indefinitely postponed.

Mr. BAER and others. Second reading.

The PRESIDENT. The question is on ordering the resolution to a second reading.

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

Mr. PORTER. I second the call.

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

Y E A S.

Messrs. Achenbach, Alricks, Baer, Beebe, Boyd, Carter, Cochran, Cronmiller, De France, Fulton, Funck, Hazzard, 37—Vol. VII.

MacConnell, M'Culloch, M'Murray, Porter, Purman, Purviance, John N., Purviance, Sam'l A., Russell, Struthers and Wright—22.

N A Y S.

Messrs. Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Broomall, Brown, Calvin, Clark, Curry, Curtin, Cuyler, Darlington, Davis, Dunning, Edwards, Elliott, Ewing, Gibson, Gilpin, Guthrie, Hall, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Landis, Lear, Lilly, M'Clear, M'Michael, Mann, Minor, Mott, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Reed, Andrew, Reynolds, Rooke, Ross, Runk, Smith, H. G., Smith, Henry W., Stanton, Wetherill, J. M., Wetherill, John Price, White, David N., White, J. W. F., Woodward and Walker, *President*—55.

So the Convention refused to read the resolution a second time.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bowman, Brodhead, Buckalew, Bullitt, Campbell, Carey, Cassidy, Church, Collins, Corbett, Corson, Craig, Dallas, Dodd, Ellis, Fell, Finney, Green, Hanna, Harvey, Hay, Heverin, Kaine, Lawrence, Littleton, Long, MacVeagh, M'Camant, Mantor, Metzger, Mitchell, Newlin, Niles, Palmer, H. W., Parsons, Read, John R., Sharpe, Simpson, Smith, William H., Stewart, Temple, Turrell, Van Reed, Wherry, White, Harry and Worrell—56.

ORDER OF BUSINESS.

Mr. MANN. I move that the orders be suspended and that the Convention proceed to the consideration of the article on the judiciary.

Mr. WOODWARD. Before that motion is put I have a privileged motion which I wish to make.

The PRESIDENT. It requires two-thirds to carry the motion of the gentleman from Potter. The question is on that motion.

The motion was not agreed to.

RESIGNATION OF JUDGE BLACK.

Mr. WOODWARD. Mr. President: The question to which I rise I suppose to be a question of the highest privilege. I move that the motion which I submitted last week for the reference of the resignation of Judge Black to the appropriate committee be taken from the table, and that the Convention proceed to consider the same.

Mr. LILLY. I rise to a point of order. My point of order is that this same motion was yesterday postponed for a week.

Mr. WOODWARD. I submit that the power of postponement does not apply to such a motion as that.

The PRESIDENT. The Chair cannot sustain the point of order. The question is on the motion of the gentleman from the city (Mr. Woodward.)

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

Mr. CUYLER. I second the call.

Mr. CURTIN. Can this question be debated. ["No!"]

The PRESIDENT. The Clerk will call the names of delegates.

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

YEAS.

Messrs. Achenbach, Armstrong, Baer, Bailey, (Huntingdon,) Beebe, Black, Charles A., Buckalew, Church, Clark, Cochran, Cronmiller, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, De France, Elliott, Gilpin, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Lamberton, Lear, MacConnell, M'Michael, M'Murray, Patton, Porter, Purman, Rooke, Ross, Runk, Smith, H. G., Smith, Henry W., Stanton, Woodward and Wright—43.

NAYS.

Messrs. Alricks, Baily, (Perry,) Bardsley, Biddle, Broomall, Brown, Calvin, Carter, Edwards, Ewing, Fulton, Funck, Gibson, Hanna, Horton, Howard, Knight, Lilly, M'Clellan, M'Culloch, Mann, Minor, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Pughe, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Russell, Struthers, Turrell, Wetherill, J. M., Wetherill, John Price, White, David N., White, Harry, White, J. W. F. and Walker, *President*—39.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bartholomew, Bigler, Black, J. S., Bowman, Boyd, Brodhead, Bullitt, Campbell, Carey, Cassidy, Collins, Corbett, Corson, Craig, Dodd, Dunning, Ellis, Fell, Finney, Green, Heverin, Kaine, Landis, Lawrence, Littleton, Long, MacVeagh, M'Camant, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Palmer, H. W., Parsons, Read, John R., Sharpe, Simpson, Smith, William H., Stewart, Temple, Van Reed, Wherry and Worrell—51.

The PRESIDENT. The motion to accept the resignation is before the Convention.

Mr. COCHRAN. I wish to make only one explanatory remark upon this subject. It is known to members of the Convention that I expressed the opinion that the act of Judge Black in resigning was an act over which the Convention had really no control. But yesterday when the question was postponed, I voted to postpone it for a week, for the reason that I understood one of my colleagues to say that he had learned from Judge Black, or had arrived at the impression from a conversation he had with Judge Black, that he was not reluctant to return. I was willing, under the practice which had been adopted by the Convention in other cases, to postpone the matter, in order that the judge might reach his own conclusion on the subject. But as the question is presented in this form this morning, I shall revert to my original view on the subject.

Mr. S. A. PURVIANCE. Mr. President: If it is in order I should like to move that a committee of three be appointed to wait upon Judge Black and request him to withdraw his resignation.

Mr. ALRICKS. I second the motion.

Mr. S. A. PURVIANCE. I believe that on the report of that committee the Convention will be able to act understandingly.

The PRESIDENT. The Chair cannot receive that motion unless it be accompanied with this addition, that the matter be postponed for the present.

Mr. S. A. PURVIANCE. I move, then, that it be postponed for the present for the purpose of having such a committee appointed.

The PRESIDENT. It is moved by the delegate from Allegheny that the further consideration of the motion be postponed for the present, and that a committee be appointed to wait on Judge Black.

Mr. WOODWARD. Mr. President: I am indifferent to the motion of the delegate from Allegheny after the most positive assurance of Judge Black in writing that he could not any longer attend to the duties of this Convention, where he was receiving no compensation whatever, and that his lucrative business in the Supreme Court at Washington was suffering. Having received that sort of assurance in writing from Judge Black, I presented his resignation and made the usual motion. I heard a suggestion as to his coming back, and I wrote to Judge Black that such a rumor was afloat in the Convention and begged him if he had any intention of coming back, to come back. I have received no answer to that letter.

Mr. G. W. PALMER. I have not seen the writing which Judge Black sent here.

Mr. WOODWARD. If the gentleman has not seen it it is not my fault. I have shown the letter to every gentleman who desired to look at it. He requested me not to present it to the Convention for reasons which he stated, and I was willing gentlemen should have an opportunity to read it, and the gentleman from Luzerne can read it if he desires. Judge Black did not wish it presented to the Convention, as I informed the body at the time. I had this letter and I gave it to the gentlemen around me who desired an opportunity to read it, and it set forth fully in his own strong language the reasons why he was obliged to retire from the Convention. They were reasons that addressed themselves to my understanding and to the understanding of everybody. They were reasons that do not arise to-day and pass away to-morrow, but they are continuing in their nature. Judge Black's business in the Supreme Court of the United States is very large. That court is just going to commence its session and will sit all winter. It requires his attention; he makes money out of that; but here he served without any compensation, and he feels that he has sacrificed enough in that direction.

Mr. S. A. PURVIANCE. Mr. President: I think it due to this Convention that instead of this communication coming directly from Judge Black to one of the members of the body, it should come to the body itself, should be addressed to the President of the Convention, and until we have that communication from Judge Black himself that he does not intend to return, I think we ought not to

vote to expel him, because it amounts to expulsion. Why, sir, we have before us three gentlemen as colleagues, Judge Woodward one of them, who resigned, if I mistake not, in as emphatic language as ever Judge Black has used in reference to his resignation. That was a severance of their connection with this body, and yet they returned after we refused to accept their resignation. The honorable gentleman from Philadelphia has returned to the body here and he is now participating in our deliberations. We desired to have his name appended to the instrument, and the desire is the same in regard to Judge Black. I do, therefore, hope that this matter will be postponed for the purpose of having a committee to wait upon him and request him to return, and then we shall know what to do. But, sir, I have understood recently that Judge Black, who it is known has not paid very special attention to the business of the Convention and perhaps does not know exactly to what extent we have gone, has said that he was under the impression that the deliberations of this Convention would run into the winter, and that therefore he could not give it his attention any longer; but when he was told by some gentleman that we intended to close our labors in about three weeks, he seemed to be surprised and said that might present a very different aspect of the case. Now, sir, let us give the judge every chance of returning to this body, as Mr. Collins, Mr. Bartholomew and Judge Woodward did.

Mr. WOODWARD. Mr. President—

The PRESIDENT. The delegate has spoken.

Mr. WOODWARD. I rise to make a statement to the delegate from Allegheny. I say there is no analogy whatever between the cases which he has mentioned and the case of Judge Black. You all know that when I resigned, I resigned because the Convention persisted by several votes upon sitting here in Philadelphia through the months of July and August. That was the reason why I resigned. The Convention receded from that position and adjourned over to September, and then I came back. That is one case—

The PRESIDENT. The delegate has spoken.

Mr. HOWARD. Mr. President: I thought we were done with this subject for one week—

Mr. WOODWARD. I beg pardon of the gentleman from Allegheny, but I have the floor, and it is not in his power to take it from me.

Mr. HOWARD. Not unless I give it to him, has the gentleman the floor.

The PRESIDENT. The delegate from Philadelphia has already spoken on this question.

Mr. HOWARD. He has spoken once, and I make the point of order then.

Mr. WOODWARD. I submit to the Chair whether the gentleman from Allegheny can take me off the floor.

The PRESIDENT. If the gentleman objects, as you have spoken twice on the subject, the Chair will be compelled to rule you out of order.

SEVERAL DELEGATES. It is a privileged question.

Mr. WOODWARD. I submit to the Chair, not to the gentleman from Allegheny.

Mr. HALL. I rise to a point of order, that the delegate from Philadelphia was making a personal explanation as to his own course. That is not speaking twice, against the rule.

The PRESIDENT. The delegate from Allegheny is entitled to the floor.

Mr. HOWARD. When I arose to address the Chair I understood the delegate from Philadelphia had concluded his personal explanation.

After we had disposed of this question yesterday I do not understand why it is brought up again this morning and with so much pertinacity. Why Judge Black has to be singled out and treated differently from other delegates who have resigned as emphatically as he did, I cannot see. They sent in their resignations here, in writing, as a matter of course; and as far as was in their power, then they made an end of their connection with this Convention by their written resignation. The Convention did not proceed every morning to take it up against a majority of the body and persist in accepting that resignation and virtually expelling them from the Convention.

I confess that I do not understand why this should be pressed in this way. I believe that if Judge Black is left alone he will return much sooner than some of the gentlemen whose resignations were sent in previously, and I do not see why we should not extend to him the same courtesy which we extended to others.

Mr. CURTIN. I believe that now I shall vote to postpone this subject. The sug-

gestion made this morning, that Judge Black on the last visit seemed to be more amiable than he had been before, appeals very much to my disposition to oblige him; and the next time he is waited upon he may smile and then the committee may stroke him the right way of the hair and we may get him back in this Convention. [Laughter.]

Mr. HAZZARD. I do not know any reason why we should not receive this resignation. I have been trying to hear some reason why we should not; but I have not heard any. If some delegate present will tell me one, I should be glad to hear it.

Mr. BOYD. I can give the delegate several reasons why it should be accepted, if that will be satisfactory.

The PRESIDENT. The question is on postponing the subject for the present and appointing a committee of three to wait upon Judge Black.

Mr. BOYD. On that motion, I call for the yeas and nays.

Mr. TEMPLE. I second the call.

The PRESIDENT. The yeas and nays are ordered, and the Clerk will proceed with the roll.

Mr. HARRY WHITE. Can this question be discussed?

The PRESIDENT. Not any further. The yeas and nays are ordered, and the Clerk will call the names of delegates.

The question being taken by yeas and nays, resulted as follow:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baer, Baily, (Perry,) Baker, Bardsley, Biddle, Broomall, Brown, Calvin, Carter, Clark, Corson, Curtin, Davis, Edwards, Ewing, Fulton, Funck, Gibson, Gilpin, Guthrie, Hanna, Horton, Howard, Knight, Lamberton, Lilly, McClean, McCulloch, Mann, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Reed, Andrew, Ross, Runk, Russell, Struthers, White, Harry, White, J. W. F., Wright, and Walker, *President*—46.

NAYS.

Messrs. Armstrong, Bailey, (Huntingdon,) Bigler, Black, Charles A., Boyd, Buckalew, Church, Cochran, Cronmiller, Curry, Cuyler, Dallas, Darlington, De France, Elliott, Hall, Harvey, Hay, Hazard, Hemphill, Hunsicker, Landis, MacConnell, M'Michael, M'Murray, Minor, Patterson, D. W., Patton, Porter, Pughe,

Purman, Reynolds, Smith, H. G., Smith, Henry W., Stanton, Temple, Turrell, Wetherill, J. M., Wetherill, J. Price, White, David N. and Woodward—41.

So the motion was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Bannan, Barclay, Bartholomew, Beebe, Black, J. S., Bowman, Brodhead, Bullitt, Campbell, Carey, Cassidy, Collins, Corbett, Craig, Dodd, Dunning, Ellis, Fell, Finney, Green, Heverin, Kaine, Lawrence, Lear, Littleton, Long, MacVeagh, McCamant, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Parsons, Read, John R., Rooke, Sharpe, Simpson, Smith, Wm. H., Stewart, Van Reed, Wherry and Worrell—46.

REPORTS OF REVISION COMMITTEE.

Mr. KNIGHT. I am instructed by the Committee on Revision and Adjustment to report, with amendments, article number twenty-three, on the removal of the Capital; article number twenty-five, on commissions, office, oaths of office, incompatibility of office; article number twenty-seven, on railroads and canals.

The PRESIDENT. The articles will be laid on the table and printed.

Mr. KNIGHT. I am also instructed by the Committee on Revision and Adjustment to report progress on the article on the Legislature, and also to report back without amendment the article on future amendments.

THE MILITIA.

The PRESIDENT. The Convention resumes the consideration, on third reading, of the article on the militia. When the Convention adjourned yesterday the pending question was on the motion of the delegate from Potter (Mr. Mann) to go into committee of the whole for the purpose of striking out the word "shall," in the first and also in the second line, and inserting "may," so as to make the section read:

"The freemen of this Commonwealth may be armed, organized and disciplined in such manner as may be directed by law; and the Legislature may provide for maintaining the militia by appropriation from the Treasury of the Commonwealth, but the Legislature may exempt from military service persons having conscientious scruples against bearing arms."

Mr. PORTER. Mr. President: I was not here yesterday when this matter was brought up. I hope, however, that the article will be passed without any amend-

ment; but it seems that everything here must be amended.

Now, the proposition, as I understand it, is to strike out the word "shall" and substitute the word "may." In the Constitution of 1838 the word "shall" was used. I can see no good reason why that word should be stricken out now and the word "may" inserted. To every right thinking man the militia is a necessity in our Commonwealth. We do not need a large force, but we still need a small force, and I think every right thinking man will agree with me on that.

Under this section as reported by the committee this power has been lodged in the Legislature. It is a discretionary power with them whether it shall be great or small, and surely we ought to leave some little to the Legislature. Certainly we can lodge the power safely in the Legislature whether the State shall have a large or small force. It strikes me that it is our duty in this fundamental law of the State to make it obligatory, to use the word "shall" in the clause for the organization of the militia, because I believe it is a necessity in our Commonwealth.

Then further, it is proposed to strike out the word "shall" in the second line, "shall provide for maintaining the militia." I do object to that most seriously. Our militia system heretofore has been a failure because the militia tax that was imposed was too small to do any good. It was difficult to collect; in a great many places it was not collected at all. A number of persons were exempt; clergymen, teachers, judges, district attorneys, and certain classes were favored. But under this proposition here we say to the Legislature, "It is your duty to organize a militia; we leave the manner of that organization entirely to you; but when you do organize that militia, then you must support it directly out of the funds of the State." We shall thus do away with the militia tax, which was a nuisance; we shall thus pay men who do enlist in the service. The history of our militia system has been that men have enlisted in the militia of the State, have bought clothing, provided themselves to do service properly, and when they came to get their pay there was no money in the county treasury. The militia tax was a failure, but by this means you will do justice to the men who enlist.

As I said before when this matter was up in committee of the whole, this tax will

come out of the corporations for the most part. It will not be felt by the people; and corporations certainly are benefited by having a militia in the State, because they have large property to protect, and if there is one body that ought to contribute for the support of the militia of the Commonwealth, it strikes me it is corporations. At any rate corporations for the most part furnish the revenue of the State.

I do hope the word "shall" will be preserved, and thus we shall say to the Legislature, "organize the militia on a fair and reasonable basis, but when you do it pay them what is fair and right; it shall be your duty; not that you *may* do it, but you *shall* pay what you have thus agreed and contracted with men to do."

The PRESIDENT. The question is on the motion of the delegate from Potter (Mr. Mann) to go into committee of the whole to strike out the word "shall" and insert "may."

Mr. MANN. The yeas and nays were called for yesterday and ordered.

The PRESIDENT. The Clerk will call the names of delegates on this motion.

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

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Boyd, Broomall, Corson, Darlington, Ewing, Funck, Gibson, Hall, Howard, Hunsicker, Landis, M'Clellan, Mann, Minor, Palmer, H. W., Purman, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Smith, H. G., Smith, Henry W., Temple and White, David N.—27.

NAYS.

Messrs. Achenbach, Ainey, Armstrong, Bailey, (Huntingdon,) Bardsley, Beebe, Biddle, Bigler, Brown, Buckalew, Calvin, Carey, Carter, Church, Clark, Cronmiller, Curtin, Dallas, Davis, De France, Edwards, Elliott, Fulton, Gilpin, Guthrie, Hanna, Harvey, Hay, Hazzard, Hemphill, Horton, Lamberton, Lilly, MacConnell, M'Culloch, M'Michael, M'Murray, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purviance, Samuel A., Reynolds, Ross, Runk, Russell, Stanton, Struthers, Turrell, Wetherill, J. M., Wetherill, Jno. Price, White, Harry, White, J. W. F., Woodward, Wright and Walker, *President*—57.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baker, Bannan, Barclay Bartholomew,

Black, Charles A., Black, J. S., Bowman, Brodhead, Bullitt, Campbell, Cassidy, Cochran, Collins, Corbett, Craig, Curry, Cuyler, Dodd, Dunning, Ellis, Fell, Finney, Green, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, Mantor, Metzger, Mitchell, Mott, Newlin, Niles, Parsons, Pughe, Sharpe, Simpson, Smith, Wm. H., Stewart, Van Reed, Wherry and Worrell—49.

Mr. J. N. PURVIANCE. I move to go into committee of the whole for special amendment, to strike out the section and insert in lieu thereof the following:

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defence when and in such manner as may be provided by law. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service."

Mr. President, the amendment which I offer is the provision of the present Constitution, and I trust the Convention will adopt it. It has thus far worked well, and I believe there is no portion of the State asking for any amendment in that respect. The section, as reported by the committee, would authorize the organization of the State of Pennsylvania into a military camp. It would authorize—

The PRESIDENT. The Chair is informed that the motion now made by the delegate from Butler was made yesterday by the delegate from Adams (Mr. M'Clellan) and voted upon.

Mr. J. N. PURVIANCE. No, sir; he moved an amendment to the section, not to strike out the whole section.

Mr. M'CLELLAN. My motion was to strike out all after the word "Commonwealth," in the fourth line."

The PRESIDENT. Very well; the delegate from Butler will proceed.

Mr. J. N. PURVIANCE. I was about to remark, Mr. President, that the section as reported by the committee would authorize the organization of military schools throughout the Commonwealth; it would authorize military encampments, and it would authorize the Legislature to organize the State into a grand military system such as might cost the State millions of dollars. There is nothing in the article as reported to prevent the Legislature from appropriating one million of dollars towards the organization and disciplining of the militia of the State, and if the Legislature were so disposed, as it might be, and probably in the

coming few years will be, this article will be, perhaps, one of the most obnoxious that could be adopted in the Constitution, for no necessity exists for large and extensive military organizations in times of peace.

Now, I should like to inquire what the object of this military organization is? What has it proved in the past? We have had a military organization in Pennsylvania for over half a century, and yet when the Mexican war broke out there was not a military company within the broad limits of the State that as a company went into the military service.

Mr. LILLY. Allow me to correct the gentleman. The company from Carbon county did go into the service, and they had a full organization at the time the war broke out. It was known as Company K, Second regiment Pennsylvania volunteers.

Mr. J. N. PURVIANCE. With due deference to the gentleman from Carbon, I undertake to say that he is mistaken.

Mr. LILLY. I know that I am not.

Mr. J. N. PURVIANCE. I was at the seat of government at the time, and of the two regiments authorized to be raised in Pennsylvania not a single company then organized as a volunteer company went to the City of Mexico, if my memory serves me correctly. In the city of Philadelphia there was a large military organization, and of that entire organization I believe I am correct in saying that not one single volunteer company as then organized went to Mexico.

Mr. BIDDLE. That is a mistake.

Mr. J. N. PURVIANCE. I think it is not. Captain Naylor, who had never been in the military service, raised a company here, and that company was composed of men, as he informed me, who never performed military duty at all. They were new men who had had no experience whatever in any military organization. Two or three companies were raised in Pittsburg, all of whom were outside of any then existing military organizations. One or two companies were raised in Cambria county, and they were outside of all military organizations. One or two companies were raised in Erie, and so all over Pennsylvania, with the exception perhaps of Carbon county, if the gentleman is correct. I recollect that from Schuylkill one gentleman there tendered a military organization, but it was not accepted, and the result was that one or two companies were raised in Schuylkill county under

Col. Wynkoop, and they were composed of miners and others who belonged to no military organization.

Mr. J. M. WETHERILL. Allow me to set the gentleman right as to a matter of fact. The company accepted from Schuylkill county, in the Mexican war, was Captain Nagle's company, and they were fully organized. Colonel Wynkoop was a private soldier in Captain Nagle's company.

Mr. J. N. PURVIANCE. I will cheerfully stand corrected as to Schuylkill county, because I believe Captain Nagle was one of the captains accepted. There were two or three military companies organized in Harrisburg, but those companies all disbanded and new companies were formed there of new men who went out to Mexico.

Now, how was it with regard to the war for the suppression of the rebellion? How many military companies then existed in Pennsylvania, and how many, as such organized companies, went into that war? I know of not a single one.

Mr. BIDDLE. The First City Troop of Philadelphia I know did.

Mr. J. N. PURVIANCE. You are right, and that exception is the only one that I know of. Therefore I say that this military organization as a general thing over the State is unnecessary and is a great expense, and it may be an increased expense, of millions of dollars if we adopt the article as reported by the committee, because it does authorize such an organization and requires the Legislature to make appropriations out of the Treasury for the support of it, such as would get up military schools and military encampments, and make a comparatively useless organization such as it has proved to be in the past in case of danger.

The patriotic citizens will ever be found adequate to every emergency, with such organization in times of peace as may be made under the amendment which I have offered.

The people of the country are always ready to defend their institutions and they are ready to do it voluntarily and to go into military organizations whenever the necessity exists for it; and that is the way under the old Constitution that it was left; and I trust this Convention will leave it, by the adoption of the amendment I have offered, in the same way under the old Constitution.

Mr. LILLY. I do not rise to answer the argument of the gentleman from Butler

against the article under consideration, but I have got up to vindicate the truth of what I asserted. Not only in Carbon county but in several other counties of the State did organizations go to the Mexican war. In the first place, the Stockton artillery was an organized company in Carbon county, and they offered their services and were accepted and went into the Second regiment of Pennsylvania volunteers. This company was commanded by Capt. Miller, who gallantly led his company at the storming of Chepultepec. His officers were Lieutenant Wolf and Lieutenant Klotz, all of whom, as well as the men under them, did gallant service, and service for which they received thanks from their commanders.

Captain Dana, of Wilkesbarre, had a volunteer company before the war in the town of Wilkesbarre, who promptly offered their services, were accepted and went into the first Pennsylvania regiment sent into that service. Many other companies, I believe a majority of the two regiments, were made up of organizations in existence at the commencement of the war; hence, his statements are not as well founded as he would like this body to believe.

Again, the gentleman says in the last war there were no organizations that went into the service; the gentleman from Philadelphia corrected him as to the First City Troop. I now say that there was a company organization in Carbon county, when the first shot was fired at Fort Sumpter, who immediately opened an armory for volunteers, when five hundred men volunteered for three months and went into the service. This organization was commanded by Colonel Concord, who fell afterwards at the head of his regiment. Had this company for a nucleus not been extant, there would have been few or no men to go into the field from Carbon county. I am sorry to have taken so much time on this subject, but could not allow my personal friends' history, living or dead, to be falsified with impunity.

Mr. GIBSON. Mr. President: I am in favor of the proposed amendment and had intended to offer it myself. I said a few words last evening on that subject, because I thought it necessary that some explanation should be given why the word "shall" appeared in the section as now proposed in this new Constitution. But, sir, I particularly desire that the words "for its defence" should be re-

tained in the Constitution we are about to make. I do not see any object at all in changing the old Constitution except where it is imperatively necessary, and I do not think any sufficient reason has been given on this floor during any of the debates that have taken place upon the subject for changing from the militia article as it now exists. Why, sir, the question this morning has been discussed as though the militia of the Commonwealth was only composed of what are known as volunteer military organizations. Not at all, sir. There always did exist volunteer military organizations which were furnished with arms by the State, that wore uniforms, were subject to regular drill, and were afterwards organized into a system under the act of Assembly. Some of those companies, as companies, did go out at the first call for volunteers to take part in the late war. But gentlemen must remember that the present Constitution says that the freemen of the Commonwealth shall be organized and disciplined "for its defence." The whole freemen of the Commonwealth, not only those who choose to join military companies, but any citizen between the age of eighteen and forty-five is subject to the mandate of the Legislature or the powers that be, and is obliged to shoulder his musket and turn out on certain emergencies. Now, sir, I say that such militia organizations, the freemen of the Commonwealth subject to such orders, who are obliged to turn out, should do so for some purpose. The militia ought to be for the defence of the Commonwealth alone. There is no such thing as a militia of the United States. This State of Pennsylvania is a sovereign State in that respect; and therefore I think when we say that the freemen of the Commonwealth shall be organized and disciplined for its defence, we are preserving a principle which should be sacred in our theory of government.

But, sir, I do not wish to dwell upon that branch of this subject. I think we ought not to reject those words, for gentlemen should remember that the militia consists not only of volunteer military organizations, but of the entire body of the freemen of the Commonwealth.

With regard to the second clause, I wish to say that I do not think any right-minded man who belongs to any of the religious sects that have asked exemption will refuse to pay to the government a proper equivalent. They are protected as well as

other citizens. It is enough that they are exempt from military duty, and they ought to pay their taxes.

Mr. CORSON. Suppose they cannot.

Mr. GIBSON. If they cannot pay, then there are also people who are not exempt who cannot pay. Let them be released by the commissioners. There are provisions for releasing persons from taxation under the general laws. I do not think that any discrimination should be made in favor of any particular sect or class of people. Sir, I read in the early history of Pennsylvania, (and it may be seen among our ancient records,) that at one time the Queen of Great Britain made a requisition upon the State of Pennsylvania for a sum of money, or for troops for the invasion of Canada at the commencement of the French war. Pennsylvania was then composed almost entirely of Quakers, and certainly none can say that those of the present day can be more conscientiously in favor of peace than the Quakers of that day were; and yet although they said they could not organize men and send them to take part in the war, they did not refuse to furnish the funds that were required of them. To be sure, they did not furnish the full amount that was demanded of them, and they also asked that it should be thrown into the general treasury, but still they were perfectly willing to furnish money for the support of the government under which they lived, and they thought it their duty to do so. They thought they were under the protection of that government, and although they would not fight or furnish men to fight, they were willing to pay money towards it. Therefore, I think that this second clause should also be retained as it is in the present Constitution, and I do not see any reason whatever for making any alteration in it. I am in favor of, and I trust this Convention will adopt, the article as it now stands in the Constitution.

Mr. DARLINGTON. Mr. President: I am unwilling to see this combined assault made by the article in question upon that respectable society, which I have the honor in part to represent here, without raising my voice, at least as far as I can, to defend it. The introduction of the clause to which the gentleman from York has referred was not at my instance, and it was suggested, if I recollect aright the preceding stages of the debate, by ex-Governor Curtin, and it arose from what occurred during the late war

when there was a delicacy on the part of some officers in taking their militia troops beyond the line, or something of that sort. Some of them did not consider that they were armed for the defence of the State outside of the lines of the State. A liberal construction, in my judgment, would, however, have justified them in going to any extent they might choose to go into the Confederacy.

It is not that, however, about which I am at all solicitous. I am not solicitous whether you retain the language of the old Constitution in that respect, or the language which has been adopted by the Convention in committee of the whole and on second reading; but I am solicitous that there should be no unnecessary violation of the rights of conscience of anybody. We professed, and the founders of the government of the State professed—I do not say the Friends professed, for we all professed—to regard the rights of conscience. We are unwilling that there should be any constraint put upon any man, or that any one should be compelled to support any religious association to which he was not attached, or which he did not see fit to support. Why is it that we thus respect the rights of conscience? It is because we all acknowledge the sacredness of it, and the propriety of respecting the rights of conscience, on all occasions where it can be respected, and where it does not conflict with the general safety.

As I had the honor to say before, I beg to repeat for an instant here, that I am decidedly of opinion that in Pennsylvania there never has been, and in the future never will be, any necessity in time of war, rebellion, invasion, or anything else, of constraining any one who is conscientiously scrupulous against bearing arms. Among the three millions and a half of people that are now, and the ten millions that soon will be within our borders, there always will be found an abundant military force to defend our homes and our firesides, to defend the honor of our State, and to take our part too in the defence of the general government against all rebellion and invasion, without edging upon any one who is religiously conscientious against bearing arms. Even if such a case should arise, if the State should ever be found in such a difficulty as never has yet been presented, then I would agree that there is something in the suggestion that every man ought to bear his share; but unless that be necessary,

while there are millions who are ready to fly to arms, and, indeed, many of those of the society to which I have referred, ready as they have always been to go to the battle field, we shall have no difficulty about the defence of the State, whether inside or outside of our borders.

There is, therefore, no such necessity, no over-ruling public necessity which calls upon us to violate the conscience of any man who has conscientious scruples against bearing arms. No man can safely say, with regard to truth, that the Society of Friends—and this is true as to other societies also—ever shirked responsibility in time of war. Hundreds and thousands of them were on your battle-fields and some of them laid down their limbs and their lives in defence of their country. What has occurred in the past we may safely assume will occur in the future, and I venture to say that there never will be, as there never has been, any kind of necessity for enforcing any man to enter the military service when his religion would not permit him to go voluntarily.

If any one happened to be drafted in the late war, who was conscientiously scrupulous against bearing arms, as our late Governor can testify, there was service for him in the hospitals in binding up the wounds and ministering to the wants of the sick soldiers.

MR. CURTIN. That is true.

MR. DARLINGTON. Hundreds of people had to be so employed. Had you gone into the homes of the Quaker ladies of Chester county, you would have seen them working, even on Sundays, making lint and bandages for the soldiers who were in the war. There was no lack of patriotism and humanity to be found among the members of that society. Therefore it is that I beg of the Convention not to impose upon that body an unnecessary burden. They pay their taxes; they pay their full share to the public treasury; they will be glad to pay all that is assessed upon them for the public benefit, and when you say that the militia shall be maintained at the public expense, they know perfectly well that they are to pay a part of that expense, and they are willing to do it so long as you do not unnecessarily discriminate against them by requiring them to pay a special militia tax. Therefore, the amendment which was inserted in this section, that the Legislature shall provide for maintaining the militia, is a very proper provision. Let it be done at the public expense. Then

for the public defence whatever the Legislature shall judge proper to be done, whether by way of encouragement of volunteers or otherwise, I am perfectly willing shall be done by the public treasury; and the society to which I have referred are perfectly willing to bear their share of taxation.

MR. BOYD. Like my friend from Chester, I cannot allow this question to pass without saying a word of vindication in behalf of the Society of Friends, of whom we have so many in the county of Montgomery. Our counties of Montgomery and Chester are adjoining, and as a matter of course, the Friends in both of them are very much alike, but rather more so in my county than in his. [Laughter.] They are certainly alike in one thing; they are always for war. They are always more clamorous for it than those who have to go [laughter;] and, like the Chester Friends, never do go, but are always perfectly willing to lay down their limbs, ten dollars for an artificial arm, and twenty dollars for an artificial leg, and scrape lint at five dollars a pound for the suffering of those who do go. While this is true, and while they are thus assisting in the conduct of the war and in the defence of the country, in Montgomery county as they do in Chester, I must enter my protest against any action on the part of this body that will have a tendency to put any of that precious class of people in the army and under fire.

Therefore, I shall vote in such a way as will prevent that calamity, because a conscientious man has no business to be called upon to perform a conscientious duty. [Laughter.]

MR. D. W. PATTERSON. I feel compelled to rise merely to vindicate the truth of history as far as it relates to my own county and to my own city of Lancaster. It was just now alleged by the delegate from Butler, (Mr. J. N. Purviance,) that there was not a single organized company of volunteers in the militia ready to obey the call of the government at the breaking out of the rebellion.

MR. J. N. PURVIANCE. If the gentleman will allow me to correct him, I did not make that remark. I said that at the time of the Mexican war the military organizations were generally disbanded, and with few exceptions no companies that were then organized went into that war. At the time of the rebellion, I believe a few did, but only a few.

Mr. D. W. PATTERSON. I am glad that the assertion is denied, but the gentleman spoke, on one occasion, of the late rebellion. I wish to state that two organized volunteer companies already organized and equipped were among the first, and the very first, to obey the call of the government at the breaking out of the rebellion. I owe it to my fellow-citizens to state this fact: One of these organizations was the "Rifle" company and the other was the "Fencibles," and I think the fact ought to be transmitted to history. I say this much in behalf of the integrity and the patriotism of my constituents, and to vindicate the truth of history.

Mr. HOWARD. It seems to me, Mr. President, that we can do no better than accept the old Constitution. It seems to make a fair provision for the organizing of the militia, and it also makes a perfectly fair provision for those people who have conscientious scruples against bearing arms. The provision, as reported by the committee, would undoubtedly compel the Legislature to arm every man in the Commonwealth liable to military duty, except those who were conscientiously opposed to bearing arms. The Legislature would have no discretion about it; they would be compelled to:

"The freemen of this Commonwealth shall be armed, organized and disciplined in such manner as may be directed by law and the Legislature shall provide."

I do not know whether the delegate from Chester supports the article reported by the committee, and whether he thinks his Quaker friends could bear the enormous tax that would be necessary to support this enormous military establishment better than they could take their chance, once in a hundred years, of paying perhaps for an exemption from actual military service in the field.

Why, Mr. President, if it is a question of cash, it seems to me they would make a great deal more money by taking the old Constitution and taking their chance of once in a while paying for a military exemption. I do not see why any man—I do not care what his conscience is, if he has a conscience that permits him to live under a government at all—should not be willing, if he is conscientiously opposed personally, to perform some act required to defend that government; I do not see why he should not contribute his money and the property that he has made under the government that has protected him while he has been making that property.

Why, sir, that property belongs to the government. It is not his; they have a right to all of it, to the last dollar, in the preservation of the life of the State; and therefore when he says, "I am conscientiously opposed to taxes," he need not bring his conscience to bear at all about it, because by the law of the government that property belongs to the government to take what is necessary, and the government takes it, and they have a right to take it, conscience or no conscience.

So there is no conscience about it, and it is all humbug to bring in the question of conscience here, when you pay the government an equivalent for this personal service. They are simply doing for the government what the government want, what they need and what the government *must* have. It is a question of necessity whenever the time arrives that this man of peace, who has these conscientious scruples and is unwilling to render this service, I say it is a matter of necessity that the government should take an equivalent as an exemption for that service; and the government must do it or they will not do justice to the men who are willing to fight our battles. The government can not do justice to the men that do fight our battles unless she makes these conscientious men pay an equivalent for the exemption that they enjoy.

There is a question of justice and conscience on both sides of this matter. Why, Mr. President, what about this conscience business? I tell you there are none of us but what are conscientiously opposed to paying taxes, and we would not do it if we could get rid of it; and we have two sides to our conscience, one opposed to taxes while the other calls us to support the government, that, we say, from necessity must be supported. It seems to be impossible for us to frame anything that would seem to meet this case in all its parts with greater justice than the provision of the old Constitution. I do not know why it is that we should now say that all the freemen of this Commonwealth are to be armed.

What was the experience of the last terrible war, when our volunteers, who never had trained, perhaps, in a militia company or military company of any kind, went into the field, and in a very few days were drilled and put to face the enemy, and fought as gallantly as any men ever did in the history of the world. And why expend all these millions to turn the Commonwealth into a great

military camp? Perhaps some gentlemen like to show themselves in times of peace, parade about with swords by their sides and a military feather waving on the top of their heads. I like to see it, too, or did when I was a boy and had two or three cents to spend for ginger-bread and sweet cider.

But now, Mr. President, under this article it is going to be an enormous business, and I am opposed to turning Pennsylvania into a great military camp.

Mr. CORSON. I would say to the gentleman that that part of the Constitution is just the same as this article, word for word.

Mr. HOWARD. No, sir.

Mr. CORSON. Yes, sir.

Mr. HOWARD. It is very different. You have not read it sharp:

"The freemen of this Commonwealth shall be armed, organized and disciplined."

The old Constitution reads in this way: "The freemen of the Commonwealth shall be armed, organized and disciplined *for its defence*."

Mr. CORSON. What else would it be for?

Mr. HOWARD. Our soldiers in Pennsylvania were used for many purposes besides the defence of Pennsylvania, and so far as the mere defence of the State is concerned I do not apprehend that it is absolutely necessary that we should turn the land into a military camp. When a war comes it is the duty of the Federal Government to protect these States. They have the military power, the war power, and the financial power, and it is their business to defend these States.

Mr. ROSS. Mr. President: Believing that the amendment proposed by the delegate from Butler, in the first part, of it, contains the recognition of a great principle, to wit: That the soldiers of the Commonwealth are for the protection and defence of the Commonwealth, and believing that the latter part of that amendment does great injustice to a large and respectable portion of the citizens of this State, I desire, if it be in order, to ask for a division of the amendment.

The PRESIDENT. It is not in order to divide a motion to go into committee of the whole.

Mr. M'CLEAN. Mr. President: I have listened in vain this morning for any good reason to be assigned why we should not continue the provision of the old Constitution for an equivalent to be paid

by those who have conscientious scruples against bearing arms. I have listened this morning to the venerable gentleman from Chester, who I suppose was as much authorized to speak for the Society of Friends as any gentleman on this floor.

Mr. CORSON. Oh, that is a great mistake. [Laughter.]

Mr. M'CLEAN. The gentleman from Chester only confirmed me in my views that the present article of the Constitution should be retained. He spoke of the willingness of the Friends to pay their taxes for the support of a government carrying on war, taxes which would be used for the purposes of war. If this is right, if this is in accordance with the conscience of the Quaker, why should he not be required to pay an equivalent for personal service in time of war?

As I remarked yesterday there are christian denominations in my part of the State who believe that it is wrong to engage in war, but at the same time they believe that their duty as citizens requires them to support the government in time of peril, and support it by the payment of an equivalent for personal service. I was impressed by the remarks of a venerable clergyman of the society of Tunkers, who came to me when he saw this article, as now reported, providing for absolute exemption from military service, and who felt indignant at it. He regarded it as neither christian nor manly that any citizen should be exempted from his share of the burden in time of peril and danger to the State.

It is said the Society of Friends should be exempted on account of their conscientious scruples. I cannot see the justice or the right of any class of people who, notwithstanding they may have acted their part in fomenting war and civil strife by the dissemination of their sectarian and political opinions, yet when the time comes that they are called upon to strike for their views, then being too scrupulous to bear arms and too scrupulous to pay one dollar as an equivalent for personal service, while their neighbors all around them are drafted and compelled to go into the service.

I do not understand the christianity or the patriotism of such a faith. I believe the true doctrine to be that of the founder of the christian religion, to "render unto Cæsar the things that are Cæsar's."

I hope that the provision of the Constitution of 1833 will be retained, and that we shall have a militia for the defence of the

State, and that every citizen will be required to bear his part of the burden and no one permitted to shirk any responsibility which rests upon him as a citizen.

Mr. BAER. Mr. President: The Convention have shown this morning that they enjoy this debate, and I mean to claim my portion of the time in the future, and especially on this section, which is thought to be so very important.

I am in favor of the old Constitution in this respect, and I propose to put myself on the record here. I shall vote for the amendment of the gentleman from Butler, and I would vote the more heartily for it if it had one provision in it which cannot at this point be incorporated into it. I do not believe that anybody has any conscientious scruples about bearing arms. The history of the past shows that it is a fiction, because when a man says he has conscientious scruples against bearing arms and yet will pay somebody else to go and shoot down his brother, I would not give a fig for his conscience. If all men in this State, as they have the same right to do, were to come up in an emergency and say, "I have conscientious scruples against bearing arms," what would become of the government in an emergency? Who would defend its liberties? And yet if one sect or a half dozen sects may do it, all men may do it. I believe that the true doctrine would be to strike that clause out altogether and come up to the standard that we so much talk of when we declare that all men are equal. If all men are equal, treat all men alike, and when a war is waged let all men bear their share in putting it down. The money of one man is paid as an equivalent for personal service. How much money of the rich millionaire is equal to the life of the poor husband of the poor wife? Are you going to measure it by a paltry three hundred dollars? For one, I say that life has no equivalent in money.

Therefore I should be glad of an opportunity to vote for striking out this idea entirely. I shall vote for the proposition, however, as it requires an equivalent for personal service, and I hope the Legislature at some day will fix that equivalent so high that you will find no conscientious man in all this country who will refuse to go to fight.

Mr. PORTER. I desire to say but a word. From the remarks that have been made here it might be supposed that we were inaugurating a new article altogether in this

Constitution; that in place of having a militia organized discreetly and with good common sense we were proposing to have a camp of soldiers scattered all over the State, and to make every man a soldier. The article as reported by the committee reads thus: "The freemen of this Commonwealth shall be armed, organized and disciplined in such manner," &c. The old Constitution is in exactly the same words, with the addition of the words "for its defence." Those words were stricken out in committee of the whole on the motion of the gentleman from Schuylkill, because some difficulty had occurred as to whether the militia could be required to go beyond the State line.

This article as reported to the Convention by the Committee on Revision is exactly the same as that in the Constitution of 1838, and if there is danger in this unlimited military force being scattered over the State, why did it not occur under the Constitution of 1838? It is a mere bugbear. Gentlemen do not read the words of the section aright, or otherwise they would not present that view to this Convention.

I have but one other remark to make, and that is in regard to the last clause, which has been changed. The old Constitution reads thus: "Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service." This was obnoxious to the Quakers. They appeared before the committee; they presented petition after petition to this body asking that they should not be compelled to pay money in lieu of service. The committee looked upon them as a respectable class. They had friends in this body. They stood fair in the community. We wanted their votes to sustain this Constitution. They were honest, decent men; and the committee, in view of these facts, reported this provision: "But the Legislature may exempt from military service these persons having conscientious scruples against bearing arms." It does not say that the Legislature shall exempt them, but it puts the power in the hands of the Legislature and says to them: "If under the circumstances in case of war these men are not required, you may exempt them." I am not one of those who believe that a Quaker or any other man should be exempt from the performance of his duty to protect his country; I believe that every man owes service to his country when it

is required; but I do say that this clause recognizing the conscientious scruples of a large, decent, respectable class of our citizens, the founders of our Commonwealth, is right and proper. We have merely lodged the power in the Legislature, which they may exercise or may let alone; they may make them go into the service or they may let them out; while under the old constitutional provision, if the Legislature did exempt them, they compelled them to pay a tax.

Mr. HAZZARD. I trust that this article will be adopted as reported. In great cities, where there are likely to be riots and things of that sort, the people are very willing sometimes to fall back upon the arm of the military properly arranged to preserve their property. It has been within the experience of every one here that when strikes have occurred in the mining districts among the miners, and millions of property were at stake, just one little fire-brand cast in the midst of those ignorant people would have destroyed the coal interests of the anthracite region had it not been for the organized militia of the State. Men fall back upon the strong arm of the government when their property and their lives are at stake, but they hesitate and quibble about paying fifty cents apiece in order to keep up this organization.

I am in favor of the report of the committee, because it makes it obligatory upon the Legislature to appropriate money for this purpose. It may be that young men like to parade their fuss and feathers, but I tell you in time of peril and danger these young men are very useful to the country. There is not a country on the face of the earth that does not keep up a military organization. My friend from Allegheny fears that the result will be to turn the State into a camp. That has never yet happened. The whole matter is left in the discretion of the Legislature. They are not all fools. They are not going to make large appropriations or appropriations that are obnoxious to the people. They will exercise a sound discretion in regulating this subject by law the same as they do upon other subjects.

As to the Quakers, I am not going to say a word about them. It is unfortunate that any of our fellow-citizens are unable to defend their country in times of peril; but if they have conscientious scruples, they are but a small sect and we can afford to allow them to enjoy those scruples,

and if the Legislature thinks proper, excuse them from military duty; but let it be imperative that a provision shall be made for the defence of the country in times of emergency and great peril.

Mr. MANN. Mr. President: I cannot remain silent and hear such a construction given to this section as that of the chairman of the Military Committee, without entering my protest. If I understand the meaning of the English language, the section under consideration does require the Legislature of Pennsylvania to arm all the freemen of this Commonwealth, except those who may be exempt from personal service because of conscientious scruples. There are no qualifying words in this article except those that are in the old Constitution. It says absolutely, "the freemen of this Commonwealth shall be armed," and there are no other qualifying words here except this last clause "that the Legislature may exempt," not that they shall, but that they may exempt, "from military service those persons having conscientious scruples against bearing arms." The old Constitution has various qualifying words, and there never has been any doubt about it. It reads: "The freemen of this Commonwealth shall be armed, organized and disciplined"—when? "For its defence."

Mr. CORSON. No, I beg the gentleman's pardon. It says the Legislature shall direct.

Mr. MANN. It reads: "The freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as may be directed by law." The section before us makes no exception whatever. The Legislature have the proper discretion under the old Constitution. They are to organize the freemen of the Commonwealth when and in such manner as they deem the defence of the State requires it; but does it require them to organize a standing army? We are going back to the Old World organizations, and we are to have put upon us a standing army like that of France and England and Italy. That is the requirement of the section before us, and there is not a single voice in all Pennsylvania asking for it. The Legislature for years has expressed the popular will on this subject, and it has always refused to organize any such militia as is provided for in this section. It is a flat contradiction and a flat resistance to the will of the people of Pennsylvania, and the only reason given for it is an alleged re-

quest upon the part of the Society of Friends for it.

Mr. President, I undertake to say here in my place that there is not an intelligent member of the Society of Friends in Pennsylvania who reads these two sections who will prefer the one now before us to the old one. They ask for bread and you give them a stone. I believe I understand the feelings of that society on this subject. My grandfather and father and many of my relatives belonged to the Society of Friends. I was brought up at the feet of their leading men, and I believe I understand their wishes on this matter, and I undertake to say that this section will not conciliate them, for it puts upon them greater burdens than the old provision. It goes square against their convictions against standing armies, and increases the military power of Pennsylvania when they think it ought to be decreased. The old Constitution says: "Those who conscientiously scruple to bear arms shall not be compelled to do so." This section simply says that they may not be. You are going back upon a provision which exempted them absolutely, and you propose to put in the Constitution language which simply says that they may be exempt. Now is there anything in this section which will commend it to the intelligent members of the Society of Friends? Clearly not; and it is against the whole spirit of the people of Pennsylvania, and the whole spirit of the people of this Union. I trust, therefore, that the amendment of the gentleman from Butler (Mr. J. N. Purviance) will prevail.

The PRESIDENT. The question is on the motion of the delegate from Butler.

Mr. J. N. PURVIANCE. I call for the yeas and nays.

Mr. STANTON. I second the call.

The question being taken by yeas and nays, resulted as follow:

Y E A S .

Messrs. Ainey, Alricks, Baer, Bailey, (Huntingdon,) Baker, Bigler, Black, Charles A., Boyd, Buckalew, Calvin, Church, Cronmiller, Curry, Dallas, De France, Ewing, Funck, Gibson, Gilpin, Hall, Hanna, Hemphill, Heverin, Howard, Hunsicker, Lamberton, Landis, McClean, McCulloch, Mann, Mitchell, Palmer, H. W., Patterson, T. H. B., Purman, Purviance, John N., Read, John R., Reynolds, Rooke, Smith, H. G., Smith,

Herrz W., White, David N., Woodward, Worrell and Walker, *President*—44.

N A Y S .

Messrs. Armstrong, Baily, (Perry,) Beebe, Biddle, Broomall, Brown, Carey, Carter, Clark, Cochran, Corson, Curtin, Darlington, Edwards, Finney, Fulton, Guthrie, Hay, Hazzard, Horton, Lear, Lilly, Littleton, MacConnell, MacVeagh, M'Michael, M'Murray, Minor, Newlin, Palmer, G. W., Patterson, D. W., Patton, Porter, Purviance, Sam'l A., Ross, Runk, Russell, Stanton, Struthers, Turrell, Wetherill, J. M., Wetherill, John Price, White, Harry, White, J. W. F. and Wright—45.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Brodhead, Bullitt Campbell, Cassidy, Collins, Corbett, Craig, Cuyler, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Green, Harvey, Kaine, Knight, Lawrence, Long, M'Camant, Mantor, Metzger, Mott, Niles, Parsons, Pughe, Reed, Andrew, Sharpe, Simpson, Smith, William H., Stewart, Temple, Van Reed and Wherry—44.

Mr. BUCKALEW. I move to go into committee of the whole for the purpose of amending the article, by striking out, in the third and fourth lines, the words, "by appropriation from the treasury of the Commonwealth," so as to make the section read: "The freemen of this Commonwealth shall be armed, organized and disciplined in such manner as may be directed by law; and the Legislature shall provide for maintaining the militia, but may exempt from military service persons having conscientious scruples against bearing arms."

I want the Legislature to have complete control over the manner and means of maintaining the militia, by declaring that they shall make provision by law for the maintenance of that force.

As I read the language of this article now, they are excluded from providing any means for maintaining the militia force, except direct appropriations from the Treasury of the State. While I would leave to them the complete power to appropriate money from the treasury, I would not exclude them, under all circumstances in all future time, from resorting to other means for supporting this military force, as they have done heretofore, as, for instance, by fines or contributions for non-

military service; nor would I prohibit them from allowing a city, for instance, to appropriate money for the maintenance of a local force, or to appropriate money out of the Treasury of the State to assist in the maintenance of a local force. In fact, in times of war and trouble we may need municipal credit as well as State credit in maintaining our military forces; and it is improvident and unwise for us to exclude the Legislature from other means of maintaining the military power of the Commonwealth than by direct appropriations of money from the Treasury. Now, the section says that the Legislature shall provide for maintaining the militia by appropriations from the Treasury of the State, and I understand that to exclude assistance from other quarters.

MR. LILLY. The words which the gentleman desires to have stricken out of this article were put in by the committee after listening to delegates from the Society of Friends. They say that they are conscientious against bearing arms, and they are conscientious against paying money directly for other people to bear arms; but they are always ready to pay their general taxes into the State Treasury. They do not want their money to go for war purposes; but when it is put into the treasury, they are not responsible for where it goes, and they cheerfully pay their taxes for the support of the government. If, after their taxes are paid in, the money is taken by the government to support the militia out of the treasury, they have nothing to say. This was put in entirely on account of their view. We were unwilling to depreciate this body of people whom we know to be respectable and believe to be entirely conscientious in their views. I hope for these reasons the amendment will not prevail.

MR. MINOR. Mr. President: I hope this motion will prevail and this amendment be made. I think we ought not, if we can avoid it, to leave the article in such shape that it will act as a temptation to any body to make undue demands upon the Treasury of the State.

If we compel the organization of the militia, and also *compel* the State to maintain them out of the treasury, there is great danger that it will act as an inducement to make unreasonable demands for military arrangements in times of peace. We ought to give the Legislature an opportunity to protect itself by omitting the compulsory clause. Then it will be left pliable, and to be governed by circum-

stances. All expenses may be paid from the treasury direct, or a part in that way and a part in other ways. Thus we destroy no mode, but give an opportunity for whatever may be the best mode.

MR. PORTER. I will state how the insertion of the words relative to direct appropriations from the State Treasury originated. There has been found to be great trouble in the collection of militia tax, although it was a small thing perhaps. Companies were organized under the law, and when they went to the county treasury to draw the money realized from this tax, as they were entitled to do, there was no money there for them. The result was that the militia system was a farce throughout the State except where private subscriptions came in to aid them. Money could not be raised in that way. The committee had that in view in putting in this language. The purpose was to leave the power to the Legislature as to the manner and details of the organization, whether large or small, but that in whatever shape they might put it, the money to support the militia organization should come from the State Treasury, so that every person should bear his share; and a militia tax should not be imposed on a certain few, as has been practically the case under the law since 1845. We conceived that if the militia system was of any use at all it was of use for the whole people, and if of use for the whole people every person in the community should bear his equal share of the expense. We conceived that corporations were benefited by it, and that therefore it was proper that they should pay some portion of the expense of the organization and maintenance of the militia. If you strike these words out now and put us back to the old militia tax, we have no guiding star. If the militia is organized the State should pay for it. Leave these words in, and then the Legislature must be guarded in their appropriations. They are responsible, and when they organize a militia, the whole power being left to them, they must appropriate money for its support, and that money will come out of the State Treasury, and not out of taxes collected off a few people. Strike out these words and it appears to me the section will be worthless. I hope they will be retained.

MR. HARRY WHITE. Mr. President: In addition to what the chairman of the Committee on the Militia (Mr. Porter) has said, and in answer to the alarm which

has been sounded by my friend from Crawford, (Mr. Minor,) it is proper to call the attention of the Convention to what the Legislature has done. Two years ago, in obedience to a demand from taxpayers of this State, the Legislature abolished the militia tax of one dollar which was applied to Philadelphia. The respectable Society of friends petitioned for that, and not alone they, but the mass of the taxpayers of the great city of Philadelphia. They called the attention of the Legislature to the fact that the money was used as a fund for corruption, that a large imposition was placed upon the taxpayers which only inured to the benefit of some favored collectors. The Legislature, when all the facts were presented to them, readily yielded to the demand and abolished the militia tax in Philadelphia. The same request was made from different parts of the Commonwealth. It came up from Lancaster county, from Lebanon county, and from the western portion of the Commonwealth, and no county made louder complaints than the county of Allegheny. The consequence was that last year the law authorizing the imposition of a militia tax was entirely repealed, and the result was that instead of the very many volunteer military organizations that formerly existed, which were to be compensated at the rate of twelve dollars per man, six dollars of which was to be paid on the organization of the company and six dollars at the end of the year, there was created in the State a force limited by the number of ten thousand persons, and they were divided and are now divided into two hundred military companies, and it is furthermore provided that in lieu of this militia tax these companies shall receive not exceeding four hundred dollars for each company of not less than forty men, thus practically giving to each company ten dollars a man.

That is the law of Pennsylvania to-day, and that law was enacted to correct the abuses which grew out of the imposition theretofore of the abominable militia tax, and I trust I shall never again see the day when the humbug system of supporting our militia organizations in Pennsylvania by a *per capita* tax will ever be re-instated.

Mr. President, the sentiment of the Legislature, representing the public sentiment of the State, can be trusted in limiting the size and number of the troops to be organized. At the commencement of this new era, at the commencement of

the present system of military organization, we had only ten thousand men. There is no demand whatever from any part of the State for an increase of this force, and I apprehend that no member of the Legislature having regard to his obligations to his people, with a desire to sustain his public reputation among his constituents, will for a moment ask for an increase of this force. The amount required to sustain this force in comparison with the old militia fund is a mere bagatelle. Make an arithmetical calculation of one dollar per man in the city of Philadelphia and one-half dollar throughout the Commonwealth, every man under forty-five years of age being liable to bear arms, and you will see that an immense fund would be raised; but it was an immense burden upon the people. In lieu of this now the whole State is only required to pay some \$50,000 or \$60,000 a year.

Mr. President in view of this experience, in view of the law as it is upon the statute book, and in view of the approval of public sentiment which that law has received so far as I have understood, I think we should make our Constitution in harmony with that sentiment. I hope we shall also respect the very proper petition which that large class of our fellow-citizens known as Friends or Quakers have addressed to this body to relieve them from that odious provision in the old Constitution requiring them to pay an equivalent for personal service. They, in common with the mass of their fellow-citizens, are willing to pay their taxes and are willing to let those taxes be appropriated as the law requires; but they are unwilling to have their consciences violated by a requirement to pay an equivalent for military service.

I trust, therefore, that this provision requiring the Legislature to maintain our militia when the Legislature deems it necessary, and to maintain it by direct appropriations from the treasury instead of by the imposition of a militia tax, will be retained. The delegate from Columbia, who moves this amendment, raises the point that this will prevent the Legislature hereafter from allowing municipalities in times of war or some great crises to contribute, or from allowing funds to be raised by the imposition of a *per capita* tax. I do not so regard it. Any duty of that kind will be exercised by the Legislature as the exigencies of the times may require. I submit that all this provision

requires is that the Legislature, when they deem it wise to maintain any military organization, shall provide funds for its support from the State Treasury.

Mr. PRESIDENT. The question is on the motion of the delegate from Columbia.

Mr. D. N. WHITE. On that I call for the yeas and nays.

Mr. MANN. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Black, Charles A., Boyd, Buckalew, Cronmiller, De France, Ewing, Funck, Gibson, Gilpin, Green, Hemphill, Heverin, Howard, Hunsicker, Lamberton, Landis, Littleton, Mann, Minor, Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Reed, Andrew, Reynolds, Rooke, Runk, Smith, H. G., Smith, Henry W., Struthers and White, David N., —37.

NAYS.

Messrs. Baily, (Perry,) Baker, Beebe, Biddle, Bowman, Broomall, Brown, Calvin, Carey, Carter, Church, Clark, Cochran, Corson, Curry, Curtin, Dallas, Darlington, Davis, Edwards, Fulton, Guthrie, Hall, Hanna, Hay, Hazzard, Horton, Knight, Lear, Lilly, MacConnell, MacVeagh, M'Clean, M'Michael, Mitchell, Newlin, Palmer, G. W., Patterson, D. W., Porter, Purviance, Samuel A., Ross, Russell, Stanton, Temple, Turrell, Wetherill, J. M., Wetherill, John Price, White, Harry, White, J. W. F., Worrell, Wright and Walker, *President*—52.

So the motion was not agreed to.

ABSENT. — Messrs. Achenbach, Adicks, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Brodhead, Bullitt, Campbell, Cassidy, Collins, Corbett, Craig, Cuyler, Dodd, Dunning, Elliott, Ellis, Fell, Finney, Harvey, Kaine, Lawrence, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Mott, Niles, Parsons, Pughe, Read, John R., Sharpe, Simpson, Smith, Wm. H., Stewart, Van Reed, Wherry and Woodward—44.

Mr. STRUTHERS. I move that the Convention go into committee of the whole to amend the section, by adding to the end thereof the following words:

"Who will furnish substitutes or pay an equivalent for personal service."

We have been, from the beginning of our sessions, urged by the gentlemen who are now in favor of making an exceptional application of this article, not to make any distinctions for conscience sake among the people of the Commonwealth. In the appropriations for charities, and in the distribution of the educational fund, we have provided in the Constitution, wherever the question has been raised, so as to guard against favoritism to any sect. We have voted steadily against any sectarianism, and yet here it is proposed by the very gentlemen who have been the most persistent on this subject of creating no sectarian distinctions, that we shall make a broad distinction in favor of a particular sect, a discrimination broader and more decided than any contained in any proposition made in this body from the commencement of our sessions.

What reason on earth is there why we should single out the little Society of Friends and say that they shall be exempt from the duty of defending the Commonwealth in time of invasion, and defending the country in time of war? Why are they alone to be relieved from the performance of that duty? I would vote in favor of striking the exemption out of the section altogether, but if we do not strike it out let us hold to the doctrine as laid down and so well established, by the framers of the present Constitution, and still keep those people to the payment of an equivalent for exemption from military service. If these gentlemen have such serious conscientious scruples on this subject let them cleanse their consciences. If they have those anti-social conscientious principles that prohibit and prevent them from entering in and going on hand in hand with their fellow-citizens in all the measures necessary for the support of their government, let them eradicate the heresies from their consciences, or else pay for the luxury.

The PRESIDENT. The question is on going into committee of the whole on the amendment of the gentleman from Warren.

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

Mr. BROOMALL. Oh, no! It is not necessary to call for the yeas and nays on that.

The PRESIDENT. Is the call seconded?

MANY DELEGATES. I second the call.

Mr. CARTER. Before the vote is taken I want to say one word, not to make a speech at all. I wish to correct an error in the remarks of the gentleman from Warren. In fact there was more than one error in his statement. There were almost as many mistakes in his statements as they were in number, in fact as many as were found by the great scientist Agassiz in criticizing a definition of the word crab, printed in a certain book. The work defined a crab as "a fish with a red color, which walks backwards." [Laughter.] These, he said, each was wrong, and were three errors.

In the first place, said Agassiz, it is not a fish.

In the second place, its color is not red, and

In the third place, it does not walk backwards.

Now, in the first place, the statement of the gentleman from Warren is inaccurate, because this is not asked for the Society of Friends alone. The word "Friend" is not mentioned and not referred to. I had the honor to originally introduce the amendment which led to this provision at the close of this article, and as I wrote it it read, "members of religious societies who are opposed to war on Christian principles;" but at the suggestion of the gentleman from Allegheny (Mr. D. N. White) that phrase was stricken out and amended as it is now. It has nothing to do with the Society of Friends or religious societies, and says in explicit language, "those persons having conscientious scruples against bearing arms may be exempted by the Legislature." There is here no reference to Quakers or religious societies. It does not declare that these persons so conscientious shall be relieved of the provisions of this article. It only says that the Legislature may do this thing, and that that body, in the exercise of their power, may exempt these people, a concession made in the Constitution of every State in the Union, although in many coupled with the requisition of paying an equivalent.

As I have said before, and which I do not now desire to repeat, for we certainly have too much of repetition here, too much grinding over of the same old grist, and I am tempted to make this remark before I sit down. An old gentleman once said to me: "If you ever attempt to be a public speaker always shut the mill down as soon as the grist is through." If we could only learn that lesson, and if we had applied it in this

Convention, instead of being here in the middle of October we could have gone home perhaps two months ago; and thus thinking, and believing further that this Convention will sustain its previous action by passing this article as at present, I will not even indicate the other errors of the gentleman from Warren, nor indicate why we should make this small concession to rights of conscience.

The PRESIDENT. The yeas and nays are ordered on the motion of the gentleman from Warren.

Mr. KNIGHT. I trust this amendment will not be made. I think we have a very good article here as it is, and in justice to many people of this Commonwealth I trust the Convention will vote down the motion to go into committee of the whole.

The PRESIDENT. The Clerk will proceed with the call.

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

YEAS.

Messrs. Alricks, Baer, Boyd, Buckalew, Church, Cronmiller, De France, Gibson, Gilpin, Guthrie, Hemphill, Heverin Howard, Hunsicker, Landis, M'Clean, Mitchell, Patton, Purviance, John N., Reynolds, Smith, H. G., Struthers, Worrell and Walker, *President*—24.

NAYS.

Messrs. Ainey, Baily, (Perry,) Baker, Beebe, Biddle, Black, Charles A., Bowman, Broomall, Brown, Calvin, Carey, Carter, Clark, Corson, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, Edwards, Ewing, Finney, Fulton, Funck, Green, Hall, Hanna, Hay, Hazzard, Horton, Knight, Lamberton, Lear, Lilly, MacConnell, M'Michael, M'Murray, Mann, Minor, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, Sam'l A., Reed, Andrew, Rooke, Ross, Runk, Russell, Smith, Henry W., Stanton, Temple, Turrell, Wetherill, J. M., Wetherill, John Price, White, Harry, White, J. W. F., Woodward and Wright—63.

So the motion was rejected.

ABSENT. — Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Brodhead, Bullitt, Campbell, Cassidy, Cochran, Collins, Corbett, Craig, Dodd,

Dunning, Elliott, Ellis, Fell, Harvey, Kaine, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Mott, Newlin, Niles, Parsons, Read, John R., Sharpe, Simpson, Smith, Wm. H., Stewart, Van Reed, Wherry and White, David N.—46.

Mr. HOWARD. I now move to go into committee of the whole, and suggest the following amendment, viz: To insert after the word "discipline," in the second line, the words, "for its defence when and."

I now ask for the reading of the section as it will be if amended.

The CLERK read as follows:

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defence when and in such manner as may be directed by law; and the Legislature shall provide for maintaining the militia by appropriation from the treasury of the Commonwealth; but the Legislature may exempt from military service persons having conscientious scruples against bearing arms."

Mr. HARRY WHITE. I ask for a division of that amendment.

MANY DELEGATES. No. No.

Mr. HARRY WHITE. Yes. I will indicate my request and explain it. I do not intend to debate it—

The PRESIDENT. A motion to divide would not be in order, for it would be an amendment to the amendment, and that cannot now be made.

Mr. HARRY WHITE. Certainly the proposed amendment can be divided.

Mr. MACCONNELL. I rise to a point of order. This is a motion to go into committee of the whole, and how can you divide such a motion?

The PRESIDENT. It cannot be divided.

Mr. HARRY WHITE. If I am allowed to explain I will make myself understood.

The PRESIDENT. The delegate from Indiana can explain.

Mr. HARRY WHITE. Very well. The motion of the delegate from Allegheny is to go into committee of the whole to insert the words "for its defence when and." I ask that it be divided so as to have a vote on the words "for its defence," and then we can vote on the words "when and." I submit that either one of these divisions, if carried, will stand by itself, for either will alter the sense of the article. The first words, "for its defence," form one subject, and the words "when and" are another. The propositions are separate.

The PRESIDENT. The delegate from Indiana can move his amendment after the Convention disposes of the amendment of the delegate from Allegheny.

Mr. HOWARD. Mr. President: This is simply no more than inserting the words of the old Constitution. The old Constitution reads in this way:

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defence when and in such manner," &c.

This restores the words of the old Constitution, which are perfectly right and proper, and I do not see any reason why the committee should have stricken them out. Let us simply put them back. That is all I ask.

The PRESIDENT. The question is on the motion of the delegate from Allegheny.

Mr. J. M. WETHERILL. I call for the yeas and nays.

Mr. TEMPLE. I second the call.

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

Y E A S .

Messrs. Ainey, Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Black, Chas. A., Bowman, Boyd, Brodhead, Broomall, Calvin, Carey, Church, Cronmiller, Curry, Darlington, De France, Ewing, Funck, Gilpin, Gilpin, Hall, Hanna, Hemphill, Heverin, Horton, Howard, Hunsicker, Lamberton, Landis, Lear, M'Clean, Mann, Mitchell, Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purvance, John N., Reed, Andrew, Reynolds, Rooke, Ross, Smith, H. G., Smith, Henry W., Temple, White, David N., Woodward, Worrell, Wright and Walker, President—52.

N A Y S .

Messrs. Baker, Biddle, Carter, Clark, Cochran, Corson, Curtin, Cuyler, Davis, Edwards, Finney, Fulton, Green, Guthrie, Hay, Hazzard, Knight, Lilly, MacConnell, M'Culloch, M'Michael, M'Murray, Minor, Palmer, G. W., Patterson, D. W., Porter, Pughe, Purvance, Samuel A., Runk, Russell, Stanton, Struthers, Turrell, Wetherill, J. M., Wetherill, John Price, White, Harry and White, J. W. F.—37.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Brown, Buckalew, Bullitt, Camp-

bell, Cassidy, Collins, Corbett, Craig, Dallas, Dodd, Dunning, Elliott, Ellis, Fell, Harvey, Kaine, Lawrence, Littleton, Long, MacVeagh, M'Camant, Mantor, Metzger, Mott, Newlin, Niles, Parsons, Read, John R., Sharpe, Simpson, Smith, Wm. H., Stewart, Van Reed and Wherry—44.

So the motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Finney in the chair.

The CHAIRMAN. The committee of the whole have been directed to insert after the word "disciplined" in the second line the words, "for its defence when, and." The amendment will be inserted.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Finney) reported that the committee of the whole had made the amendment directed by the Convention.

The PRESIDENT. The question recurs on the passage of the article.

Mr. HUNSICKER. I call for the previous question on the article.

The call was seconded by Messrs. Andrew Reed, Boyd, Corson, Green, De France, Funck, Heverin, Beebe, Mitchell, Hazzard, Temple, Broomall, J. Price Wetherill, Russell, Knight, Joseph Bailey, T. H. B. Patterson, Wright, S. A. Purviance, Brown, MacConnell, Porter, Clark and Harry White.

The PRESIDENT. The question now is, shall the main question be put?

The question being put, it was determined in the affirmative.

The PRESIDENT. The question now is on the passage of the article.

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

Mr. HEMPHILL. I second the call.

SEVERAL DELEGATES. Let the article as amended be read.

The CLERK read as follows :

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defence when and in such manner as may be directed by law; and the Legislature shall provide for maintaining the militia by appropriations from the Treasury of the Commonwealth; and the Legislature may exempt from military service persons having conscientious scruples against bearing arms."

The PRESIDENT. 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, Ainey, Baily, (Perry,) Baker, Beebe, Biddle, Black, Chas. A., Bowman, Boyd, Brodhead, Brown, Buckalew, Calvin, Carey, Carter, Church, Cochran, Corson, Cronmiller, Cuyler, Dallas, Darlington, Davis, De France, Elliott, Ewing, Finney, Funck, Gibson, Green, Guthrie, Hall, Hay, Hazzard, Hemphill, Heverin, Horton, Heward, Knight, Lamberton, Landis, MacConnell, M'Culloch, M'Michael, M'Murray, Minor, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Sam'l A., Rooke, Ross, Runk, Russell, Smith, Henry W., Stanton, Wetherill, J. M., Wetherill, John Price, White, David N., Woodward, Wright and Walker, President—65.

N A Y S .

Messrs. Alricks, Baer, Broomall, Edwards, Fulton, Harvey, Hunsicker, Lilly, M'Clean, Mann, Mitchell, Palmer, G. W., Pughe, Reed, Andrew, Reynolds, Smith, H. G., Struthers, Temple, Turrell and Worrell—20.

So the article was passed.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullit, Campbell, Cassidy, Clark, Collins, Corbett, Craig, Curry, Curtin, Dodd, Dunning, Ellis, Fell, Gilpin, Hanna, Kaine, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, Mantor, Metzger, Mott, Newlin, Niles, Parsons, Patterson, D. W., Read, John R., Sharpe, Simpson, Smith, Wm. H., Stewart, Van Reed, Wherry, White, Harry and White, J. W. F—48.

THE JUDICIARY.

The PRESIDENT. The next article in order is the article on the Judiciary, which is now before the Convention, the pending question being on the motion of the delegate from Philadelphia (Mr. Cuyler) to go into committee of the whole for special amendment, to insert a new section, which will be read.

The CLERK read as follows :

"There shall be established by law a court to be styled "The Superior Court of the State of Pennsylvania," having three judges, learned in the law, chosen by the electors of the State at large. Those first chosen shall respectively hold office for terms of five, of ten, and of fifteen years, as may be determined by lot to be drawn immediately after taking the oath

of office, and those afterwards chosen shall hold office for terms of fifteen years each. The judge of said court having the shortest unexpired term shall be chief justice thereof.

"The said court shall have and exercise all the jurisdiction in law and in equity heretofore possessed by the court of *nisi prius*, and shall also have and exercise the jurisdiction of a final appellate court in all causes in law and in equity in which the amount in controversy does not exceed — hundred dollars, or in which both parties to the record shall agree—without regard to the amount in controversy—to submit the same to the final judgment or decree of said court. The judgments of said court shall not be reported as authoritative evidence of the law, and it shall be the duty of the Supreme Court upon petition of any defendant in error or appellee, if satisfied that doubtful and unsettled questions of law are involved in any cause pending in the superior court, to cause the same to be certified in the Supreme Court for its decision.

"The appellate jurisdiction of said court shall be exercised in convenient districts to be established by law."

MR. HOWARD. Before that question is put I should like to suggest to the delegate from Philadelphia, who offers this section, to modify in the manner and form as provided in the paper that I hold in my hand.

THE PRESIDENT. A motion was made yesterday to postpone in order to print a certain amendment. That amendment has been printed and laid on our tables; and now it is asked that that amendment be modified; that is, the delegate from Allegheny asks that the mover shall modify it. I do not think the mover can modify it; much less do I think it can be modified by anybody else.

MR. CUYLER. Do I understand that by any principle of law it is incapable of amendment? Is the Convention so tied by its own rules of order as to be powerless to amend or improve that which it has before it?

THE PRESIDENT. The Convention can permit it by unanimous consent. It certainly is not a matter of right by any means, nor in order to do so.

MR. CUYLER. I admit that rules of order should be somewhat stringent. What I have to say on this suggestion is this: That which I am most tenacious about is the *nisi prius* jurisdiction for Philadel-

phia. As to the appellate jurisdiction outside of that, I will cheerfully adopt anything that may be acceptable to the majority of the Convention. If that which is suggested by my friend from Allegheny (Mr. Howard) meets the approbation of the Convention, it will meet mine. So long as I can retain what is to me the essential feature, the *nisi prius* jurisdiction here, the rest may be changed as the Convention may prefer.

MR. BEEBE. Will the Chair allow it to be read?

THE PRESIDENT. The Convention can allow the modification or not, as they see proper. It will be read.

THE CLERK read as follows:

"The said court shall have and exercise the jurisdiction of a final appellate court in all cases of appeals, *certioraries*, and writs of error from or to the several courts of oyer and terminer and courts of quarter sessions of the peace in this Commonwealth. Said court may exercise such further jurisdiction as shall be provided by law; and any two judges may hold an appellate court; and also in and for the county of Philadelphia, said court may be held by any one judge, to be delegated, for the purpose, and shall have and exercise all the jurisdiction in law and equity heretofore possessed by the court of *nisi prius*, and the same shall be a court of record; and all appeals from said court shall be to the Supreme Court, and writs of error and *certioraries* from the Supreme Court shall be issued to said court of *nisi prius* for removal of its proceedings as in the case of other courts of record."

THE PRESIDENT. The Chair cannot receive the proposed modification. The amendment was laid over one night and printed and is on our desks, and now it is proposed to substitute something essentially different. If the House so order, the Chair will acquiesce; but until it does so order, with his understanding of the parliamentary rules, the modification cannot be received.

MR. LILLY. I object.

MR. HOWARD. I rise to a question of privilege for the purpose of obtaining information as to the effect of adopting this amendment. Suppose the Convention should accept the proposition of the delegate from Philadelphia, does that put that proposition in any better position than the rest of the article? Is it then open to amendment, or should we be compelled to accept it as a whole; or if

it is got at must it be by a reconsideration? If the Convention should accept the proposition of the delegate from Philadelphia, and it then stands simply as the rest of the article upon third reading, so that it is open to amendment, I care nothing about it. I offered it in this place because some delegates seemed to think that if we inserted the whole section it would stand in a better position than the rest of the article upon third reading, because all the rest is open to amendment all the time until it is finally adopted, while this matter that we vote in as new matter, that is, an entire section, can only be reached by a reconsideration, and you have got either to reject it or adopt it. In other words, you cannot amend it at all. If such has been the understanding of the Convention it seems to me it is a very bad one. I think that any new section put in on third reading should stand precisely in the position of the rest of the article and be open to amendment by any delegate. Certainly it ought not to stand any higher. A section that has only received one reading ought not to stand higher than the remainder of the article, which has been gone over so thoroughly. Therefore, I hope the Chair, if the question has not been decided, will hold that the adoption of any new section to this article does not place that section in any better position than the balance of the article, but leaves it open to amendment the same as any other portion.

Mr. CUYLER. Will the gentleman from Allegheny pardon me for a suggestion? Would it not be possible —

Mr. LILLY. This is all out of order, and I object.

Mr. CUYLER. I do not think I am out of order in the suggestion I propose to make.

The PRESIDENT. The delegate from Philadelphia will proceed.

Mr. CUYLER. I propose to ask the Chair whether we can divide the question upon this section, closing with the words "chief justice thereof," and if that be adopted then withdraw or vote down the second part and substitute for it that which is proposed by the gentleman from Allegheny? Can we take the question on the first division first?

The PRESIDENT. The Chair has decided over and over, and the Convention has acquiesced in it, that a motion to go into committee of the whole to

make a specific amendment cannot be divided.

Mr. CUYLER. But after the second part is voted down, cannot there be a section proposed equivalent to that which the gentleman from Allegheny proposes?

The PRESIDENT. We can get rid of the trouble we appear to be in by the delegate withdrawing his amendment by unanimous consent and introducing a new one.

Mr. LILLY. I object to that. We had better have a vote on the proposition.

Mr. CUYLER. I ask permission to withdraw the amendment and substitute that suggested by the gentleman from Allegheny. That will meet the difficulty.

Mr. LILLY. I object. We have consumed too much time already. Let us have a vote.

The PRESIDENT. The gentleman from Philadelphia asks unanimous consent to withdraw the amendment that he offers.

Mr. LILLY. I object.

The PRESIDENT. Objection is made.

Mr. CUYLER. Then I ask leave to substitute the section as prepared by the gentleman from Allegheny, and to go into committee of the whole for the purpose of making that amendment.

The PRESIDENT. Will the Convention agree that the delegate may offer the proposition of the gentleman from Allegheny as a substitute?

Mr. LILLY and Others. No.

Mr. DALLAS. I rise to a point of order. My point of order is that the delegate having withdrawn the proposition which is in print upon our desks, the article is now open for amendment.

The PRESIDENT. He has not withdrawn it.

Mr. DALLAS. I understood he did withdraw it on leave.

Mr. CUYLER. I did withdraw it on leave, and offered that which the delegate from Allegheny presented.

The PRESIDENT. The Chair certainly did not so understand.

Mr. CUYLER. I intended to convey that impression.

The PRESIDENT. Shall the gentleman have leave to withdraw his amendment?

Mr. HUNSICKER and Mr. LILLY. No.

The PRESIDENT. It is objected to.

Mr. CUYLER. If leave is refused, then I ask to divide the question.

Mr. BUCKALEW. I submit to the gentleman from Philadelphia that the simplest plan is to have his amendment re-

jected *pro forma*, and afterwards offer part of it as a new proposition.

Mr. CUYLER. Very well.

The PRESIDENT. The question is, will the Convention go into committee of the whole for the purpose of making the amendment indicated by the gentleman from Philadelphia?

The motion was not agreed to.

Mr. CUYLER. Now I move to go into committee of the whole for the purpose of making the amendment presented by the gentleman from Allegheny (Mr. Howard.)

The PRESIDENT. The amendment will be read.

The CLERK read as follows:

"There shall be established by law a court to be styled 'The Superior Court of the State of Pennsylvania,' having three judges learned in the law, chosen by the electors of the State at large. Those first chosen shall respectively hold office for terms of five, of ten, and of fifteen years, as may be determined by lot to be drawn immediately after taking the oath of office, and those afterwards chosen shall hold office for terms of fifteen years each. The judge of said court having the shortest unexpired term shall be chief justice thereof.

"The said court shall have and exercise the jurisdiction of a final appellate court in all cases of appeals, *certioraries*, and writs of error, from or to the several courts of oyer and terminer and courts of quarter sessions of the peace in this Commonwealth. Said court may exercise such further jurisdiction as shall be provided by law, and any two judges may hold an appellate court; and also, in and for the county of Philadelphia, said court may be held by any one judge to be delegated for the purpose, and shall have and exercise all the jurisdiction in law and equity heretofore possessed by the court of *nisi prius*, and the same shall be a court of record; and all appeals from said court shall be to the Supreme Court; and writs of error and *certioraries* from the Supreme Court shall be issued to said court of *nisi prius* for the removal of its proceedings as in the case of other courts of record."

Mr. CURTIN. Mr. President: We have adopted in this body so many reforms which I am quite sure will commend themselves to the approval of the people of the State, that I do not desire to load down the work of the Convention by amendments that cannot and will not commend themselves to the judgment of

the people. One of the sincere regrets of the great body of the members of this Convention must surely be that the Committee on the Judiciary failed to make a unanimous report, for if the distinguished and learned gentlemen who compose that committee had harmonized their views and unanimously introduced changes and modifications in our judiciary system, no doubt they would have been adopted; but from the two leading minds of that committee down through the distinguished and learned gentleman composing it, there seemed to be no harmony of opinion, and the consequence is, that we are going to the people of the State with an article on the judiciary, so vital to the interests and the rights of the people, which cannot commend itself to their judgment and support.

Mr. President, I was heartily in favor of either of the plans—accepting that of the chairman as the best—for an intermediate court to divide the labors of the Supreme Court; but the proposition met with no favor and was voted down. That of the learned gentleman from Philadelphia (Mr. Woodward) I should have been glad to see adopted, because that would have relieved the Supreme Court. As the only means of relieving that court, we have agreed to appoint two additional judges, without changing in the least the jurisdiction of the court and without giving them the only thing that they ask for, as I understand—more aid in the performance of their work. Now, it is proposed to establish another court of three judges. I do not know that I should feel constrained to cast my vote against the establishment of that court if it was deemed proper and necessary by the practicing lawyers of the State; but we are thus adding five judges in courts of appellate jurisdiction. We have decided in one of the sections of this article that every county containing forty thousand people shall have a president judge, and my colleagues who make the calculation say that adds thirty-five judges. The five added to the Supreme Court will be forty. If we give them five thousand dollars salary each, it will amount to two hundred thousand dollars a year. That is a calculation that the people can make; and a people so sober and serious in their consideration of all the actions of their public servants as the people of this Commonwealth, will inquire who has asked for it, and what benefit will be accomplished by it.

Now, sir, I trust that the work of this Convention will meet the approbation of the people. Indeed, I know that they will accept almost anything that we propose as a reform, for the people of Pennsylvania are lively in their anxiety for some reform in the organic law; but I doubt extremely if they will look with much satisfaction on the work of this Convention which merely multiplies public offices without adding to the relief of the Supreme Court, already overburdened with business, or giving to the people more speedy remedy or justice in their rights of property or person.

I oppose this amendment to the article on the judiciary, in the first place, because I cannot see the necessity for it. I would be willing, however, to yield that reason to the better judgment and experience of the learned gentlemen who are in full practice as lawyers; but I cannot yield my settled conviction that by adding five judges to the supreme bench and thirty-five president judges to the bench of the common pleas, we are neither answering public expectation nor commending our work to the favorable judgment of our constituency. True, we have taken away the associate judges, and that office, whether ornamental or useful, is gone; but whether ornamental or useful, it infused into the proceedings of the court the mind of a layman, fresh from the people and elected by them, who was supposed to partake of their common sense, to have sympathy in common with them and zeal with them, to represent them in local affairs which come within the jurisdiction of the court. We have taken that away, and that class of men are arrayed against our Constitution. We have declared that every forty thousand people in Pennsylvania shall have a president judge, whether they need one or not. I can understand that a judge might be required to administer the law to forty thousand people in Philadelphia, with the activities of trade and commerce, and with the crimes that are committed in a large city, in the sessions as well as in the civil jurisdiction; but I cannot understand that there are forty thousand people anywhere in Pennsylvania engaged in the usual pursuits of life, in pastoral, agricultural pursuits, or in the ordinary manufacturing business of the country, who could claim the services of a president judge for any length of time so as to keep him from becoming entirely rusty in his profession and useless on the bench.

In five years there will be six more counties that will be entitled to claim a president judge, as I read the census figures, and at the end of another decade you will add ten or fifteen more, until you multiply the judges so that in twenty years from this time the army of the judiciary in Pennsylvania will be quite equal to that at the bar. There are in this body ninety-two lawyers, or men supposed to be lawyers. Some gentleman suggests that I am mistaken, that the number is one hundred and one. If so, there are more here than I thought. We are better than I supposed we were, if we have one hundred and one lawyers. But the people have said certainly to gentlemen when they were at their homes, and have made that kind of expression to some extent through the public journals, that if there were not so many lawyers in this body we might have completed our labors long ago, and that if there had been an infusion of common sense from the mass of the people here, we might have offered amendments more judicious in their character. Now, we present to the people an amendment on the judiciary, and we add five judges at the head and forty judges running down to the tail of the system; and that is about all we do. The people may be censorious enough to say that the one hundred and one lawyers in this Convention have made a Constitution to suit lawyers, and that many of them may expect to get on the bench through the action of their own amendments. I hope every lawyer in this Convention who has an ambition to be on the bench will get there, and I am quite sure that all of you, gentlemen, will ornament the bench when you do get there; but at the same time I do most seriously object to your distorting this Constitution which should go straight to the people, which should emanate from this body as if it came from all the mass of the people when assembled in Convention instead of one hundred and thirty-three men, and I pray you, gentlemen, not to seek places on the bench by putting into the organic law of this State a feature which cannot commend itself to the sober, deliberate judgment of the people, but which must meet their positive and indignant condemnation.

For these reasons I am opposed to this amendment and shall cast my vote against it.

Mr. HOWARD. Mr. President: I have no doubt the delegate from Centre (Mr.

Curtin) is very sincere in all that he says on this occasion, for he is always sincere; but I think he has greatly exaggerated this matter. Now, sir, for myself, so far as the administration of justice is concerned, it being a matter essential in a free State, I am not disposed to quarrel about its cost, nor am I going to begin to oppose a proposition of that kind, simply on account of the cost. I do not think that is exactly the point we should consider. In the next place, I do not believe at all that the number of judges is to be increased to forty. I think somebody has made a very wild calculation on that point. Although we have agreed that a county with forty thousand population may constitute a separate judicial district, yet there will be thirty-eight or thirty-nine counties in this Commonwealth that cannot reach that number of forty thousand people, so that it is impossible to make out the account as the delegate from Centre figures it up. He has taken his figures from some wild calculation, I think. You can never make up that number; I do not believe you can make up the half of it. But suppose we did add that number to the bench, and it was necessary, and would really facilitate the administration of justice, what then? We have not hesitated to consider seriously an appropriation of a million dollars for the support of public schools, and we would not hesitate to appropriate more than that if necessary. What is two hundred thousand dollars for this purpose to the Commonwealth of Pennsylvania to-day, with her development, her wealth, her great commerce, and all her resources? It is a very small matter, even if our action should increase our expenses that much.

The committee that reported the judiciary article provided in the original report for a third court, what we call a half-way house on our road to the Supreme Court. They did that for the purpose of relieving the labors of the Supreme Court. That committee believed it to be necessary that there should be some means provided to relieve the pressure now made on the Supreme Court of the State. I was opposed to any half-way place. I believed it would lead to a collision and conflict of decisions, and so I could see no use in any half-way house on the road to the Supreme Court.

If, however, this proposition is accepted by the Convention, it provides that there

shall be three judges elected by vote of the Commonwealth to constitute a separate court, any two of whom may sit as an appellate court, not alone in Philadelphia, but when they sit as an appellate court they will sit in any part of the Commonwealth, wherever they shall be by law directed to sit. There was a portion of this proposition which the Clerk failed to read, and it is in these words: "The appellate jurisdiction of said court shall be exercised in convenient districts to be established by law."

In order to relieve the Supreme Court—and this will relieve them without making any conflict of jurisdiction, by giving to the new court all the criminal cases and all the civil business of the quarter sessions in road cases—we provide that such matters shall go directly to this court, by appeal or writ of error, and be determined finally in this court. Its civil jurisdiction will be confined exclusively to the county of Philadelphia.

Now, Mr. President, why should there be one court in Philadelphia presided over by a judge chosen by the electors of the State at large, because this amendment allows one of the judges to hold this *nisi prius* court? This being the largest city of the Commonwealth, where the largest business is transacted, judicial as well as commercial and manufacturing, there is a reason why a judge who presides over one court in this great metropolis shall be chosen by the entire people of the Commonwealth, so as to be free from the local prejudices of this community, and not governed or swayed in any way by the local opinions of the people here. This court, undoubtedly, will be open to all the people of the Commonwealth. Our citizens are now compelled to come from all parts of the State, if they desire to make any particular men, who reside in Philadelphia, defendants in an action. They must come here to make citizens of Philadelphia defendants in a suit; and now they must sue them in the local courts here; and I say, from the magnitude of the judicial business of that kind which has to be transacted in the city of Philadelphia by citizens from other parts of the State, it would be better to have one court in this city the judges of which were selected by the inhabitants of the whole Commonwealth.

It is for these reasons, first to relieve the Supreme Court to the extent of all the road business and the criminal business

of the Commonwealth, and next to have one court chosen by all the people of the State having civil jurisdiction in the great city and county of Philadelphia, that I urge this proposition.

Mr. CUYLER. Mr. President: I have only a very few words to add to what I said yesterday, for I then explained briefly and I hope concisely the reasons why this provision should pass.

I do not share in the apprehensions of the distinguished delegate from Centre. I have no fear that the people of Pennsylvania will hesitate to provide all the courts that the interests of the Commonwealth and the suitors in her courts require. I have no faith in that unwise economy which would be unwilling to encounter the reasonable expenditure that the administration of justice requires. Therefore, I do not share in his apprehensions in the slightest degree.

Now, the reasons for this court are briefly these: So far as the county of Philadelphia is concerned, if the article stands as it now does, you have taken away a part of our judicial force, you have deprived us of a tribunal important not only by reason of the number of cases in its jurisdiction, but by reason of the character of the jurisdiction in which those cases are considered and acted upon. Whatever may be the case in the rest of the Commonwealth, here it is pre-eminently true that our people require a tribunal which shall be removed wholly from local influences. The magnitude of the questions that arise in our court of *nisi prius* and the character of those questions do demand for the interests of the people of this county a tribunal that is selected from the body of the whole State. We have always had that; it is an ancient court. Why should it be taken away from us? What new condition of affairs has come to pass in our Commonwealth and in our city which should dis-entitle us to a part of the jurisdiction we have always had in the past? I do not understand that any gentleman entertains the idea that we should not have such a jurisdiction. The complaint has been that heretofore it was exercised by judges of the Supreme Court; and while all men admitted that we ought to have such a court, the country bar complained that when they came here to argue their causes they found one of the judges of the Supreme Court absent holding the court of *nisi prius*, and in consequence of that they were deprived

of the benefit of a full bench upon the argument of their cases. That was their complaint, and it was a just complaint, the force of which I recognize.

Now, this amendment does continue to the city of Philadelphia a jurisdiction that it has always had, and does relieve the objection which has existed in the minds of gentlemen heretofore that a judge of the Supreme Court is taken from his proper duty in order to hold that court.

These, sir, are the reasons why the court of *nisi prius* should be perpetuated in this county, and in the manner which is described in the amendment that has been offered and is under consideration.

Now, a single thought more. As I said yesterday, in our district court we have over sixteen hundred untried causes waiting upon the calendar. The judicial force of that court, multiplied in the manner in which it has been under the action heretofore had by this Convention, is wholly incapable of disposing of that mass of business, and will be still more so if the important questions which the *nisi prius* has heretofore considered are to be transferred to that court in the future.

Now, as to the appellate jurisdiction: no man doubts, no man denies, no man can doubt or deny that the Supreme Court of this State as it now exists, or as it is modified under the action heretofore had by this Convention, is incompetent to rid its calendar of the burden which presses upon it. In the Philadelphia district and in the Pittsburgh district, it is more than three years in arrears. With the population and business of the Commonwealth expanding hourly, and with the business both in number of causes and in their magnitude, which must go to that court, increasing in an increasing ratio with each year in the future, how can it be otherwise? How is this to be relieved? Not by adding to the number of judges of the court, for seven judges can hear no more than five, or no more than three.

How are we to get rid of it? There are but two methods of getting rid of it. The one is the system that was proposed in my amendment as offered yesterday, which was substantially that proposed by the Judiciary Committee in the article they reported; that is, that certain classes of cases should be taken to an intermediate court and finally disposed of there. The other is to make this intermediate court supreme in certain classes of jurisdiction. Just that is the distinction between the suggestion of the gentleman from Alle-

gheny of to-day and mine of yesterday. It carves out from the appellate business of this Commonwealth the business of the criminal courts and the civil business of the court of quarter sessions, such as road cases and matters of that class, and takes them to this superior court for final decision. The judges of this court doubtless will be as able and as competent men as the judges of the Supreme Court. They are to be selected from the whole body of the Commonwealth. They will exercise this jurisdiction in convenient districts established by the Legislature from time to time, as the necessities of public business dictate, and within the very class of cases limited by this article, this tribunal, composed of most competent men, will be final and conclusive in their decisions. That is the other method of relieving the difficulty. I do not regard it myself as being as complete as that originally reported by the Judiciary Committee or that which I suggested yesterday; but I gladly accept it as a step in the right direction. Though it does not go as far as I desire, still it goes far enough to give this county what it does require and has had in the past, and measurably to relieve the Supreme Court. I would go further, but to a limited extent it will relieve that court, and therefore I am in favor of this amendment.

MR. WOODWARD. Mr. President: Yesterday we voted rather thoughtlessly on this amendment and carried it. I voted for it myself. On examining it I have changed my mind. I do not know what may be the temper of the Convention to-day in regard to it; and, not knowing what the vote will be, I take the liberty of expressing such thoughts as occur to me in relation to it.

I entirely concur in what my learned friend (Mr. Cuyler) has said in regard to the necessities of this city and county. The court of *nisi prius* was a valuable court and highly prized here by the bar and people, as I believe. We have taken it from them in this Constitution and we have given them no equivalent. When you consider the population of the city and the business and the interests that are concentrated here, I am of opinion that we ought to provide some substitute for the *nisi prius* which we have taken away; and if this amendment were confined to the city and county of Philadelphia, with some modifications I should be in favor of it as appropriate to the condition of this city. But, Mr. President,

that is not the scope of this proposition. It is not merely a measure for this city, but it is providing the whole State with an intermediate court with a certain appellate jurisdiction, consisting of three judges, with such districts as the Legislature may hereafter provide.

Now, I tell gentlemen that the Legislature cannot form districts in Pennsylvania in which three judges can administer the law. I speak with the more confidence on this subject, because when we had up the proposition of an intermediate court, I amused myself with supposing the State divided; I tried to divide the State into judicial districts, and did so, and I found that nothing less than ten or eleven districts could be formed in Pennsylvania to render them at all workable—I mean formed in such a way as that the business could be done.

I had a scheme of that sort, a scheme of an intermediate court, that would have answered all the purposes which the gentleman argues so strongly in favor of, as to this city of Philadelphia, and that would have supplied to the entire population of Pennsylvania the same advantages; and they ought to have the same advantages that the people of this city have. And moreover, sir, my scheme, I firmly believe—though I do not say this with confidence, for I did not make the calculation—would not have taken one dollar of additional salary out of the Treasury of the Commonwealth. If it would have increased the aggregate salaries of judges by even ten thousand dollars, certainly that would be an outside estimate. It would not have cost the people of Pennsylvania over ten thousand dollars more to provide the whole State with a court of *nisi prius*, according to the plan which I had the honor to submit. What fate that proposition met in this Convention, I need not tell gentlemen here; they all know; but I might tell outsiders.

I believe it was the very thing which the people of Pennsylvania needed; I know it was the very thing which the Supreme Court of Pennsylvania needed for their relief; and I venture to affirm with great confidence that it would not have taken \$10,000 additional money out of the Commonwealth's treasury. But then, in order to verify this observation, let me add it would have reduced the number of common pleas judges considerably. And now I say, as the gentleman from Centre said, that the most offensive feature of

this judiciary article as it stands at present is its unnecessary and mischievous multiplication of judges.

Sir, we have got too many judges in Pennsylvania now, and if any gentleman will take up the history of the common law in England and look at the number of judges and the salaries of those judges who settled those great principles of law which we now administer in this country they will see how preposterous is the provision we have made for the number of judges here. Why, sir—I hope gentlemen will excuse me for alluding to my own experience, but I have no better guide for my thoughts than my own experience—I was appointed in 1841 to the largest judicial district in Pennsylvania, consisting of five counties, five large populous counties. It was afterwards divided, not at my instance, but at the instance of the members of the bar, and my district consisted from that time of three counties. If those five counties had remained with me for my ten years they would have occupied me about twenty weeks in the year. The three counties that did remain to me did not occupy more than sixteen weeks of my year; and what was the consequence? I never grew rusty in the law so rapidly as I did during those ten years, and by the time the ten years had elapsed I was of opinion that I was not fit for the Supreme Court and declined a nomination on the ticket in 1851.

Sir, these unemployed judges may be very good lawyers when they go upon the bench: but they go to farming, lumbering or speculating, and they grow rusty in the law. The business accumulates in the counties, and we hear from the bar that they cannot have their causes tried, and the judge runs down, and runs down continually, and why? Because he is not fully worked. All over the world you will find that the best judge is the man that does the most work. Keep him in the harness; keep him at work; let him sit all the workable days in the year; pay him well; make his tenure short; let him be responsible at the end of ten or fifteen years to his constituents, and if they are pleased with him they will return him, and if they are not pleased with him they can substitute somebody else; but pay him well and keep him at work. Reduce the number of your judges by one-third at least, and you would improve the judiciary of Pennsylvania, and you would save the people's money. We

ought to relieve ourselves of many of the difficulties which embarrass us now, and then you could provide for an intermediate court without its costing the people a dollar.

Now if the gentleman would refer this measure back to the Judiciary Committee, or if you would constitute a Judiciary Committee out of this body to take up the whole judicial article and recast it, I believe you would do the State great service; but I suppose it is too late for that.

Let me say a word upon the very amendment that is before us. That amendment refers for the jurisdiction of this intermediate court to the court of *nisi prius*, and the effect of that reference will be to bring into the Constitution every act of Assembly that we have on the subject of the court of *nisi prius*. All the jurisdictions which have, from time to time, been conferred on the *nisi prius* by acts of Assembly, will, by this amendment, become constitutional provisions. Well, if you will look into the statutes you will find that the court of *nisi prius* has jurisdiction in equity cases all over the State; that is to say, the Supreme Court has jurisdiction in equity cases all over the State, and the original jurisdictions of the Supreme Court in Philadelphia are exercised by the court of *nisi prius*.

Mr. CUYLER. I differ entirely with the gentleman in that, and I believe I speak advisedly. The Supreme Court in *bank* has in corporation cases jurisdiction over the whole Commonwealth. The court of *nisi prius* has not and never did have any jurisdiction outside of the county of Philadelphia.

Mr. WOODWARD. The gentleman does not differ with me, but differs with an act of Assembly. The court of *nisi prius* was originally a mere excrescence upon the Supreme Court. It had no power to enter judgment even. Cases were heard in the *nisi prius*, but the judgment was entered in the Supreme Court. Then came an act of Assembly that gave it power to enter judgment. It never had a record; its record has always been the record of the Supreme Court; its writs have always been issued out of the Supreme Court. It is a mere appendage of the Supreme Court. Now, the Supreme Court has jurisdiction all over the State in equity cases both by the rule of court and by act of Assembly, the original jurisdiction in the city of Philadelphia is to be exercised

by the court of *nisi prius*. The immediate consequence of incorporating this reference to the *nisi prius* into a constitutional provision, will be to subject every county in this Commonwealth to the jurisdiction of this *nisi prius* in Philadelphia in equity cases. It will draw the whole equity practice of the Commonwealth here to Philadelphia. Well, as a Philadelphia lawyer, I have no particular objection to that; but do country lawyers mean to do that? Do they mean that?

Mr. CUYLER. I have only to say that if that view were correct, I would yield the argument without an additional word, but the view is not correct.

Mr. WOODWARD. That would be the effect of this amendment if I understand both the amendment and the act of Assembly.

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

Mr. WOODWARD. Yes, sir.

Mr. BIDDLE. I want to ask, for I am not certain that I understand him, that he says that in every equity case jurisdiction can be had over the State, or do you confine it to corporations?

Mr. WOODWARD. I say that in every equity case commenced in the Supreme Court the *nisi prius* has jurisdiction in Philadelphia.

Mr. BIDDLE. I hold in my hands your decision the other way.

Mr. WOODWARD. There has been an act of Assembly since then.

Mr. CUYLER. There is no act of Assembly which gives the court of *nisi prius* jurisdiction in such cases, except corporation cases.

Mr. WOODWARD. We have referred to the law this morning, and I am sure that such was our reading of it.

Mr. ARMSTRONG. The act of Assembly was hastily referred to this morning, and it seemed to give general equity jurisdiction.

Mr. CUYLER. No member of the Philadelphia bar has ever believed in the existence of any such power.

Mr. WOODWARD. We have only this morning referred to the law.

Mr. CUYLER. I have too often had occasion to look at the question to have any doubt about it myself.

Mr. BIDDLE. I have the law, and I will hand it to the gentleman.

Mr. WOODWARD. [Having examined the book handed to him.] It seems that I was misled by a hasty glance at the act of Assembly this morning; but it applies

to all corporation cases commenced in the Supreme Court.

Mr. BIDDLE. That is certainly so.

The PRESIDENT. The gentleman's time has expired.

Mr. BIDDLE. I move that his time be extended.

Mr. LILLY. I object.

Mr. BIDDLE. I merely rise to give the gentleman who spoke last an opportunity of stating accurately what I think he stated too broadly. He said, I think inadvertently, that the jurisdiction in equity in the court of *nisi prius* is co-extensive with the whole State. Now, if he will limit that proposition to the cases of corporations, I will agree with him.

Mr. WOODWARD. I do.

Mr. BIDDLE. That is all I want to say. I wanted merely to give him an opportunity, which I thought he ought to have, because whatever is said by him has, and justly has, very great weight.

Mr. ARMSTRONG. I do not mean to enter into any discussion of this question, but I deem it proper to put myself right on the record with respect to it. It is very well known that I was earnestly in favor of an intermediate court. I wanted such a court, well devised, carefully considered, which would present a scheme consistent with itself, and which would be efficient. I do not regard this proposition, as it stands now, as of that character. I think it is too meagre; it does not meet the necessities of the case, and whilst it would give to Philadelphia a court of original jurisdiction, it would give no relief in precisely similar cases and under similar necessities in other sections of the State, and it would introduce an anomalous court which has not been received with favor anywhere and make that court an exception to the established system which it has been the purpose of this Convention to form.

As to the *nisi prius* jurisdiction, it is settled by authority in the case of *Hottenstein vs. Clement*, which the gentleman from Philadelphia (Mr. Cuyler) has before him, that the jurisdiction of the court of *nisi prius* does extend in equity cases over every private corporation in the State.

Mr. CUYLER. No. No.

Mr. BIDDLE. But not between citizens.

Mr. ARMSTRONG. But not between citizens.

Mr. BIDDLE. Yes; that is right.

Mr. ARMSTRONG. The jurisdiction does not extend to individuals, but it does to

private corporations, and the number and extent of these private corporations is so great that it would be an extreme hardship if they are to be dragged to Philadelphia for the purpose of trial.

I forbear making further comment. If any scheme can be presented which will give us an intermediate court upon the basis presented by the Committee on the Judiciary or that presented by the gentleman from Philadelphia, (Mr. Woodward,) it shall have my most cordial assent. I think it would be a great improvement to the judicial system of the State; but we have no such system proposed in the proposition now pending, and I hope it will not pass.

Mr. J. N. PURVIANCE. I do not rise to occupy the time of the Convention for more than two minutes. I merely wish to correct a misstatement, because I do not want an error that might be used to the prejudice of this article in the Constitution, to go on the record. The distinguished gentleman from Centre (Governor Curtin) stated that the increase of judges would be somewhat great, and the expense proportionately large. Now, I wish merely to correct him in that statement. The increase of judges would be nineteen under the separate judicial district system, allowing to counties having a population of forty thousand a judge. From that we are to deduct seven, because the new districts which would be formed out of the adjoining counties would be greater in number and consequently would require fewer judges, and this would leave an increase of only twelve judges. Twelve judges, at \$4,000 a year, would make \$48,000.

We then dispense with the associate judges, which cost the State, according to the Auditor General's report for 1872, the latest volume to which I could have access, \$60,117. Taking the one from the other, we have an actual saving by the new system of \$12,117, if we deduct the whole cost of the associate judges, but as some are to be retained in a few counties, the saving would not be that amount. The number of associate judges to be dispensed with would amount to about \$50,117. Then take the \$48,000 which would be incurred by the increase of the president judges from the \$50,117 saved by dispensing with the associate judges, and we have an actual saving to the treasury of \$2,117 per annum by the proposed system.

Thus:

Increase of judges.....	19
Deduct for districts that would be composed of more than one county.....	7
Actual increase of president judges.....	12
Per annum.....	\$4,000
Salary of president judges.....	\$48,000
Saved by abolishing associate judges.....	50,117
Actual saving per annum.....	2,117

I merely rose to make this statement.

The PRESIDENT. The question is on going into committee of the whole for the purpose of making the amendment offered by the gentleman from Philadelphia (Mr. Cuyler.)

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

Mr. BOYD. I second the call.

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

Y E A S .

Messrs. Baker, Biddle, Corson, Curry, Cuyler, Dallas, Gibson, Guthrie, Hall, Hanna, Howard, M'Michael, Mann, Newlin, Read, John R. and Smith, H. G.—16.

N A Y S .

Messrs. Achenbach, Ainey, Alricks, Armstrong, Bailly, (Perry,) Black, Charles A., Bowman, Boyd, Broomall, Brown, Buckalew, Calvin, Clark, Cochran, Cronmiller, Curtin, Darlington, Davis, De France, Edwards, Elliott, Ewing, Funck, Green, Harvey, Hay, Hazzard, Hemphill, Horton, Hunsicker, Lamberton, Landis, Lear, Lilly, MacConnell, M'Clean, M'Culloch, Mitchell, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Ross, Runk, Russell, Smith, Henry W., Struthers, Turrell, White, J. W. F., Woodward, Wright and Walker, *President*—57.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Brodhead, Bullitt, Campbell, Carey, Carter, Cassidy, Church, Collins, Corbett, Craig, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Gilpin, Heverin, Kaine, Knight, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Murray, Mantor, Metzger, Minor, Mott, Niles, Pal-

mer, H. W., Parsons, Porter, Pughe, Rooke, Sharpe, Simpson, Smith, William H., Stanton, Stewart, Temple, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N., White, Harry and Worrell—60.

Mr. ARMSTRONG. I desire to move to go into committee of the whole to amend the eighteenth section in the fourth line, by adding after the word "State" the words, "and which may be increased."

I desire to appeal to the second sober thought of the Convention upon the question of the salary of judges.

Mr. MACCONNELL. We have voted at least twice on that, and voted it down. I submit that it is out of order.

Mr. ARMSTRONG. I am fully aware of the condition of the question, and I started by saying that I wanted to appeal to the second sober thought of the gentleman and others of this Convention.

It will be observed that by the fifteenth section of the article on the Legislature it is provided that "no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment." I believe that the judges are an important exception to this general rule, which I voted for and which I cordially approve. The longest tenure of office of any of the officers of the State is imposed on the judges not only in the common pleas, where there is more than one judge, but in the Supreme Court judges they come upon the bench at different periods, their terms expire at different times. Hence the difficulty is just this: Suppose a judge of the Supreme Court to be elected this year when the salary stands, for illustration, at seven thousand dollars or seven thousand five hundred dollars; suppose that he holds that office for twenty-one years, the salary cannot be increased beyond that. Suppose in the exigencies of the times that next year or five years from this the salary should be increased to eight thousand dollars or nine thousand dollars for judges then elected. Thus you have men on the bench, judges performing the same office and who receive different compensations. You might have one receiving compensation as it stands now, of seven thousand five hundred dollars; next year a judge might be elected who might receive eight thousand dollars; and another nine thousand dollars, and another one thousand dollars, and so on. We cannot anticipate the exigencies which may arise within a period so long

as twenty years, nor even so long as ten years, and I do not think that it is wise to tie the hands of the Legislature on that question. It is safely vested with them, and it is not in danger of abuse.

I do not think it would promote the harmony of the system or the harmonious relation of the judges of the courts that one should be receiving more compensation than another for discharging precisely the same duties. The exception will not add any considerable expense to the Commonwealth, and I think, in view of the harmony it would promote and the essential injustice of paying one judge more than you would pay another for precisely the same service, it is an exception which ought to be made in favor of the judges, and because of the long term of service which is imposed upon them.

I have brought this subject to the attention of the Convention because I believe it is the only exception that we ask; it is a right exception, and one which can do no harm to the State. As to the possibility of judges seeking an increase of salary, I do not attach much importance to that. They never sought more salary except when their salary was so entirely inadequate that they could not live upon it; and to-day the judges of the Supreme Court are living in the upper stories of hotels in this city simply because they are wholly unable to live in any other manner.

Mr. J. N. PURVIANCE. At seven thousand five hundred dollars a year?

Mr. ARMSTRONG. Yes, sir, with large families to support. They have their families to support and educate, and that is to be taken into consideration. I do not like to designate members of the court by name, but the lawyers here are familiar with them—members of the Supreme Court, with large families growing up, not only to be supported in their homes at a distance, but their children to be educated and the expenses of their families are necessarily so great that it imposes on them a degree of personal economy which is not consistent with the dignity of the office or with the reasonable comfort which they ought to enjoy.

I do not want to enter into this. I appeal to the Convention on this subject, because I believe that we are fixing in the hard lines of the Constitution a rule which will be inconvenient, which is unjust, which leads to a difference of salary for the discharge of the same duties, and

which we ought to correct, and which it is not dangerous to correct.

Mr. BROOMALL. I am sorry to be compelled to differ in opinion from the gentleman from Lycoming, the chairman of the Judiciary Committee, upon this question. It is very possible that the salaries of the judges may, at some time in the future, be found to be too small and will have to be increased; but I think all the evils which he has predicted would not pay for the great harm of allowing the judges to be beggars at the bar of the Legislature. I think that the business of a judge and his position would be so degraded by that that it would be better that he should starve than that he should be reduced to that humiliation.

Mr. BUCKALEW. Mr. President: The original intention of a provision in the Constitution in regard to the judges and Governor of the State on the question of salary was to render them independent of the Legislature, so that they should not have the question of their compensation perpetually overhauled by the two Houses. Now, the Convention have thought proper to extend that old provision to all the officers of the Commonwealth. In extending it they have thought proper to add that the salary of no officer shall be increased during his term of service.

One useful result that we shall get from this general provision found in another part of the Constitution, is that this perpetually recurring subject of official salaries will be substantially excluded from the Legislature. It will be a question always to be determined prospectively as to future incumbents of public offices, and it will, therefore, be determined upon its merits without the disturbing effect of any existing private interest to pervert the judgment of members. If this be a good regulation for the other officers of the Commonwealth, pray, why is it not a peculiarly good thing for the judges of the Supreme Court and courts of common pleas and other judges learned in the law throughout the Commonwealth?

We know that the greater part of the legislative discussions with reference to salaries heretofore has been with regard to the salaries of the judges of the courts. It is a perpetually recurring subject, and it is one that ought to be excluded. If any class of officers are excluded, the judges should be excluded from legislative debate.

Well, sir, another consideration. The pay of judges throughout our Commonwealth now, I insist, is upon a liberal scale, and that whether we compare the scale of payment in their case with that of any other State, adjoining us or remote from us, or with the scale of payment by the government of the United States. Formerly the district judge of the United States Court in Philadelphia received four thousand dollars a year salary. I suppose that is the pay now of Judge Cadwalader, who I believe has a very large amount of business to transact.

Mr. MACCONNELL. The judge of the western district gets four thousand dollars.

Mr. BUCKALEW. Then the United States government, with a flowing treasury which the State does not possess, with means of revenue that the State does not possess, pays its judges, substantially of the same class as our Supreme judges, but four thousand dollars a year; and we have fixed the pay of our Supreme judges at seven thousand dollars, and that of the Chief Justice at seven thousand five hundred dollars, and no law judge of this State, unless it may be in some of the exceptional cases, as in Cambria and Luzerne, now gets less than four thousand five hundred dollars a year, and from that up to seven thousand dollars.

Now, sir, while upon the one hand it may happen that the expenses of the judges will increase during a twenty-one years term by an inflation of the currency and by other causes, on the contrary the value of their compensation may be increased by a return to specie payment, by changes in the business world that will make their salary more available to them. I see no reason why the judges of our law courts should not be left upon the same footing as other public officers, and I see especial reason why this Convention creating a considerable number of judges, actual and prospective, should not be subjected to the reproach of looking altogether to the courts, and forming them and extending partiality and favor to the judges, because we, three-fourths of us, are practicing lawyers before them.

Mr. HOWARD. I thought this question had been decided. ["No."] Well, we have decided it three times.

The PRESIDENT. The question is on the motion of the delegate from Lycoming (Mr. Armstrong.)

The motion was not agreed to.

Mr. GIBSON. I move to go into committee of the whole for the purpose of striking out section twenty-three.

I will merely say that I think this section an unnecessary and uncalled for innovation upon the present system. If there are any abuses in any of the districts in regard to the practice of registers of the orphans' court, they can be remedied by an act of Assembly or by a rule of court. The attention of the Convention has been called from time to time to this provision. I think it would be much better, in order to preserve the uniformity of our system, to strike it out altogether.

Mr. S. A. PURVIANCE. I hope the motion made by the delegate from York will not prevail. This section was put in after very careful consideration and discussion, I believe not only on first reading, but second reading; and as will be observed, it applies mainly to the city of Philadelphia and the county of Allegheny, where there is an immense amount of orphans' court business done. I believe every lawyer on this floor will agree with me that there is no looser business done within the State than that which pertains to the interests of minors and orphans. This section provides simply that the counties containing a certain population shall have an orphans' court, whilst other counties may in the discretion of the Legislature. I do hope that the section will be retained.

The PRESIDENT. The question is on the motion of the delegate from York (Mr. Gibson.)

The motion was not agreed to.

Mr. HANNA. I move to reconsider the vote of yesterday whereby the Convention agreed to go into committee of the whole for the purpose of amending section twelve in the tenth line by inserting after the word "criminals" the words "within such districts." I find that my amendment accomplishes much more than I desired, and I therefore move to reconsider that vote.

Mr. HUNSTICKER. I second the motion.

Mr. ARMSTRONG. I hope unanimous consent will be given to that change.

The PRESIDENT. Will the Convention unanimously agree to strike out those words in the twelfth section? ["Aye."] It is agreed to.

Mr. WOODWARD. I move that the Convention go into committee of the whole for the purpose of adding a section which I will send up to the Clerk.

The CLERK read the proposed amendment, as follows:

"The Legislature shall, at its first session after this Constitution takes effect, erect the several counties of the State into a convenient number of circuits, not exceeding twelve; each circuit to consist of contiguous or adjacent counties, and to be as nearly equal in population and legal business as may be possible, and for each of said circuits there shall be elected a circuit judge, and the said circuit judge shall, during his term of office, reside within the circuit for which he was appointed; shall hold his office for the term of twelve years, if he shall so long behave well, and shall receive a salary to be fixed by law, at less than the salary of a judge of the Supreme Court, but more than the salary of a judge of the court of common pleas or district court, but which salary shall not be diminished by taxation or otherwise during his continuance in office.

"The circuit court, in each circuit, shall consist of the said circuit judge as its presiding officer, and of all the law judges within the circuit. They shall arrange for holding as many terms of court in banc each year as the business may require. The terms of the court in banc shall be held in any county of the circuit as the court may appoint, and shall be held by any five of the judges of the circuit as they may agree among themselves, and of the number holding a term in banc, three shall be a quorum. If the circuit judge is unable for any cause to preside at a term in banc, the judge whose commission is oldest of those holding the term shall preside.

"The said circuit court shall have no original but only an appellate jurisdiction. All civil cases in law or equity, decided by the courts of common pleas or the district courts, or in any of the courts of civil jurisdiction that may be created by law, shall be removable by way of appeal, into the proper circuit court, under such regulations as may be prescribed by law, and the evidence upon which the inferior court rendered its decree or judgment shall be fully certified, if required by either party, into the circuit court by the judge who rendered the decree or judgment, and thereupon the circuit court shall, after due hearing and consideration, affirm, modify or reverse the said decree or judgment. If a new trial be awarded as part of the judgment of the circuit court, the same may be had

before the judge who tried the cause or before the circuit judge in the same county, or any other county of the circuit, as the court may appoint, and the same cause may come again before the circuit court for review, and when a final judgment or decree shall be entered by the circuit court, the same shall conclude the rights of all parties to the record, unless the said circuit court or one of the judges who sat at the hearing shall allow a writ of error to remove the cause into the Supreme Court, and if such allowance be made, a writ of error shall issue out of the Supreme Court to the said circuit court and be proceeded in as in other cases. Whenever the Supreme Court in any case shall award a writ of *venire facias de novo* the new trial shall be had in the court where the cause originated, and shall be again removable into and reviewable by the circuit court, as in other cases, with right to a second writ of error, if allowed, as aforesaid. In no case shall a judge of the circuit court take part in the decision of a cause tried before him in the common pleas or district court, though he may sit at the argument as an assessor.

"The circuit judge, besides performing the duties of president of the circuit court, may hold special courts, criminal or civil, in any county of his circuit, under such regulations as may be prescribed by law; and all motions for new trial or in arrest of judgment in criminal cases tried in the court of oyer and terminer, shall be removable by way of appeal into the circuit court, under such regulations as may be prescribed by law; and the judgment of the circuit court in such cases shall be conclusive and final.

"The circuit court shall be a court of record, and have a seal such as the Legislature may prescribe, and the lien of its decrees and judgments shall be regulated by law."

Mr. WOODWARD. I would not offer this amendment again, but for the palpable necessity of something of the kind, which has been developed in the debate on the motion of the gentleman from Philadelphia (Mr. Cuyler.) I say the palpable necessity of an intermediate court of some kind for the relief of the Supreme Court in its business. If this amendment is carried, the *visi prius* will be restored in its best possible form to the city of Philadelphia, because a circuit judge will reside here and preside here with the assistance of not more than four of the

judges of the the court of common pleas. I have been encouraged to offer this amendment by gentlemen who feel the necessity for something of the kind. It is familiar to the Convention, and therefore it is not necessary for me to enter into any explanation of it.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Woodward.)

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

Mr. CORSON. I second the call.

The question being taken by yeas and nays, resulted as follow:

YEAS.

Messrs. Armstrong, Baker, Beebe, Biddle, Black, Charles A., Boyd, Corson, Gibson, Green, Guthrie, Hemphill, Howard, Hunsicker, Lear, MacVeagh, M'Michael, Newlin, Stanton, Woodward, Worrell and Wright—21.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Bailly, (Perry,) Bownman, Brodhead, Broomall, Brown, Buckalew, Calvin, Church, Clark, Cochran, Darlington, Davis, De France, Edwards, Elliott, Hall, Hay, Hazzard, Horton, Lamberton, Landis, Lilly, MacConnell, M'Clellan, M'Culloch, M'Murray, Mann, Mitchell, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Struthers, Turrell, Wetherill, J. M., White, David N., White, J. W. F. and Walker, *President*—52.

So the motion was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Carter, Cassidy, Collins, Corbett, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, Dodd, Dunning, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gilpin, Hanna, Harvey, Heverin, Kaine, Knight, Lawrence, Littleton, Long, M'Camant, Mantor, Metzger, Minor, Mo't, Niles, Palmer, H. W., Parsons, Patton, Porter, Rooke, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, John Price, Wherry and White, Harry—60.

Mr. D. N. WHITE. I move the previous question on the article.

Mr. ARMSTRONG. I hope that we shall soon reach a vote on the article and it will

not be necessary to call the previous question.

MR. BRODHEAD. I wish to offer an amendment to come in at the end of the first section.

MR. D. N. WHITE. I called the previous question.

THE PRESIDENT. The delegate from Allegheny was not in his seat and the Chair cannot recognize his call.

MR. BRODHEAD. I move to go into committee of the whole to amend by adding at the end of the first section :

"But no such court thus established shall be vested with original jurisdiction beyond the city or county in which it may be located."

I ask for the reading of the section as it would stand if these words were added.

THE CLERK read as follows:

"The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the Legislature may, from time to time, establish; but no such court thus established shall be vested with original jurisdiction beyond the city or county in which it may be located."

The motion was not agreed to, the ayes being twenty-seven, not a majority of a quorum.

MR. HAY. I move to go into committee of the whole for the purpose of adding the following amendment to section eleven:

"In the cities of Pittsburg and Allegheny not more than one alderman shall be elected in each ward or district."

When section eleven was first considered in committee of the whole it provided that there should be but *one* alderman or justice of the peace elected in each ward, township or borough. Upon the further consideration of that section on second reading it was amended so as to provide as it now stands; that *two* should be elected in each ward, township, or borough. It is the desire of a great many citizens of the county of Allegheny that not more than *one* of those officials shall be chosen in a ward, and this number is ample for all necessary purposes.

I have therefore offered this amendment in order that we may have the number of those officials reduced as is desired in our cities. The subject has been heretofore fully discussed and I do not intend

now to take up the time of the Convention upon it further than to express the hope that we may be permitted to reduce the number of these officials to one in a ward or district in the cities of Pittsburg and Allegheny. It may suit the country districts, the boroughs and townships, to have two justices of the peace in those localities; but it does not suit us to have so many aldermen. Give us this much relief, from the lessening of number, even if we can get no other.

After this amendment is considered, I have one other amendment for which I shall ask the favorable consideration of the Convention.

MR. J. W. F. WHITE. I merely have to say that the article as we now have it does not require two to be elected. It says there shall not be more than two elected. There may be but one. I hope, as we voted out the previous section, we shall not have another in its place. We do not want it.

MR. MACCONNELL. I second the expression of that hope.

MR. EWING. I think one of the evils of our aldermanic system is attributable to the fact that we have so large a number of aldermen in the cities. They usually are elected or seek the office for the purpose of making a living by it. We have in the city of Pittsburg at the present time I think seventy-eight aldermen, or as many as they have here in Philadelphia. There is not legitimate business for half that number. I believe that public opinion in the cities of Pittsburg and Allegheny calls for this change. I should have been willing to leave it to the Legislature, but many think we cannot get it from the Legislature. I heard considerable discussion of the provision that we voted in here on second reading in reference to Pittsburg and Allegheny, and I think the general sentiment was against incorporating that in the Constitution; but I have heard no one speak against a provision that would limit the number of aldermen to one in each ward. I believe uniformly all I have heard speak of that expressed an opinion that one was enough, and that even that number would not be required, and generally a hope that there would be a provision in the Constitution limiting them to one in each ward.

MR. ARMSTRONG. I suppose we might sit here for one solid month and it would be entirely within the power of the one hundred and one lawyers who are here to

think of something else if they cudgel their brains with sufficient activity. Now we have got this article before us, spending more time upon it than on any other two articles in the entire Constitution. If we proceed in this manner, I do not know where the end is to be. The amendments which have been recently added have not seemed to be of any very great importance; and now for the purpose of testing the sense of the Convention upon this question, I call the previous question upon the amendment and the article.

The PRESIDENT. Gentlemen seconding the call for the previous question will rise.

Mr. S. A. PURVIANCE. I would ask the chairman of the Judiciary Committee to withdraw the call. There are several corrections to be made.

SEVERAL DELEGATES. Make them afterward.

Mr. ARMSTRONG. That can be done by unanimous consent.

The following delegates rose to second the call for the previous question, as follows: Messrs. Edwards, Howard, Ewing, Funck, Green, Corson, Stanton, Mitchell, Bowman, Russell, J. M. Wetherill, MacVeagh, MacConnell, Carter, Wright, T. H. B. Patterson, Church, Lilly, Davis, Broomall, Boyd, D. N. White, Ainey and McCulloch.

The PRESIDENT. The question now is, shall the main question be put?

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

Mr. STANTON. I second the call.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Achenbach, Ainey, Armstrong, Baily, (Perry,) Beebe, Bowman, Boyd, Broomall, Calvin, Carter, Church, Clark, Corson, Davis, De France, Edwards, Elliott, Finney, Funck, Green, Horton, Lear, Lilly, MacConnell, MacVeagh, M' Culloch, M' Murray, Mitchell, Palmer, G. W. Porter, Purman, Purviance, John N., Russell, Smith, Henry W., Stanton, Wetherill, J. M., White, David N., Woodward, Wright and Walker, *President*—40.

NAYS.

Messrs. Alricks, Baker, Biddle, Black, Charles A., Brodhead, Brown, Buckalew, Cochran, Curtin, Dallas, Darlington, Ewing, Fulton, Gibson, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Howard,

Hunsicker, Lamberton, Landis, M'Clean, M' Michael, Mann, Minor, Newlin, Patterson, D. W., Patterson, T. H. B., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Ross, Smith, H. G., Struthers, Turrell, White, J. W. F. and Worrell—41.

ABSENT—Messrs. Addicks, Andrews, Baer, Bailey, (Huntingdon,) Bannar, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Cassidy, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Dodd, Dunning, Ellis, Fell, Gilpin, Hanna, Heverin, Kaine, Knight, Lawrence, Littleton, Long, M'Camant, Mantor, Metzger, Mott, Niles, Palmer, H. W., Parsons, Patton, Pughe, Rooke, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed Wetherill, John Price, Wherry and White, Harry—52.

The PRESIDENT. The main question is not ordered.

Mr. HOWARD. The question now, I believe, is on the motion of the delegate from Allegheny (Mr. Hay.)

Mr. LILLY. The article is out of the House for to-day.

The PRESIDENT. The late President decided that such a vote carried it over. I should be very much gratified if I was able to concur in that decision, but I am not. My judgment then was, and is now that it does not carry it over. "Now" means the previous question, and we go on with the article just as we were.

Mr. BUCKALEW. I submit to the Chair that that was not the decision of the presiding officer. It was submitted to the Convention and the question was deliberately determined by the Convention itself. Hence I submit to the judgment of the Chair that if the decision is to be touched, the same course ought to be pursued now. Of course the Convention itself may over-rule its former judgment.

The PRESIDENT. The Chair was under the impression that the decision was made by the Chair. He understands now that it was by the Convention. If by the Convention, then the Chair cannot of course interfere with it.

Mr. ARMSTRONG. Is there no way in which the question can be submitted to the judgment of the House?

Mr. BROOMALL. By appeal.

Mr. ARMSTRONG. For the purpose of meeting the views of the Chair, as I understand them, I will take an appeal in order to submit the question again to the Convention. I always thought the

decision was wrong and I think so now. I concur in the remarks of the Chair.

The PRESIDENT. The gentleman will understand that I did not decide the question.

Mr. HOWARD. I had the floor, I believe. I stopped for the purpose of having this question of parliamentary law decided.

Mr. DALLAS. Is it not decided?

Mr. HOWARD. Very well. That was the decision of the Convention.

The PRESIDENT. The Chair is compelled to hold that inasmuch as the Convention has heretofore decided deliberately, that under the refusal to order the main question to be now put the whole subject went over, the Chair will not reverse that decision, although he believes that it was not right to make it.

Mr. ARMSTRONG. Will the Chair entertain an appeal on that question? It is a matter that will be inconvenient in the consideration of other articles.

Mr. DALLAS. I second the appeal if necessary, but I make the suggestion that the Chair submit the question to the House without appeal.

Mr. HOWARD. How can you appeal from an order of the Convention?

Mr. ARMSTRONG. Then I move that the order be reversed.

Mr. DALLAS. I second that motion also, if it is necessary.

Mr. ARMSTRONG. That is a way by which we can get at it. We stand here stopped by a decision against which the sense of the Convention is very strong. This is the same body that made the order, and if the Convention can make it, it can reverse it.

Mr. MACVEAGH. It is very much the same point of order, and certainly there is no objection to the Chair submitting it to the House. Then we can reverse the rule.

Mr. HOWARD. I move that we proceed to consider the report of the Committee on Revision and Adjustment on the article on suffrage, election and representation.

Mr. S. A. PURVIANCE. I move that the Convention proceed to consider article number ten.

Mr. DALLAS. There is an appeal pending.

Mr. ARMSTRONG. Is it in order for the Chair to submit the question to the House now?

Mr. D. W. PATTERSON. Your predecessor, Mr. President, submitted it to the

House. Why cannot you now re-submit it to be over-ruled, as he was?

Mr. HUNSICKER. Perhaps there would be still a better way to reach this question. I move to reconsider the vote by which this Convention refused to order the main question to be put. I voted in the majority on that question, and I make that motion in order that we may in some manner reach and dispose of this question.

Mr. AINEY. I second the proposition of the gentleman from Montgomery. I understood from a remark the Chair made the other day that he did not intend to adhere to the decision that a refusal to order the main question to be put placed the article out of the House for that day. It was with that understanding that I voted against ordering the main question.

The PRESIDENT. The Chair did say so, under the impression that this decision was only a decision of the former presiding officer, which, perhaps, he might not have felt called upon to follow; but he understands now that it was a decision of the House, and the Chair cannot over-rule the decision of the Convention.

Mr. HUNSICKER. Then, sir, I move to reconsider the vote by which the Convention refused to order the main question to be now put.

The PRESIDENT. Did the gentleman from Montgomery vote with the majority?

Mr. HUNSICKER. I did.

Mr. T. H. B. PATTERSON. I second the motion.

The PRESIDENT. How did the gentleman vote?

Mr. T. H. B. PATTERSON. I voted in the majority.

The PRESIDENT. The question is upon the reconsideration of the vote by which the Convention refused to order the main question to be put.

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

Mr. HEMPHILL. I second the call.

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

Y E A S .

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Calvin, Carter, Church, Clark, Corson, Davis, De France, Dunning, Edwards, Elliott, Finney, Fulton, Funck, Green, Hall, Hay,

Hazzard, Horton, Hunsicker, Lilly, MacConnell, MacVeagh, M'Clellan, M'Murray, Mann, Mitchell, Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Ross, Russell, Smith, Henry W., Stanton, Struthers, Wetherill, J. M., White, David N., Woodward, Wright and Walker, *President*—53.

N A Y S.

Messrs. Baker, Biddle, Buckalew, Cochran, Curtin, Cuyler, Dallas, Darlington, Ewing, Gibson, Gilpin, Guthrie, Harvey, Hemphill, Howard, Lamberton, Landis, M'Michael, Minor, Newlin, Patterson, D. W., Patton, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Turrell, White, J. W. F. and Worrell—29.

So the motion to reconsider was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Boyd, Bullitt Campbell, Carey, Cassidy, Collins, Corbett, Craig, Cronmiller, Curry, Dodd, Ellis, Fell, Hanna, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, M'Culloch, Mantor, Metzger, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Rooke, Runk, Sharpe, Simpson, Smith, H. G., Smith, William H., Stewart, Temple, Van Reed, Wetherill, John Price, Wherry and White, Harry—51.

Mr. CUYLER. I move to commit this entire article to a select committee.

The PRESIDENT. That motion is not now in order. There is a question pending.

Mr. CUYLER. When it shall be in order, I will make such a motion.

Mr. DARLINGTON. What is the question pending?

The PRESIDENT. The question before the House is, "shall the main question be now put?" The vote by which the House refused to order it having been reconsidered the question again recurs, "shall the main question be now put?"

Mr. CUYLER. Is it in order to say a word on that subject?

The PRESIDENT. It is not debatable.

Mr. HUNSICKER. I understood when I made the motion to reconsider that the call for the previous question was to be withdrawn. If I had not so understood, I should not have made that motion.

Mr. DARLINGTON. If that is so, let the eighteen gentlemen withdraw it. It is competent for the eighteen gentlemen

who seconded the call for the previous question to now withdraw it.

The PRESIDENT. The Clerk will call the names of delegates on this question.

Mr. ARMSTRONG. I seconded the call for the previous question. I withdraw it for one.

Mr. HOWARD. Then the thing for us to do is to say that the main question shall not be put, and adjourn.

Mr. CUYLER. I understand the call to be withdrawn.

Mr. HOWARD. The call cannot be withdrawn. Let us vote it down again, and adjourn and carry the whole question over.

Mr. CUYLER. I understand the call for the main question to be withdrawn.

Mr. T. H. B. PATTERSON. Can a call be withdrawn after it is made and voted on?

The PRESIDENT. The Chair does not think that it is in the power of the gentleman who moved the previous question to withdraw it. It was seconded by eighteen delegates, was voted on and the vote reconsidered. Now it cannot be withdrawn.

Mr. CUYLER. Then I appeal to the seconders to let the call be withdrawn.

The PRESIDENT. That is not in order. The question is, shall the main question be now put.

Mr. HOWARD. Is it in order to move that we now adjourn?

The PRESIDENT. Not with this question pending.

Mr. HOWARD. This is the first time I ever knew a motion to adjourn not to be in order.

The PRESIDENT. Is the Convention ready for the question?

Mr. J. W. F. WHITE. I call for the yeas and nays.

Mr. EDWARDS. I second the call.

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

Y E A S.

Messrs. Achenbach, Ainey, Armstrong, Bally, (Perry,) Beebe, Bowman, Boyd, Brodhead, Carter, Church, Clark, Corson, Davis, De France, Dunning, Edwards, Elliott, Horton, Lilly, MacConnell, MacVeagh, M'Murray, Mann, Mitchell, Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Smith, Henry W., Struthers, Wetherill, J. M., White, David N., Wright and Walker, *President*—37.

N A Y S.

Messrs. Alricks, Bailey (Huntingdon,) Baker, Biddle, Black, Charles A., Brown, Cochran, Curry, Curtin, Cuyler, Dallas, Darlington, Ewing, Finney, Gibson, Gilpin, Green, Guthrie, Hall, Harvey, Hay, Hemphill, Howard, Hunsicker, Lamber-ton, Landis, McClean, McCulloch, Minor, Newlin, Palmer, G. W., Patterson, D. W., Read, John R., Reynolds, Ross, Smith, H. G., Turrell, White, J. W. F., Wood-ward and Worrell—40.

So the Convention refused to order the main question to be now put.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Broomall, Buckalew, Bullitt, Calvin, Campbell, Carey, Cassidy, Collins, Corbett, Craig, Cronmiller, Dodd, Ellis, Fell, Fulton, Funck, Hanna, Hazzard, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, M'Michael, Mantor, Metzger, Mott, Niles, Palmer, H. W., Parsons, Reed, Andrew, Rocke, Runk, Russell,

Sharpe, Simpson, Smith, Wm. H., Stan-ton, Stewart, Temple, Van Reed, Weth-erill, Jno. Price, Wherry and White, Harry—56.

The PRESIDENT. Under the ruling of the House the Chair is compelled to say that the article goes over.

Mr. CUYLER. I ask unanimous consent

Mr. BROOMALL. I desire to appeal from the decision of the Chair.

Mr. DARLINGTON. I second the ap-
peal.

The PRESIDENT. You cannot appeal from my decision. I made no such de-cision. It is the decision of the House.

Mr. HOWARD. I move that the Con-
vention do now adjourn.

The motion was agreed to, there being on a division, ayes thirty-nine, noes thirty-four; and (at two o'clock and forty-two minutes P. M.) the Convention ad-journed till to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND SIXTY-FIRST DAY.

THURSDAY, October 9, 1873.

The Convention met at half-past nine, o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

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

RESIGNATION OF JUDGE BLACK.

The PRESIDENT appointed as the committee to wait upon Mr. J. S. Black relative to his resignation, under the resolution of yesterday, Mr. S. A. Purviance, Mr. Boyd and Mr. Lamberton.

PHILADELPHIA MAGISTRACY.

The PRESIDENT laid before the Convention a memorial from John Dungan, in reference to the Philadelphia magistrate system, which was laid on the table.

LEAVES OF ABSENCE.

Mr. NILES asked and obtained leave of absence for Mr. J. M. Bailey for a few days from to-day.

Mr. CLARK asked and obtained leave of absence for Mr. Brown until next Tuesday, and also for Mr. G. W. Palmer for a few days from to-day.

Mr. BRODHEAD asked and obtained leave of absence for Mr. Lear for to-day and to-morrow, on account of ill health.

Mr. H. W. SMITH asked and obtained leave of absence for himself for Monday and Tuesday next.

Mr. GILPIN asked and obtained leave of absence for himself for to-morrow.

Mr. HAZZARD asked and obtained leave of absence for Mr. Russell for Monday and Tuesday.

Mr. HAY asked and obtained leave of absence for himself for to-morrow.

ADJOURNMENT SINE DIE.

Mr. J. N. PURVIANCE. I offer the following resolution:

Resolved, That this Convention will adjourn *sine die* on Saturday, the 18th inst., at one o'clock P. M.

On the question of proceeding to the second reading and consideration of the resolution, the yeas and nays were called by Mr. J. N. Purviance and Mr. H. W.

Smith, and were taken with the following result:

YEAS.

Messrs. Alricks, Baily, (Perry,) Bannan, Broomall, Carter, Cochran, Cronmiller, Curry, De France, Edwards, Elliott, Hay, Horton, Landis, MacConnell, MacVeagh, M'Culloch, M'Murray, Niles, Parsons, Patterson, T. H. B., Purman, Purviance, John N., Purviance, Sam'l A., Russell, Smith, Henry W., Stanton, Struthers, White, David N., Wright and Walker, *President*—31.

NAYS.

Messrs. Addicks, Ainey, Armstrong, Bailey, (Huntingdon,) Baker, Bardsley, Biddle, Black, Charles A., Brodhead, Brown, Buckalew, Calvin, Clark, Curtin, Dallas, Darlington, Davis, Dunning, Ewing, Gibson, Gilpin, Green, Guthrie, Hall, Hanna, Hazzard, Hemphill, Hunsicker, Lamberton, Lilly, M'CLean, M'Michael, Mann, Minor, Mott, Newlin, Patterson, D. W., Patton, Porter, Reed, Andrew, Reynolds, Rooke, Runk, Simpson, Temple, Turrell, Van Reed, Wetherill, J. M., White, J. W. F. and Woodward—50.

So the resolution was not ordered to a second reading.

ABSENT.—Messrs. Achenbach, Andrews, Baer, Barclay, Bartholomew, Beebe, Bigler, Black, J. S., Bowman, Boyd, Bullitt, Campbell, Carey, Cassidy, Church, Collins, Corbett, Corson, Craig, Cuyler, Dodd, Ellis, Fell, Finney, Fulton, Funck, Harvey, Heverin, Howard, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, Mantor, Metzger, Mitchell, Palmer, G. W., Palmer, H. W., Pughe, Reed, John R., Ross, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Wetherill, Jno. Price, Wherry, White, Harry and Worrell—52.

THE PREVIOUS QUESTION.

Mr. ALRICKS. I offer the following resolution;

Resolved, That if the previous question be called and the Convention on taking a

vote refused to sustain the call, the business under consideration shall be proceeded in as if no such call had been voted on, and the ruling of the Convention to the contrary is hereby revoked.

Mr. HUNSICKER. Must not this resolution relating to the rules lie over for one day?

The PRESIDENT. No, sir.

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

CONSTITUTIONAL ELECTION.

Mr. WOODWARD submitted the following resolution, which was read twice and agreed to:

Resolved, That the Secretary of the Commonwealth be requested to furnish the Convention a tabular statement of the votes cast in the several counties in 1838 for Governor and for and against the amended Constitution of 1837-38.

DEBATE ON JUDICIARY ARTICLE.

Mr. MACVEAGH offered the following resolution, which was read twice and considered:

Resolved, That the debate on the article on the judiciary shall close at eleven o'clock this day, and that the Convention will then proceed to vote on any amendments offered, and subsequently on the article itself, without discussion.

Mr. BUCKALEW. I wish to make an inquiry before this resolution is voted upon; and that is whether its adoption will prevent the Convention from referring this article. I ask that the resolution be read again.

The resolution was read.

Mr. BUCKALEW. If that precludes the reference of this article, I am opposed to its adoption. I do not suppose that the gentleman intends to preclude the Convention from referring it; but from the reading of the resolution, I am afraid that the Chair may hold that a motion to refer the article would not be in order, because the Convention had ordered the vote to be taken on it at eleven o'clock.

Mr. COCHRAN. It strikes me that whether it would or would not preclude the question of reference, we may decide both matters at one time under this resolution. I am not in favor of referring the article, but, for one, I shall vote for the resolution, even if it does preclude the question of reference.

Mr. HAY. The objection we have to this resolution is that it proposes too early an

hour. It is now ten o'clock, and it is proposed that the vote shall be taken at eleven o'clock, when the order of resolutions has not yet passed, and the whole hour may be taken up in considering resolutions.

Mr. MACVEAGH. Any amendment to any extent may be offered; the only thing is that it stops discussion at that time. The amendments are to be offered and decided without debate.

Mr. DARLINGTON. I wish to make an inquiry of the Chair. Will the adoption of this resolution to close debate and take the vote at a certain hour preclude a reference to a committee to adjust it as a matter of form afterward? If the Chair will be kind enough to inform me as to that, I shall know how to vote.

The PRESIDENT. The Chair declines to make any decision on any question in advance of its arising.

Mr. BUCKALEW. I am perfectly aware that the Convention are not satisfied with this article, and yet we should be compelled to adopt it if this resolution prevailed; or at least some of us would feel compelled to vote for it. We all know that in reference to another subject in the article on the Legislature—I mean the constitution of the House of Representatives—after the Convention ascertained that the subject was not and could not be put in the Constitution in a satisfactory shape by the Convention, it was sent to a special committee. That committee met and made a report upon the most difficult question that we have had before us, and without any delay their report was substantially adopted. This judicial article is full of peril in its present form, and I regard it as impossible for the Convention in open session to put it into satisfactory shape. I want it referred, I do not care to whom, to put it in more acceptable form in a committee room; and then probably upon that report, we can come to a conclusion. If nothing can be done, then let us submit to a separate vote one or two of the questions contained in this article which are open to general objection in the Convention.

Mr. HOWARD. Make the motion to refer now.

Mr. MACVEAGH. You can submit the entire article to a separate vote.

Mr. BROOMALL. Is it proper at this time to amend the resolution?

The CHAIR. Yes, sir.

Mr. BROOMALL. Then I move to amend by adding to it:

"*Provided*, That this shall not preclude a motion to refer."

Mr. MACVEAGH. I submit that this House will make a mistake if it means to refer other than, as the chairman of the Committee on Judiciary suggests, to the Committee on Revision and Adjustment. There are certain marked differences of opinion here, which no committee can possibly get rid of. One is the reorganization of the judiciary of the State. The bar by an almost unanimous voice protest against it. In this city they met and passed a resolution without a dissenting opinion, protesting that your interference was unwise and undesired. Then we have rearranged the districts of the State in precisely the same manner, and assumed again the functions of the Legislature, as I understand it, and added a large number of judges in order to suit two or three districts that need them, and which could be supplied by the Legislature. The majority of this Convention, however, seems to favor throwing that firebrand before the public and before the profession throughout the length and breadth of the State. Others of us are opposed to it. Now, how could a committee of reference harmonize these differences?

This judiciary report received thorough consideration in the Judiciary Committee. For weeks and months it was before them. It came into the House and received thorough consideration here upon two different occasions. It has now again been debated for four days, and I understand a substitute is to be offered that will range this Convention on one side or the other by presenting the article in the present Constitution, and incorporating three or four of these amendments in it, thus bringing up a direct issue between the report of the Judiciary Committee and the article in the old Constitution. This Convention is certainly intelligent enough now, and has heard enough upon the subject to decide upon that question without further discussion.

Mr. DE FRANCE. I wish to correct the gentleman from Dauphin about one thing which has been talked about a great deal here, and that is that our apportionment of the State increases the number of judges. The president judges are only increased five, if I have made a right calculation, and then we do away with the associate judges in twenty districts. Twice twenty is forty, the number of associate

judges who are dispensed with. They receive about five hundred dollars each, or twenty thousand dollars in all, and that will pay the salaries of the five additional law judges we have provided for.

That is the fact about this question, and if the gentleman from Dauphin will use his mathematics a little, he will find that he is not correct in his assumption.

Mr. ARMSTRONG. Like all other questions of very great importance submitted to a deliberative assembly, this article has evoked a large difference of opinion. There are points in this report which do not meet the approval of many members of the Convention, although they are points which the Judiciary Committee decidedly approved. I believe if any one man in this Convention had the making of this Constitution all to himself, he would be an entirely harmonious body, [laughter,] and would be able to approve of precisely what he had done; but that is not the principle which pervades a deliberative assembly. We meet together to confer and be advantaged by the united judgment of a large number of intelligent men. If I had this article of the Constitution in my own keeping I would not make population the basis of judicial districts; and yet the united preference of this Convention is against my view, and they have adopted forty thousand people as the basis of judicial representation, and I submit to that decision as presumptively wiser than my own judgment.

Look again at the question of the Philadelphia courts. The gentleman from Dauphin has risen in his place to say that the Philadelphia bar unanimously opposes that system; but, sir, out of the seven or eight hundred members of the bar of Philadelphia only about fifty were present at the meeting to which he has referred, and the proposition as it now stands in the Convention meets the approval of the gentleman from Philadelphia, (Mr. Dallas,) who was one of the members present at that meeting, and at that time opposed to it. So also I have in my possession a letter from one of the prominent and leading lawyers of Philadelphia, who has as large a practice perhaps as any man at the bar, and he cordially approves the system and endorses it in the warmest terms.

I do not want to extend these remarks. It is sufficient to know that there are in this article many things of profound value to this State, and which will greatly improve our judicial system. We cannot

all have what we want. Let us, as wise men, accept the united judgment of the entire body, believing that the judgment of one hundred and thirty-three men is better than that of any one man in the Convention, however wise.

With these views, I approve this article of the Constitution, not because it contains all that I would like to have in it, and notwithstanding it contains some matters contrary to my judgment, but because I am not vain enough to believe that my personal judgment is better than that of a majority of one hundred and thirty-three men who know just as much as I do. I readily admit that as the article now stands, there are verbal amendments and matters of adjustment which might be submitted with advantage to a Committee on Revision and Adjustment, and if gentlemen will agree that the adoption of this resolution shall not preclude a reference to a Committee for Revision and Adjustment, I will not oppose it. But if it be to open the entire scope of this question and bring it here again in the presence of a new and fresh debate, to repeat what has been already so often said in this Convention, then I am totally opposed to it.

If the gentleman from Delaware will so modify his resolution as not to preclude such reference for the purpose of revision and adjustment, I shall have no objection to it.

Mr. MACVEAGH. I will accept that amendment, certainly.

The PRESIDENT. The pending amendment is the amendment of the delegate from Delaware.

Mr. MACVEAGH. I was going to say, if he would accept it, I should not object.

Mr. ARMSTRONG. I was suggesting to the gentleman from Delaware to amend his proposition so as not to preclude the reference to a committee for the purpose of revision and adjustment.

Mr. BROOMALL. I modify my motion, then, by adding at the end the words, "for revision and adjustment."

Mr. MACVEAGH. Then I accept that amendment.

The PRESIDENT. The amendment is accepted.

Mr. MACVEAGH. Now I desire a vote.

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

The resolution as amended was agreed to.

COPIES OF DEBATES.

Mr. HAY. The Librarian of the United States Senate has requested copies of our Debates. I offer a resolution for the purpose of furnishing them :

Resolved, That two copies of the Debates and proceedings of the Convention be presented to the library of the United States Senate and to the Congressional library.

The resolution was read the second time.

Mr. LILLY. I move that that be referred to the Committee on Printing and Binding. ["No." "No."]

The PRESIDENT. It is moved to refer the resolution to the Committee on Printing and Binding.

Mr. LILLY. I will state my reason for the reference. ["No!" "No!"] My idea is that this whole matter ought to be under the control of the Committee on Printing and Binding.

The motion to refer was not agreed to.

The PRESIDENT. The question is on the resolution.

Mr. COCHRAN. Allow me to make one inquiry, and that is this: whether or not we are sure that we have the copies to give. ["Yes!"]

Mr. HAY. Oh, yes.

The resolution was agreed to.

CONSTRUCTION OF WILLS.

Mr. ARMSTRONG. I desire to make a report from the Judiciary Committee. There was referred to the Committee on Judiciary a resolution directing them to inquire into the expediency of introducing into the Constitution a provision which would virtually reverse a decision of the Supreme Court. I am instructed by the committee to report that it is not expedient to embody the proposition in the Constitution.

The PRESIDENT. The report will be read.

The CLERK read the resolution and report as follows :

The following resolution having been referred, viz :

"Resolved, That the Committee on the Judiciary inquire into the expediency of reporting a section to the purport that in the construction of wills where the ancestor takes a preceding free hold estate the remainder may be devised to the heir or issue in fee as purchasers, if such is the clear intention of the testator."

The Judiciary Committee respectfully report that it is not expedient to embody

the above proposition in the Constitution.

MILEAGE OF MEMBERS.

Mr. HAY submitted the following report:

"The Committee on Accounts and Expenditures of the Convention report the following statement of the respective places of residence of the members, with the mileage to which they are entitled according to the distances furnished, under the resolution of the Convention, by the members themselves, and the following resolution, to wit:

Resolved, That warrants be drawn in favor of the members named in the statement appended to this report for the sum placed opposite their names respectively, being the amounts due them for their mileage for the present session of the Convention.

[A tabular statement follows.]

The resolution was read a second time.

Mr. HAY. It is proper that I should say one word to explain to the members from Philadelphia that no mileage has been allowed to them for this session, so that they may understand that their names are not included in the statement appended to the report.

Mr. BIDDLE. Oh, we do not want it.

The resolution was agreed to.

THE JUDICIARY.

Mr. J. N. PURVIANCE. I move that the Convention now proceed to the consideration of the judiciary article.

The motion was agreed to, and the Convention resumed the consideration of the article on the judiciary on third reading.

The PRESIDENT. When the Convention adjourned yesterday there was a motion of the delegate from Allegheny (Mr. Hay) pending to go into committee of the whole for the purpose of amending the eleventh section by adding to it the words:

"In the cities of Pittsburg and Allegheny not more than one alderman shall be elected in each ward or district."

Mr. HAY. Mr. President: Upon consultation with some of my colleagues, I have agreed to modify the amendment and change the phraseology.

The PRESIDENT. The question is on going into committee of the whole to make the amendment offered yesterday by the gentleman from Allegheny.

The motion was not agreed to.

Mr. HAY. Now, I move to go into committee of the whole for the purpose of

amending the eleventh section by adding:

"In cities containing over fifty thousand inhabitants not more than one alderman shall be elected in each ward or district."

I have modified this amendment so as to omit the naming of the two cities, which only it will affect in the State, and to make it in form a general provision applicable to all cities of fifty thousand inhabitants and over. And, sir, as the reduction of the number of magistrates has already been agreed to for the city of Philadelphia by the Convention, I see no reason why a similar reduction, although to not quite so great an extent, should not be made for the city of Pittsburg, which needs somewhat the same reform in this matter as the city of Philadelphia. I appeal to the members from the country, who have already secured what they desire, *two* aldermen and justices of the peace in their boroughs and townships, not to impose the same measure on a city, the necessities and circumstances of which are very different.

Mr. BEEBE. I see no reason why the gentleman should not modify his proposition so as to apply to all cities.

Mr. HAY. Only this reason: I do not want the thing to be defeated. I do not want it to be overburdened nor more put in the proposition than it will bear. It is only proposed to ask this change for the cities of Pittsburg and Allegheny, in the county which I in part represent, and I am sure—as it has been several times negatived—that a proposition to extend it to all cities would not be acceptable to the Convention. I hope they will agree to this change for us now, and after that extend its application if there is such a desire.

Mr. BEEBE. That is the very reason why I oppose it. As I understand it, there are gentlemen present here who live in other cities, who consider that one is sufficient. The country members are unanimous that two in the respective districts are necessary, and it would thereby be a general provision applicable to all cities, and I think it will be acceptable to a majority of the delegates on this floor.

Mr. GUTHRIE. I hope the Convention will concede this amendment to Pittsburg. I think it will be acceptable to the citizens there very generally. I trust the Convention will adopt it.

Mr. T. H. B. PATTERSON. I merely wish to state that I am in favor of this amendment, and that the whole delega-

tion as far as I have met them, are in favor of it for the benefit of the large cities.

MR. HAY. Allow me to correct the gentleman, as I do not wish any delegate here to vote under any misapprehension whatever. There are one or two gentlemen from Allegheny county who are not in favor of it.

MR. T. H. B. PATTERSON. That may be so, but all that I have seen agreed to it.

MR. MACVEAGH. What cities does it include?

MR. T. H. B. PATTERSON. Only Pittsburgh and Allegheny.

MR. MACVEAGH. It will very soon include others. It will include Scranton, I suppose.

MR. T. H. B. PATTERSON. Oh, no; Scranton has not the requisite population.

THE PRESIDENT. The question is on the motion of the gentleman from Allegheny (Mr. Hay.)

MR. MACVEAGH. I call for the yeas and nays on that proposition.

MR. HAY. I second the call.

THE PRESIDENT. The Clerk will call the roll.

MR. HANNA. Mr. President—

THE PRESIDENT. The yeas and nays have been ordered.

MR. HANNA. The names have not been called.

THE PRESIDENT. Well, they have been ordered. It is too late to speak now.

THE CLERK proceeded to call the roll.

MR. HOWARD. I believe some delegates do not understand this question. They have an idea that this proposition will interfere with the special provision for Philadelphia. It does not interfere with it in any way.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Beebe, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Buckalew, Calvin, Carey, Carter, Church, Clark, Cochran, Corbett, Corson, Cronmiller, Curtin, Dallas, Darlington, Davis, De France, Edwards, Elliott, Ewing, Gibson, Green, Guthrie, Harvey, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Lamberton, Landis, Lilly, MacConnell, McClean, McCulloch, M'Michael, M'Murray, Mann, Minor, Parsons, Patterson, D. W., Patterson, T. H. B., Patton,

Porter, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Runk, Russell, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Turrell, Van Reed, Wetherill, J. M., White, David N., Woodward, Worrell and Walker, *President*—75.

NAYS.

Messrs. Addicks, Ainey, Bardsley, Gilpin, Hall, Hanna, MacVeagh, Newlin, Niles and White, J. W. F.,—10.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Baer, Baker, Barclay, Bartholomew, Bigler, Black, J. S., Bowman, Bullitt, Campbell, Cassidy, Collins, Craig, Curry, Cuyler, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Funck, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Cammant, Mantor, Metzger, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Pughe, Rooke, Ross, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Wetherill, John Price, Wherry, White, Harry and Wright—48.

The Convention accordingly resolved itself into committee of the whole, Mr. M'Michael in the chair.

THE CHAIRMAN. The committee of the whole have had referred to them the article on the judiciary for the purpose of adding to the end of the eleventh section the following:

"In cities containing over fifty thousand inhabitants not more than one alderman shall be elected in each ward or district." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. M'Michael) reported that the committee of the whole had inserted the amendment referred to them.

MR. HAY. I now move that the Convention go into committee of the whole for the purpose of amending section eleven, by adding at the end of the amendment just inserted these words, "and they shall be compensated only by fixed salaries."

THE PRESIDENT. The motion is before the Convention.

MR. HAY. Mr. President: I do not propose to take up the time of the Convention by a recapitulation of the arguments that have already been made very fully on this question during earlier sessions of this body. It has already been decided that the magistrates in the city of Philadelphia shall be compensated only by fixed salaries, and it is very much

my desire that the same rule, although not precisely in the same manner, shall be extended to the cities of Pittsburg and Allegheny. I regard this as the important measure of reform in the aldermanic system in cities. The practice now of many magistrates who have crept into this office is to encourage litigation rather than to settle and quiet it. It is regarded as important that the number of these officials should be reduced. It is everywhere esteemed an advantage that the number of office-holders should be as small as is consistent with the proper discharge of public duties. We have already agreed to reduce the number of these officers somewhat in our cities, although not by any means to the extent to which I think they ought to be reduced; and I hope that the Convention will now agree also to the principle of compensating public officials by fixed salaries instead of permitting them to be tempted by the desire of making gain by the encouragement of petty, malicious and mischievous litigation.

Mr. DARLINGTON. I suggest to the gentleman to amend his proposition, by adding "to be paid out of the fees received."

Mr. HAY. That is matter of legislation. So far as the question of the amount of the salary is concerned, it has been suggested to me that it ought not to exceed the fees received. In most cases certainly not; but that is purely matter of legislation. The amount of salary may be fixed as well as its proportion to fees received, as may be provided by law.

Mr. COCHRAN. I ask the gentleman whether his amendment applies only to magistrates in Pittsburg and Allegheny, or whether it applies to the whole State?

Mr. HAY. It only applies to these two cities; and in the county of Allegheny all our county officials are now compensated by salaries instead of fees, to the considerable gain of the county treasury. If judges and clerks are to be paid fixed salaries, why not the petty magistrates? The rule works well, and is not a mere experiment with us. I hope that this change may be made. A genuine and real and needed reform will have been accomplished.

Mr. EWING. I was heartily in favor of the amendment just inserted. The amendment now offered is a provision which I should be very glad to see tried by an act of Assembly; and I might myself be

willing to see it inserted in the Constitution; but I think any one who has talked to our people knows that there is great opposition to such a provision as this in the Constitution, and it will excite opposition at home. I doubt very much whether it is called for. The almost uniform expression that I have heard is that it is a matter for legislation and that it ought to be so that it could be changed if it did not work well. A large number of people think that it will not work well, and I shall vote against it on that account.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Hay.)

Mr. HAY. I ask for the yeas and nays.

Mr. DALLAS. I second the call.

Mr. MACVEAGH. As we are going into this matter in detail, will the gentleman from Allegheny fix the amount of salary?

Mr. GUTHRIE. Mr. President: I wish simply to say that I consider this a very unwise proposition. I voted the other day to strike out the twenty-seventh section containing a similar provision, because it created salaried officers. An amendment was afterwards brought in amending the number of aldermen, which left out this objectionable part, and I supported it; but I had no idea that that was merely opening the way to another proposition of this kind. I hope the Convention will not adopt it.

The question being taken by yeas and nays resulted, yeas thirty, nays fifty-three, as follows:

YEAS.

Messrs. Bailey, (Huntingdon,) Bardsley, Biddle, Brodhead, Carey, Carter, Corson, Cronmiller, Dallas, Darlington, Green, Hay, Hazzard, Hemphill, Heyerlin, Lamberton, Landis, McClean, McCulloch, Patton, Purviance, John N., Read, John R., Rooke, Runk, Russell, Simpson, Struthers, Wetherill, J. M., Worrell and Walker, *President*—30.

NAYS.

Messrs. Addicks, Ainey, Alricks, Armstrong, Baily, (Perry,) Beebe, Broomall, Brown, Buckalew, Calvin, Clark, Cochran, Corbett, Davis, Dodd, Dunning, Edwards, Elliott, Ewing, Gibson, Guthrie, Hall, Hanna, Harvey, Horton, Howard, Hunsicker, Lilly, MacConnell, MacVeagh, Michael, Murray, Mann, Minor, Mott, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Reed, An-

drew, Reynolds, Smith, Henry W., Temple, Turrell, Van Reed, White, David N., White, J. W. F., Woodward and Wright—53.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Baer, Baker, Bannan, Barclay, Bartholomew, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Bullitt, Campbell, Cassidy, Church, Collins, Craig, Curry, Curtin, Cuyler, De France, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, Mantor, Metzger, Mitchell, Newlin, Palmer, H. W., Pughe, Ross, Sharpe, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Wetherill, John Price, Wherry and White, Harry—50.

MR. S. A. PURVIANCE. I move to go into committee of the whole for the purpose of striking out in section three, lines four and five, the words "of injunctions where a corporation is party defendant, *habeas corpus*, and."

The object of this motion is to unburthen, if possible, the Supreme Court of some of its labors. This part of the section relates to the original jurisdiction of the Supreme Court, and my amendment confines it to all questions of *mandamus* and *quo warranto*. It strikes me that the local jurisdiction can as well dispose of cases of *habeas corpus* and injunctions as the Supreme Court, and it would greatly relieve the labors of that body by striking that out.

MR. ARMSTRONG. These words were inserted with great deliberation by the Committee on the Judiciary, and were retained by the Convention after full discussion. It is only necessary to remind the Convention that there are corporations whose jurisdiction extends over the entire State, to show that there are very many instances in which it is eminently proper that the court having jurisdiction equal to the privileges of the corporations should have jurisdiction of a question of that kind. As to the matter of *habeas corpus*, there is no court of record in the Commonwealth that ought not to possess the power of *habeas corpus*. It is essentially right and necessary to protect the liberty of the citizen, and should be made as convenient and as extensive as possible. I will not further debate the question.

THE PRESIDENT. The question is upon the motion of the gentleman from Allegheny (Mr. S. A. Purviance.)

The motion was rejected.

MR. ARMSTRONG. I move to go into committee of the whole for the purpose of amending the twenty-third section, in line twenty-one, by adding after the word "said" the words "separate orphans," so as to preclude any ambiguity upon that question. I make this motion to go into committee of the whole, trusting, however, that the Convention will give unanimous consent to allow it to be done. The clause would read as amended:

"All accounts filed with him as register, or as clerk of said separate orphans' court, shall be audited by the court without expense to parties," &c.

THE PRESIDENT. Shall the gentleman from Lycoming have unanimous consent to make this amendment.

Unanimous consent was given and the amendment made.

MR. J. W. F. WHITE. I believe that I have not occupied five minutes of the time of this Convention on the judiciary article during our entire discussion, either on second reading or in committee of the whole. I now move that the Convention go into committee of the whole for the purpose of substituting what I hold in my hand for the entire article, and if the Convention will bear with me I desire to say a few words in explanation of my amendment.

THE PRESIDENT. Let the amendment be sent to the Clerk's desk and read.

The CLERK read the words proposed to be substituted for the article as follows:

SECTION 1. The judicial power of this Commonwealth shall be vested in the Supreme Court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court and 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.

SECTION 2. The judges of the Supreme Court, of the several courts of common pleas and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors of the Commonwealth in the manner following, to wit: The judges of the Supreme Court by the qualified electors of the Commonwealth at large; 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, by the qualified elec-

tors 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. The judges of the Supreme Court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts of record as are, or shall be established by law, and all other judges required to be learned in the law shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the 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 grounds of impeachment the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature. The judge of the Supreme Court whose commission shall first expire shall in turn be the chief justice, and if two or more commissions shall expire on the same day the judges holding them shall decide by lot which shall be the chief justice. Any vacancies happening by death, resignation or otherwise in any of the said courts shall be filled by appointment by the Governor, to continue till the first Monday in December succeeding the next general election. The judges of the Supreme Court and the presidents of the several courts of common pleas shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth, or under the government of the United States, or any other State of this Union. The judges of the Supreme Court during their continuance in office shall reside within this Commonwealth, and the other judges during their continuance in office shall reside within the district or county for which they were respectively elected.

SECTION 3. Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.

SECTION 4. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties.

SECTION 5. The judges of the court of common pleas in each county shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery for the trial of capital and other offenders therein; any two of the said judges, the president being one, shall be a quorum, but they shall not hold a court of oyer and terminer or jail delivery in any county when the judges of the Supreme Court, or any of them, shall be sitting in the same county. The party accused, as well as the Commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the Supreme Court.

SECTION 6. The Supreme Court and the several courts of common pleas shall, beside the powers heretofore usually exercised by them, have the power of a court of chancery so far as relates to perpetuating of testimony, the obtaining of evidence from places not within the State, and the care of the persons and estates of those who are *non compos mentis*, and the Legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary, and may, from time to time, enlarge or diminish those powers or vest them in such other courts as they shall judge proper for the due administration of justice.

QUARTER SESSIONS, ORPHANS' AND REGISTERS' COURTS.

SECTION 7. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace and orphans' court thereof.

WRITS OF CERTIORARI.

SECTION 8. 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.

SECTION 9. The president of the court in each circuit within such circuit, and the judges of the court of common pleas within their respective counties

shall be justices of the peace so far as relates to criminal matters.

SECTION 10. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds shall be kept in each county.

SECTION 11. The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

SECTION 12. In all cases in this Commonwealth 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.

SECTION 13. 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; and no court of original jurisdiction shall be presided over by any one or more of the judges of the Supreme Court.

Mr. J. W. F. WHITE. At this late moment I shall not attempt to discuss this question. I merely wish to explain what this amendment is. It is the judiciary article of the present Constitution modified slightly in the respects which I will state. I strike out of the second section the words which relate to the first election under that amendment, they being now wholly useless. I then strike out from the article as it now stands that which relates to the register's court. I believe that upon that point we are all agreed. These are the only things stricken out from the article as it is in the present Constitution. Then I have added two sections from the report before us, section fourteen and section twenty-one. I added the fourteenth section as it stands here. I modified the twenty-second section in this way: I struck out the words: "The court of *nisi prius* is hereby abolished," so as to make the section read, "and no court of original jurisdiction shall be presided over by any one or more of the judges of the Supreme Court." The object of modifying this section is not to abolish the *nisi prius* court, but to prohibit one of the judges of the Supreme Court presiding over it. Let the Legisla-

ture provide judges for that court if they want to do so.

Mr. BIDDLE. Will the gentleman from Allegheny allow me to ask him a question?

Mr. J. W. F. WHITE. Certainly.

Mr. BIDDLE. How can there be a court held by one of the judges of the Supreme Court, without one of those judges presiding over it?

Mr. J. W. F. WHITE. The Legislature can change that.

Mr. BUCKALEW. Will the gentleman allow me to interrupt him?

Mr. J. W. F. WHITE. Yes, sir.

Mr. BUCKALEW. The gentleman has omitted at the end of the fourteenth section of the article before us, what has been voted on by the Convention with reference to small appeal cases. I mean the amendment that provides that small appeals shall be allowed to be taken to an appellate court only on allowance by the court or one of the judges thereof.

Mr. J. W. F. WHITE. I have no objection to adding that if it be so desired.

I have only this to say: All that we have proposed to do by the article now before us as we have modified it can be done by the Legislature except in one particular. They cannot extend the term of judges of the Supreme Court to twenty-one years, but everything else that is proposed in this article is within the province of the Legislature to do; and if it does not work well they can undo it or modify it. If put in the Constitution it is beyond remedy except by an amendment to the Constitution.

We have incorporated in this article so many provisions not originally reported by the Committee on the Judiciary that the article is altogether a different thing from that which was reported by the committee. Scarcely a feature of the plan originally reported by the chairman of the Judiciary Committee has been left in the article as it now stands before us. We have incorporated into it in my judgment so many objectionable features that when the vote comes on it I must vote against it altogether.

Therefore I prefer that we should go back and take the article in the old Constitution, modify it as I have suggested, so as to make it appropriate to the new Constitution, adding these two sections about which I think there is no difficulty and can be no controversy, striking out the register's court, about which we all agree, and then leave all the other matters for the

Legislature to establish or not as they may think best; and with a reformed Legislature, such as we propose by our Constitution, I think we can safely trust that question to the Legislature.

Mr. TEMPLE. I call for the orders of the day.

Mr. J. W. F. WHITE. I call for the yeas and nays on my amendment.

The PRESIDENT. Is the call seconded?

MANY DELEGATES. I second the call.

The PRESIDENT. [At 11 o'clock A. M.] The time has now arrived when debate must cease, according to the order of the Convention.

Mr. J. W. F. WHITE. I ask for the yeas and nays on my motion.

Mr. TEMPLE. I second the call.

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

Y E A S .

Messrs. Addicks, Ainey, Bailly, (Perry,) Bailey, (Huntingdon,) Bardsley, Black, Charles A., Church, Cronmiller, Curtin, Ewing, Gibson, Gilpin, Green, Hazzard, Heverin, Horton, Howard, Lilly, MacVeagh, M'Culloch, M'Michael, Mann, Patterson, D. W., Porter, Reed, Andrew, Rooke, Struthers, Wetherill, J. M., White, J. W. F., Woodward and Walker, *President*—31.

N A Y S .

Messrs. Alricks, Armstrong, Baer, Beebe, Biddle, Boyd, Brodhead, Broomall, Brown, Buckalew, Calvin, Carey, Carter, Clark, Cochran, Corbett, Corson, Dallas, Darlington, Davis, De France, Dodd, Dunning, Edwards, Elliott, Guthrie, Hall, Hanna, Harvey, Hay, Hemphill, Hunsicker, Lamberton, Landis, Littleton, MacConnell, M'CLean, M'Murray, Minor, Mott, Newlin, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reynolds, Runk, Russell, Simpson, Smith, H. G., Smith, Henry W., Stanton, Temple, Turrell, Van Reed, White, David N., Worrell and Wright—63.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Baker, Bannan, Barclay, Bartholomew, Bigler, Black, J. S., Bowman, Bullitt, Campbell, Cassidy, Collins, Craig, Curry, Cuyler, Ellis, Fell, Finney, Fulton, Funck, Kaine, Knight, Lawrence, Lear, Long, M'Camant, Mantor, Metzger, Mitchell, Palmer, H. W., Pughe, Ross, Sharpe, Smith, William H., Stewart,

Wetherill, John Price, Wherry and White, Harry—39.

Mr. M'CLEAN. I desire to suggest a correction of language in the last section, which I hope will not be objected to. It is the thirty-second section. Instead of having the words "attached to," in the sixth line, I propose to substitute the words, "united with," so as to read: "may be united with contiguous districts." I hope unanimous consent will be given. ["No!"]

The PRESIDENT. It is moved to go into committee of the whole to make the amendment indicated.

The motion was not agreed to.

The PRESIDENT. The question now is on the passage of the article.

Mr. MACVEAGH and Mr. TEMPLE called for the yeas and nays, and they were taken with the following result:

Y E A S .

Messrs. Alricks, Armstrong, Baer, Bailly, (Perry,) Bannan, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Calvin, Carter, Clark, Cochran, Corbett, Corson, Dallas, Darlington, Davis, De France, Dodd, Dunning, Elliott, Guthrie, Hall, Hay, Hazzard, Hunsicker, Lamberton, Landis, Littleton, MacConnell, M'Culloch, M'Michael, M'Murray, Minor, Mott, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Runk, Russell, Simpson, Smith, H. G., Stanton, Temple, Turrell, Van Reed, White, David N., Worrell and Wright—61.

N A Y S .

Messrs. Addicks, Ainey, Bailly, (Huntingdon,) Baker, Bardsley, Church, Cronmiller, Curtin, Edwards, Ewing, Gibson, Gilpin, Green, Hanna, Harvey, Hemphill, Heverin, Horton, Howard, Lilly, MacVeagh, M'CLean, Mann, Niles, Patterson, D. W., Porter, Reed, Andrew, Rooke, Smith, Henry W., Struthers, White, J. W. F., Woodward and Walker, *President*—33.

So the article was passed.

ABSENT.—Messrs. Achenbach, Andrews, Barclay, Bartholomew, Bigler, Black, J. S., Bullitt, Campbell, Carey, Cassidy, Collins, Craig, Curry, Cuyler, Ellis, Fell, Finney, Fulton, Funck, Kaine, Knight, Lawrence, Lear, Long, M'Camant, Mantor, Metzger, Mitchell, Newlin, Palmer, H. W., Read, John R., Ross, Sharpe,

Smith, William H., Stewart, Wetherill, J. M., Wetherill, John Price, Wherry and White, Harry—39.

Mr. MACVEAGH. I move that the Convention proceed now to the third reading of the article on the Legislature as reported back from the Committee on Revision.

Mr. ARMSTRONG. I desire to know whether it is necessary to make a motion that this article on the judiciary be referred to the Committee on Revision and Adjustment that they may report an engrossed article correcting such verbal inaccuracies as they may discover.

Mr. LILLY. I take it that this article has gone beyond the power of the House without a reconsideration. The article has passed finally. By common consent I suppose what the gentleman suggests can be done; but otherwise it cannot without a reconsideration of that vote.

Mr. CORSON. It was all in that motion.

Mr. MACVEAGH. I think that if to-morrow the chairman himself has any verbal corrections he wants to make in the article, they will be adopted by unanimous consent.

Mr. C. A. BLACK. Certainly.

Mr. MACVEAGH. Let him bring them in to-morrow morning.

Mr. ARMSTRONG. I cannot bring them in so soon as that.

Mr. MACVEAGH. Any time.

Mr. ARMSTRONG. In the course of a week or so I will give the article a very careful revision, and if there are any inaccuracies, I will ask the Convention to correct them.

ORDER OF BUSINESS.

Mr. MACVEAGH. I move that now we proceed to the third reading of the section of the article on the Legislature.

The PRESIDENT. It has not been reported back. That committee reported progress yesterday.

Mr. MACVEAGH. There was an order—

The PRESIDENT. There was an order that they should report, and they did report progress.

Mr. S. A. PURVIANCE. I move that the Convention proceed to consider on third reading the article on education.

Mr. BROOMALL. I was about to move to proceed to consider the article on revenue and taxation. It is ready now and I think can be finished during the day.

Mr. MACVEAGH. One moment—

Mr. S. A. PURVIANCE. I withdraw my motion for the present.

Mr. BUCKALEW. I submit that we had better take up the articles in the order they were reported. The next article is article number eight, on suffrage and election.

Mr. BROOMALL. I withdraw my motion, then.

SUFFRAGE AND ELECTION.

The PRESIDENT. Will the Convention proceed to consider article number eight, on suffrage and election? ["Aye!"] That article is before the Convention.

The CLERK read the amendments reported by the Committee on Revision and Adjustment.

The PRESIDENT. Will the Convention adopt the report of the committee?

Mr. BUCKALEW. I desire to make an explanation of a mistake made by the committee in the sixth section, by striking out the words, "under a requisition from the President of the United States or by the authority of this Commonwealth." It was not the intention of the committee to make a correction there which would affect the substance of the section, but in the haste of their action they made a mistake by striking out those words. The section as it stands is exactly the section at present in the Constitution of the State. The committee supposed, without reflection, that no soldiers could be in the military service except under a requisition of the President or as a member of the militia of the State. We overlooked the fact that scattered citizens of this State might be members of the regular army of the United States. The Committee on Suffrage, Election and Representation carefully considered this particular point, and it is a material one, and reported the section in the proper form. I propose, therefore, by common consent to amend the report of the committee by restoring those words.

The PRESIDENT. Will the Convention unanimously agree to restore those words? ["Aye." "Aye."] That change will be made.

Mr. BUCKALEW. Now, I move the adoption of the report, and then on third reading it will be open for consideration.

The motion was agreed to.

Mr. D. W. PATTERSON. I move that the article be transcribed for a third reading.

The motion was agreed to.

Mr. D. W. PATTERSON. I now move

that we proceed to the consideration of the article on third reading.

The motion was agreed to, and the article was read the third time as follows:

ARTICLE VIII.

SUFFRAGE AND ELECTIONS.

SECTION 1. Every male person twenty-one years of age possessing the following qualifications shall be entitled to vote at all elections:

First. He shall have been a citizen of the United States at least one month.

Second. He shall have resided in the State one year, or if having previously been a qualified elector or a native born citizen of the State, he shall have removed therefrom and returned, then six months immediately preceding the election.

Third. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

Fourth. If twenty-two years of age or upwards, he shall have paid, within two years, a State or county tax, which shall have been assessed at least two months and paid at least one month before the election.

SECTION 2. The general election shall be held annually on the Tuesday next following the first Monday of November, but the Legislature may by law fix a different day, two-thirds of each House consenting thereto.

SECTION 3. All elections for city, ward, borough and township officers for regular terms of service, shall be held on the third Tuesday of February.

SECTION 4. All elections by the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters opposite the name of the elector who presents the ballot. Any elector may write his name upon his ticket, or cause the same to be written thereon and attested by a citizen of the district.

SECTION 5. Electors shall in all cases except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance on elections and in going to and returning therefrom.

SECTION 6. Whenever any of the qualified electors of the Commonwealth shall be in actual military service under a requisition from the President of the United States, or by the authority of this Commonwealth, such electors may exercise the

right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual place of election.

SECTION 7. All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the State, but no elector shall be deprived of the privilege of voting by reason of his name not being registered.

SECTION 8. Any person who shall give, or promise or offer to give, to an elector any money, reward or other valuable consideration for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such elector's vote or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election, and any elector whose right to vote shall be challenged for such cause before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received.

SECTION 9. Any person who shall, while a candidate for office, be guilty of bribery, fraud, or wilful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this Commonwealth; and any person convicted of wilful violation of the election laws, shall, in addition to any penalties provided by law, be deprived of the right of suffrage absolutely for a term of four years.

SECTION 10. In contested elections and in proceedings investigating elections, no person shall be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

SECTION 11. Townships and wards of cities or boroughs shall form or be divided into election districts of compact and contiguous territory, in such manner as the court of quarter sessions of the city or county in which the same are located may direct: *Provided*, That districts in cities of over one hundred thousand inhabitants shall be divided by the courts of quarter

sessions, having jurisdiction therein, whenever at the next preceding election more than two hundred and fifty votes shall have been polled therein; and other election districts, whenever the court of the proper county shall be of opinion that the convenience of the electors and the public interests will be promoted thereby.

SECTION 12. All elections by persons in a representative capacity shall be *viva voce*.

SECTION 13. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of the State or of the United States, or on the high seas, nor while a student of any institution of learning, nor while kept in any poor house or other asylum at public expense, nor while confined in public prison.

SECTION 14. District election boards shall consist of a judge and two inspectors, who shall be chosen annually by the citizens. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk. The first election board for any new district shall be selected, and vacancies in election boards shall be filled as shall be provided by law. Election officers shall be privileged from arrest upon days of election, and while engaged in making up and transmitting returns, except upon warrant of a court of record or judge thereof, for an election fraud, for felony, or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service.

SECTION 15. No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held any office, appointment or employment in or under the government of the United States or of this State, or of any city or county, or of any municipal board, commission or trust in any city, save only justices of the peace and aldermen, notaries public and persons in the militia service of the State; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices below the grade of city or county offices, as shall be designated by general law.

SECTION 16. The courts of common pleas of the several counties of the Com-

monwealth shall have power, within their respective jurisdictions, to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required, such appointments to be made for any district in a city or county upon petition of five citizens, lawful voters of such election division, setting forth that such appointment is a reasonable precaution to secure the purity and fairness of elections; overseers shall be two in number for an election district, shall be residents therein, and shall be persons qualified to serve upon election boards, and in each case members of different political parties; whenever the members of an election board shall differ in opinion, a majority of said board and said overseers, acting together, shall decide the question of difference; in appointing overseers of election, all the law judges of the proper court (able to act at the time) shall concur in the appointment made.

SECTION 17. The trial and determination of contested elections of electors of President and Vice President, members of the General Assembly and of all public officers, whether State, judicial, municipal or local, shall be by the courts of law, or by one or more of the law judges thereof; the General Assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall apply to any contest arising out of an election held before its passage.

Mr. M'MURRAY. I move to go into committee of the whole for the purpose of amending section two, in the third line, by inserting after the words "two-thirds" the words "of all the members," so that the section will read as follows:

"The general election shall be held annually on the Tuesday next following the first Monday in November; but the Legislature may by law fix a different day, two-thirds of the members of each House consenting thereto."

I desire to state the reason why I offer this amendment. It is provided in another place that before a bill shall become law it shall be voted for by a majority of all the members elected to each House. Now, this is a very important matter, the changing of the time of holding the general election. It might happen that at some time when quite a num-

ber of members of each House were absent a bill to change the day of the general election might go through under the provisions of that other section and still receive a majority of two-thirds of all the members present. This amendment is designed to remove that difficulty.

The PRESIDENT. The question is on the motion of the delegate from Jefferson.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Calvin in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on suffrage and election with directions to insert, in the third line of the second section, the words "of all the members." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Calvin) reported that the committee of the whole had inserted the amendment referred to them.

Mr. HANNA. I move that the Convention resolve itself into committee of the whole for the purpose of amending section three, by adding at the end thereof the following words, "but in Philadelphia said election shall be held on the first Tuesday of May."

Mr. President, this section as reported provides that all elections for city officers shall be held on the third Tuesday of February. Now, I submit that that will not be satisfactory to the people of this city. A few years ago we had a municipal election in this city in the month of May. I believe that was to the entire satisfaction of the people of this city. It was a special election for municipal officers. But for some reason or other—I do not know that the people required the change—that election was dispensed with, and all officers of the city were required to be elected at the general election in October. Now it is proposed that they shall be elected at a special election in February, and I think that will meet with universal dissatisfaction.

One very great objection to it is on account of the inclement season of the year. Why, sir, I can hardly conceive of a more disagreeable, stormy, inclement time of the year in which to hold an election. I suppose that an election should be fixed for a day that will meet with general approval, that will suit the general convenience of the people, and will induce them

to come out to the polls and vote, thus expressing their opinion at the ballot-box; and yet here we propose to select a day which will deter thousands and tens of thousands of people, in case it should be a stormy one, from doing their duty as citizens in this respect.

I should be in favor of holding a special election for municipal officers. I think in principle it is a good thing, so that the selection of those officers shall not be confounded with other issues which arise in national and State elections; but at the same time let us give the people a day which will suit their convenience and meet their approval and satisfaction.

Why, sir, let me call the attention of the Convention to the fact that we have by this article divided the city into election divisions containing not over two hundred and fifty voters. At each election division therefore we will have five or six election officers. They must be there from the opening of the polls until the closing thereof. No matter how disagreeable, how cold, how wet or stormy the day may be, those men must be in attendance to perform their duties. Now, sir, a great many of those election places are uncomfortably located. They are not comfortably located. They are not such as add to the comfort of the election officers. Some are held in places even at the general election where, although it may be a stormy day in October, no fire is provided for their comfort. I have known an election to be held in some divisions of the city in stables, in carpenter shops, in paint shops, where there are no comforts or conveniences for the election officers. Where the polls are held at public houses there may be some comfort for the election officers; but in other places, where there are none such, it will add greatly to the discomfort and inconvenience of these officers.

But, sir, I consider in the first place the comfort of the people. I think we should provide means whereby they will be induced to come to the polls. At the election in October, 1872, there were polled in the city of Philadelphia 116,000 or 117,000 votes. That election was held in the month of October. If you now provide that the election shall be in February, the worst season of the year, we shall not poll probably more than sixty or seventy per cent. of that vote. I therefore hope that we in Philadelphia shall be allowed a different day from that fixed for the remainder of the State.

An objection may be made that we are making an exception. Why, sir, we have been making exceptions all along. I am opposed on principle to these special provisions in the Constitution, because I believe it is within the power and province of the Legislature to fix, not only an election day to suit the different people of different localities in the State, but to provide for a hundred other things upon which we have chosen to legislate ourselves.

Here is a matter that goes home to one locality directly, and I do assure this Convention that the mass of the people of Philadelphia, while they may be willing to hold a special election for municipal officers, will yet never consent that that day shall be fixed in the month of February. Therefore, I hope that the Convention will give us a season of the year when we will probably have a beautiful day and mild weather, when it will enable the aged, the invalid and the infirm of our voting population to go to the polls and deposit their ballots, and in all respects meet the comforts of our citizens.

MR. CORSON. I am in favor of this amendment, and I trust that the vote upon it will secure to the Convention a change in the election day for the entire State. The month of February does not suit our people. I know that the sentiment of the Convention is that the elections shall be kept separate, and that a different day shall be selected for the election of State officers from that which is selected for the holding of municipal elections. The month of February is in the middle of winter. The month of May is a month in which every man can turn out. The old man ought not to be deprived of his right to vote by fixing the election day in such an inclement season of the year that it will be dangerous to his life to go to the polls. The sick or afflicted man ought not to be deprived of his vote by fixing it at such a season of the year that he cannot go out without peril to his life. If there is any reason in the world that any man can give why we should take the most inclement season in the year, and select that as the time upon which the free people of Pennsylvania shall go to the polls to cast their votes, I would like to hear it. If any man can stand up here and give a reason for it I will submit; but unless that is done, I trust that this amendment will be adopted and that then the word "May" shall be substituted in the article for "February,"

so as to make that date uniform throughout the State.

Why, sir, in the country, where elections are held in country school houses, where there is scarcely accommodation for the election boards, there is no room to cut your ticket or arrange your ballot. There is no accommodation for the men to gather there in the day time and deposit their votes. What will they do in the month of February but suffer from the storms and the colds?

Another thing that I beg this Convention to bear in mind, that there is now a law by which, practically, the public houses are closed on election day. The tavern keepers have retaliated by closing their doors entirely, and they will not admit the people within their walls that they may have comfortable quarters, but the people are driven out into the cold because the tavern keepers think that by this means they can compel the people to repeal that salutary law which forbids the sale of intoxicating liquor on election day. Let us overcome that difficulty by fixing the election day in the month of May, so that a man can sit down in the open field, if needs be, and write out his ticket and make the most careful selection of candidates. I trust that this Convention will now adopt this amendment, and that after February is stricken out and May inserted that then it will be applied to the whole State.

MR. GIBSON. I rise to a question of order. These two sections, numbered two and three, passed this House on third reading, and are therefore now part of the Constitution.

THE PRESIDENT. The Chair does not understand that point of order.

MR. GIBSON. These two sections have already been adopted in committee of the whole, on second reading, and have been read a third time and adopted.

MR. MACCONNELL. I think that they were afterward reconsidered.

MR. EWING. The gentleman from York is correct in his statement; but these two sections were, by a special vote, reconsidered and sent to the Committee on Revision.

MR. DALLAS. There certainly is a great deal of weight in what the gentleman from Montgomery has said as to the inclemency of the weather in the month of February being an objection to fixing the election day during that month. But, sir, to go into that subject would be to open a

discussion which occupied this Convention, at an earlier stage of its proceedings, for several days; and I do not think that it can be re-opened profitably or with advantage. That discussion has nothing to do, however, with the merits of the special amendment offered by my colleague from Philadelphia, (Mr. Hanna,) which proposes not that the day for holding municipal elections shall be changed throughout the State, but that an exception shall be made in favor of the city of Philadelphia. If the argument of the gentleman from Montgomery is sound—and I do not say it is not—it is less forcible in its application to Philadelphia than to any other part of the State; for, in this city we have provided that for every two hundred and fifty voters there shall be a place to vote; our city is paved, and whatever may be the occasional exception, the rule is that the places of voting are comfortable.

But the objection to this amendment which I desire to make is this, that it proposes to fix for the city of Philadelphia, by a special amendment, a different day for holding its municipal election than that which we have fixed for the rest of the Commonwealth.

That should not be done for two reasons.

First, because it is an exception of local application only, which in itself is to many minds of very great weight; and,

Secondly, because the purpose of this section is reform in elections, and one of its objects is to fix these municipal elections, not only separate from general elections, but to provide a uniform day throughout the State for holding them from one extreme to the other, in order to prevent colonization. In other words, to give to each section of the State, and to each voter of each section, enough to do to attend to their affairs at home upon election day, and so prevent their migrating to different parts of the State to assist at the election of other people. If the day is different here from what it is elsewhere, you may have the voters of Philadelphia aiding you at your municipal elections, and *vice versa*.

Mr. BUCKALEW. I would appeal to the gentleman from Philadelphia to withdraw his amendment for the present, as the question of the day of election throughout the State will of course be passed upon by the Convention. There are amendments upon that subject which will be offered, and I intend to offer one

myself. If the day fixed for elections throughout the State shall continue as at present the gentleman can renew his amendment hereafter.

Mr. HANNA. I withdraw my amendment for the present.

Mr. BUCKALEW. To raise a question which is one of great interest to the people throughout the State and about which I have heard more probably at home than about anything else—I mean the time when this spring election shall be held—I now move to go into committee of the whole in order to amend the third section of this article by striking out the words, “the third Tuesday in February,” in the second line, and inserting “the third Friday in March;” and at the end of the section adding the following words: “In counties where a different day is now fixed by law the Legislature may authorize the same to be held on the third Tuesday of February.”

Mr. President, this date, the third Friday in March, is well established in this State. I do not know how far back it runs, but it is a day that has been accepted in all parts of the State as a proper and convenient time, except in those counties where the lumber interests are located, in the north and the northwest, where an exceptional day under particular legislation has been created for those counties. No longer ago than two years since, when the Legislature rescinded their action fixing these local elections at the time of the general election, they again endorsed this day, the third Friday in March, as a time of the year when the severity of the winter is broken, a time of the year when people have their ideas awake as to what is to be done by their officers during the year. About that time, in towns and townships, they are considering the question of the local improvements they are to make during the year, whereas if you take an earlier day in the winter, when many of the questions of local government are not being considered at all, the people are not likely to select their officers with due judgment and discretion. If there is no strong possibility of gain by changing it, I want to conform to the practice and views of the people, and to what has been established by law in the State. This existing law I do not propose to change; but as there is particular objection from the people of certain counties in the north and northwest, and as at the instance of the gentlemen from those districts, the time of

holding the spring election was by the Convention fixed in February, I propose to provide now that their convenience may be consulted, so that they may still hold their elections in February if they desire.

I do not see any great necessity for holding the elections throughout the State on exactly the same day. I see no necessity for making our elections uniform on that subject. What is material, and the only thing that is material, is to separate.

Mr. LILLY. This matter was discussed very fully in this Convention several times. All the amendments that have been moved here this morning were successively passed upon and voted down, and I see no reason why the time of the Convention should be further delayed by bringing them up for the fourth time. For my part I do not care anything about any particular day on which the municipal and county elections shall be held. What I do care about is that we shall not again repeat here this morning what has already been repeated three different times. These amendments were offered in committee of the whole and were voted down. They came up on second reading and were again rejected. They were considered upon third reading, and the Convention refused to agree to them, and the sections to which these amendments have been proposed were finally adopted by the Convention. That remained the state of the case for months without objection from any member of this body. Then for the convenience of the Committee on Revision and Adjustment, and for their convenience only, not for the purpose of altering anything at all in these sections, the vote by which the Convention had adopted them after third reading was reconsidered—although we had no business to reconsider it, as months had expired—and these two sections were referred to the Committee on Revision and Adjustment.

Now, this whole question is brought up this morning on the various amendments that have been submitted, and I do insist after all the action that has taken place upon this subject, we had better leave the article just as it is. These sections are objectionable to nobody.

Mr. AINEY. The gentleman is mistaken; they are objectionable.

Mr. LILLY. I have heard objection from one member.

Mr. AINEY. I have heard of no single county that is in favor of this proposition. In my own county, Lehigh, our newspapers have published articles against it, and the people object to it decidedly. When this question first came before the Convention, I voted for the report of the Committee on Suffrage, Election and Representation; I voted for holding the municipal elections in the month of February without thinking that that was the most inclement period of the year. Upon subsequent reflection, I have concluded that that vote was wrong, and I hope that the Convention will this morning change it.

Mr. BEEBE. After mature deliberation and debate, this question was settled in Convention by requiring that municipal elections should be held upon the third Tuesday of February for the simple reason that the paramount idea in the mind of the Convention was to secure a uniformity of elections. This was strongly contended for by delegates from Philadelphia upon the ground that it prevented colonization, not only in Philadelphia, but in other densely populated districts of the State. In order to have this uniformity, it was apparent to the Convention that it was absolutely necessary to fix the period of holding the municipal elections at the time stated in the section now before us, because nearly one-fourth the area of the entire State of Pennsylvania, is engaged in lumbering and rafting timber, and running it down the streams to market. The third Friday of March, which otherwise seems to be a popular day, utterly precluded the possibility of consulting the convenience of the people in determining upon that day for all the municipal elections of the Commonwealth, because at that season of the year the lumbermen and raftsmen are never at home. It was to accommodate great industrial localities of this community that the third Tuesday in February was selected.

I am not very particular about having the elections all upon the same day; but if the Convention shall so decide, and if we are to have a uniform day, I have no objection to interpose. I do say that there is no part of the population of this State that cannot attend an election on the third Tuesday of February, whereas on the third Friday of March it is impossible for a large portion of the voters of the lumber districts of the State to be at all represented at the polls.

If the Convention shall conclude that a uniform day is not necessary, I see no reason why we should not have such a general amendment as shall leave the matter to the Legislature to fix for the convenience of population or locality. If, however, we are to have a uniform day throughout the State, then, notwithstanding all the arguments of our friends from Philadelphia, February would be the proper time. The gentleman from Philadelphia (Mr. Hanna) talks of the privation and suffering of the voters of Philadelphia from the inclemency of the weather during the month of February, where in that city every two hundred and fifty voters are constituted a district and they have to go necessarily but a few squares to reach the polls. We have in the country, sir, bad roads, and men live far away from the voting places. Often a voter goes several miles to a school house in order to vote. He takes his dinner with him, and puts up with all these privations because he wants the election held at that season of the year when he can have time to attend it. I take it that my friend from Montgomery, (Mr. Corson,) if he would consult the rural districts of his county, would find that their people would not desire to have their spring election right in the midst of their spring work, their planting and their seeding; and that they would very much prefer to submit to all the inclemency suggested by him for the advantage of having their elections in the month of February.

Again, in our portion of the State at least, the weather is quite as inclement in March as it is in February, and the roads almost impassable, for the simple reason that in February the roads are frozen and travel is good and we have fair winter weather; whereas in the last of March the roads are all broken up, almost impassable, and we are likely then to have heavy rains.

Mr. HANNA. I should like to ask my friend from Venango a question, whether or not during the season of the year that he refers to the voters in the rural sections or lumber sections have anything else to do but to go to the election. But in Philadelphia we are busy all the time.

Mr. BEEBE. Certainly they are busy, but not with work requiring immediately to be done.

Mr. DALLAS. Mr. President—

The PRESIDENT. The delegate has spoken once.

Mr. DALLAS. Not on this amendment.

The PRESIDENT. The delegate will proceed.

Mr. DALLAS. I am opposed to the amendment of the gentleman from Columbia for precisely the same reason that I stated in objecting to the amendment of the gentleman from Philadelphia; that is, that it makes it possible to fix different days in different sections for holding the municipal election; and I rise now to call the attention of the Convention to the several different occasions at which it has passed upon this question and determined upon uniformity throughout the State.

In the section now under consideration, after long debate, a uniform day was fixed, to wit: the third Tuesday of February; in the seventh section of this same article we have provided that "all laws regulating elections by the citizens or for the registration of electors shall be uniform throughout the State," and in the article on legislation we have provided that "there shall be no special legislation for the opening or conducting of elections or fixing or changing the places of voting." Thus it will be seen, we have, in three several places recorded it as our judgment that all election laws should be of uniform application; and now, at this late day, we are asked to reverse all that we have heretofore done upon the subject. I hope we will not do so.

Mr. DARLINGTON. Mr. President: When this question was up before, in the early part of our sessions, I was opposed to the change from March to February; but we made it, and so far as our farming population have said anything to me about it it has been, "We are content; it suits us better; in March we are all preparing to go to work; if the weather is fair we want to be in the field; February is a leisure time; let it be then." February was fixed with regard to some of the counties because they were engaged in lumbering, and it suited them better. I suppose now this suits the average community better than any other time. I am inclined to think so. If Philadelphia shall be entitled to a different day by reason of her peculiarities, I have no objection to it; but I apprehend as to the entire country February will suit.

The PRESIDENT. The question is on the motion of the delegate from Columbia.

Mr. BUCKALEW. I ask for the yeas and nays.

Mr. HANNA. I second the call.

The PRESIDENT. The Clerk will call the roll.

Mr. EWING. I wish to say a word on this amendment before the yeas and nays are taken. When this matter was in committee of the whole—

The PRESIDENT. The Chair has ordered the yeas and nays to be taken.

Mr. EWING. I did not so understand.

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

YEAS.

Messrs. Ainey, Alricks, Baily, (Perry,) Bannan, Boyd, Buckalew, Calvin, Carey, Church, Cochran, Corson, Curtin Davis, Hanna, M'Culloch, M'Michael, Mitchell, Newlin Patterson, D. W., Purman, Purviance, John N., Reynolds, Runk, Smith, Henry W., Stanton, White, David N., Woodward and Wright—23.

NAYS.

Messrs. Baer, Baker, Bardsley, Beebe, Biddle, Black, Charles A., Bowman, Broadhead, Broomall, Carter, Clark, Corbett, Cronmiller, Curry, Dallas, Darlington, De France, Dodd, Dunning, Edwards, Ewing, Gibson, Gilpin, Green, Guthrie, Hall, Hay, Hazzard, Hemphill, Heverin, Horton, Howard, Hunsicker, Lamberton, Landis, Lilly, MacConnell, MacVeagh, M'CLean, M'Murray, Mann, Minor, Mott, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Russell, Struthers, Turrell, Van Reed, White, J. W. F., Worrell and Walker, *President*—60.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Bartholomew, Bigler, Black, J. S., Brown, Bullitt, Campbell, Cassidy, Collins, Craig, Cuyler, Elliott, Ellis, Fell, Finney, Fulton, Funck, Harvey, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, Mantor, Metzger, Niles, Palmer, H. W., Ross, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple, Whetherill, J. M., Wetherill, Jno. Price, Wherry and White, Harry—45.

Mr. D. W. PATTERSON. I move that the Convention resolve itself into committee of the whole to make the following amendment, to be added to section three :

"But the select and common council of every city now existing and hereafter es-

tablished having a population of thirty thousand or more, shall have the power of changing, altering and fixing the time or times for holding the municipal elections; but such change or changes shall only be made by a vote of two-thirds of each council, and such vote shall be taken by yeas and nays and entered on its journal."

["No!" "No!"]

Gentlemen may vote "no" when the time comes. [Laughter.]

I want to say here that Lancaster city, which I have the honor in part to represent, holds its election at the general election in October. So does Philadelphia; so do other cities. By so doing they save a very large taxation to the city. A municipal election costs in this city some \$52,000 when it is held separately from the general election. If it is held on the general election day the costs are reduced to less than one-fourth of that amount. On some occasions a municipal election held in this city has cost over \$100,000. In the city of Lancaster it greatly increases our expenses and taxation, and we have built water works and other public improvements there by which we are necessitated to be under a very heavy city debt and pay large taxation.

Mr. President, we and other cities should be relieved from this heavy expense. We should accede this to every city, since by this Constitution we have made cities separate and distinct governments—municipalities to be regulated by the vote and voice of the people. Why should we not, when we even give them the power to prohibit the Legislature, the people's tribunal, from interfering with their municipality by putting a railroad through their city without the consent of the city authorities? Why should we not submit this to the citizens themselves when they elect their officers, their councils and those who make their laws? If the action of their councils does not please the people they can turn them out of office. Why should we not permit these governments, so large and necessarily under so heavy expense, to fix their municipal election as proposed by that amendment, by which they can save a very large expense, and hence a very large and heavy taxation?

I know why it is opposed by some gentlemen in this House. I have heard them say why it is opposed. It is not to save taxation; it is not to give the people, whom they profess to have confidence in

in these municipalities, the privilege of ruling themselves; but it is denying that privilege and curtailing the powers of the people themselves. If the Convention refuse to adopt the proposed amendment it denies the right of self-government to such cities and is an insult to the people of such municipalities.

Now, I have applied this amendment to every city containing thirty thousand population. Members are afraid that if it is changed there might be colonization of voters into these cities. It is a very strange thing if, under the strict election and registration laws we have, that could happen. We have heard no complaint of that kind except from one city, and that comes from those gentlemen who in part represent that city and who now oppose this amendment and insist on compelling their own constituents to endure the heavy cost of holding distinct municipal elections—the heavy cost of near one hundred thousand dollars for every such election. Do gentlemen call this reform? Now, Mr. President, is it not self-evident that if we allow the people to rule their cities, to control their taxation, we should allow them in this particular to fix their municipal elections at such time or times as they find most convenient for themselves and at such time or times as will relieve them in a great measure from very heavy taxation.

The gentleman from the city on my left, (Mr. Dallas,) who opposes this amendment, has said nothing about the heavy taxation which his doctrine will impose upon his constituents. He is all the time complaining of the heavy city debt and the heavy city taxation, and he opposes this proposition in the face of the fact that a municipal election in the city of Philadelphia, held separate and alone from the general election, will cost that city not less than \$52,000 at any time, and it has cost as much as \$100,000.

Mr. HANNA. \$100,000.

Mr. D. W. PATTERSON. I have said it was \$100,000 for several elections, though it is never less than some \$52,000, I am told, and the published reports of your controller will confirm that allegation.

In the city of Lancaster we are satisfied with the present system. I have heard no objection from any man or any party to it; and in other cities I find that they found it after long trial in a different direction, beneficial to all to hold the municipal election at the time the general election is held. I hope, therefore, this

amendment will be adopted, and that cities containing thirty thousand inhabitants and over, at least, will be permitted to make their own laws on this subject.

Mr. H. G. SMITH. I think my colleague is mistaken in this matter, with all due respect to him. I assert that the holding of our municipal elections in Lancaster city on the same day with the general elections has resulted in evil, and in evil only. To such an extent has it gone that this day in the city of Lancaster and for weeks and months past Republican and Democratic newspapers have united in demanding some kind of independent action which shall take the election of their councilmen out of the hands of those into whose power it has fallen. The board of trade of the city some weeks ago made a move, which was approved by one of the Republican daily journals of that city, to nominate a municipal ticket irrespective of political parties.

Mr. D. W. PATTERSON. Not for a change of the day of election though.

Mr. H. G. SMITH. The result has come from that cause, because the people at a general election are unable to take that care in the selection of municipal officers that they ought to take. The municipal contest is mixed up with the general contest, and the tickets are voted as a whole without that discrimination and care which the people should exercise in such cases. The Legislature tried a change two or three years ago; the change was made over the whole State; and it worked such ills that a speedy return was made to the old system of separating the local election from the general elections. This clause in the Constitution as it now stands was adopted I believe by a large vote. I am sure it is wise, and I hope it will be retained. The expense in this matter is one which the people will not care to consider if by the change they are enabled to secure that discrimination in the election of their local and municipal officers which they ought to exercise.

The PRESIDENT. The question is on the motion of the delegate from Lancaster (Mr. D. W. Patterson.)

Mr. D. W. PATTERSON. On that question I call for the yeas and nays.

Mr. H. G. SMITH. I second the call.

The question being taken by yeas and nays, resulted as follows:

Y E A S.

Messrs. Addicks, Ainey, Bailly, (Perry,) Bardsley, Carey, Cochran, Corson, Hanna,

MacVeagh, M'Michael, Mann, Patterson, D. W., Smith, Henry W. and Stanton—14.

N A Y S.

Messrs. Alricks, Baer, Baker, Bannan, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Buckalew, Calvin, Carter, Church, Clark, Corbett, Curry, Dallas, Darlington, Davis, De France, Dodd, Dunning, Edwards, Elliott, Ewing, Gibson, Gilpin, Green, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Lamberton, Landis, Lilly, MacConnell, M'Clean, M'Culloch, M'Murray, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Porter, Furman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Runk, Russell, Smith, H. G., Turrell, Van Reed, Wetherill, J. M., White, David N., Woodward, Worrell, Wright and Walker, *President*—70.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Bartholomew, Bigler, Black, J. S., Brown, Bullitt, Campbell, Cassidy, Collins, Craig, Cronmiller, Curtin, Cuyler, Ellis, Fell, Finney, Fulton, Funck, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, Mantor, Metzger, Minor, Newlin, Palmer, H. W., Pughe, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Struthers, Temple, Wetherill, John Price, Wherry, White, Harry and White, J. W. F.—49.

Mr. DARLINGTON. I move to go into committee of the whole for the purpose of amending the first section in the thirteenth line by striking out the words "two years" and inserting "one year."

Mr. President, the Convention have by a very decided vote upon a former occasion decided to retain the tax qualification for the voter. This is precisely as it has been since the foundation of the government; and the change I propose to make is to reduce the time, to make the elector pay a tax every year instead of once in two years. That might have been very wise in the foundation of the government, when we were just coming out of the revolutionary war, when there was no money and not much property, but it is inapplicable to the present state of circumstances. There is no difficulty in every voter of the Commonwealth paying his proper share of the burdens of the Commonwealth every year. If the assessed value of his occupation, and there

be nothing else, should be but one hundred dollars or two hundred dollars, and the tax should be but six cents or twelve cents, he ought to esteem it a privilege to pay his share, and before he exercises the right of suffrage, ought to be compelled to pay it. Therefore I propose to compel every voter, when he exercises the right of suffrage, to place himself upon the record as having within one year paid a State or county tax which shall have been assessed at least two months and paid at least one month before the election. I hope the amendment will be agreed to. I ask for the yeas and nays upon it.

Mr. EWING. I second the call.

The question being taken by yeas and nays resulted as follows:

Y E A S.

Messrs. Bardley, Boyd, Brodhead, Broomall, Curtin, Darlington, De France, Edwards, Ewing, Gilpin, Guthrie, Hanna, M'Michael, M'Murray, Patterson, D. W., Smith, Henry W., White, David N., and White, J. W. F.—18.

N A Y S.

Messrs. Ainey, Alricks, Baer, Baily, (Perry,) Baker, Bannan, Beebe, Biddle, Bowman, Buckalew, Calvin, Church, Clark, Cochran, Corbett, Corson, Cronmiller, Curry, Dallas, Davis, Dunning, Elliott, Gibson, Green, Hall, Harvey, Hay, Hazzard, Hemphill, Horton, Hunsicker, Lamberton, Landis, Lilly, MacConnell, MacVeagh, M'Clean, M'Culloch, Mann, Minor, Mitchell, Mott, Newlin, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Furman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Runk, Russell, Smith, H. G., Stanton, Struthers, Turrell, Van Reed, Woodward, Worrell, Wright and Walker, *President*—66.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Bartholomew, Bigler, Black, Charles A., Black, J. S., Brown, Bullitt, Campbell, Carey, Carter, Cassidy, Collins, Craig, Cuyler, Dodd, Ellis, Fell, Finney, Fulton, Funck, Heverin, Howard, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, Mantor, Metzger, Palmer, H. W., Porter, Pughe, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wetherill, John Price, Wherry and White, Harry—49.

Mr. CORSON. I ask unanimous consent to make a verbal amendment in the first line by striking out the word "male." [Laughter.]

Mr. TURRELL. I move that the Convention go into committee of the whole for the purpose of amending in the first line, by striking out the word "person" and inserting the word "citizen." The word "citizen" is manifestly the proper one.

Mr. BUCKALEW. That is certainly right. We can do that by unanimous consent.

The PRESIDENT. Shall unanimous consent be given to the amendment suggested by the delegate from Susquehanna (Mr. Turrell?)

Unanimous consent was given and the amendment made.

Mr. HANNA. I now move that the Convention go into committee of the whole, in order to make the amendment which I offered this morning and withdrew for the present.

Mr. PRESIDENT. The Clerk will state the amendment.

The CLERK stated the amendment as follows:

To add to the end of section three the words, "But in Philadelphia such election shall be held on the first Tuesday of May."

Mr. BEEBE. That has just been voted on.

Mr. MACCONNELL. We have just rejected that proposition.

Mr. HANNA. No. I call for the yeas and nays upon the amendment.

Mr. BAER. I rise to a point of order. The same question was determined in the amendment of the gentleman from Philadelphia before.

The PRESIDENT. The yeas and nays are called for, and the Clerk will proceed with the call.

Mr. MACVEAGH. I trust that the gentleman will not call for the yeas and nays on this question. Let us take the question by a division.

The PRESIDENT. The Clerk will call the names of the delegates.

Mr. CORSON. The call was not seconded.

The PRESIDENT. Who seconds the call?

Mr. CORSON. Nobody.

Mr. STANTON. I do.

Mr. MACVEAGH. That is a game that can be carried to any extent, and can be made very annoying.

The PRESIDENT. Go on with the roll. The yeas and nays were taken and were as follow, viz:

YEAS.

Messrs. Bardsley, Carter, Corson, Hanna, Littleton, M'Michael, Newlin, Patterson, D. W., Reynolds, Stanton and Woodward—11.

NAYS.

Messrs. Alricks, Baer, Bailly, (Perry,) Bannan, Beebe, Biddle, Bowman, Brodhead, Broomall, Buckalew, Church, Clark, Corbett, Cronmiller, Curry, Curtin, Dallas, Darlington, De France, Dunning, Edwards, Elliott, Ewing, Finney, Gilpin, Green, Guthrie, Hall, Harvey, Hay, Hazzard, Horton, Howard, Hunsicker, Lamberton, Landis, Lilly, MacConnell, MacVeagh, M'CLean, M'Culloch, M'Murray, Mann, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Purman, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Russell, Smith, H. G., Smith, Henry W., Struthers, Van Reed, White, David N., Worrell, Wright and Walker, *President*—64.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Bigler, Black, Charles A. Black, J. S., Boyd, Brown, Bullitt, Calvin, Campbell, Carey, Cassidy, Cochran, Collins, Craig, Cuyler, Davis, Dodd, Ellis, Fell, Fulton, Funck, Gibson, Hemphill, Heverin, Kaine, Knight, Lawrence, Lear, Long, M'Camant, Mantor, Metzger, Minor, Palmer, H. W., Porter, Pughe, Purviance, Samuel A., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Turrell, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry and White, J. W. F.—58.

Mr. CORSON. In order to put myself right on the record—I do not want to call for the yeas and nays or to consume time—I move to go into committee of the whole in order to strike out the word "February" and insert the word "May," so as to have the spring election held on the third Tuesday of May.

The motion was rejected.

Mr. HANNA. I now move to go into committee of the whole for the purpose of amending section seven by striking out all after the word "State," in the third line.

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

The CLERK read as follows:

"But no elector shall be deprived of the privilege of voting by reason of his name not being registered."

Mr. HANNA. I understand by this section that we, in the Constitution, admit the right of the Legislature to pass laws upon the subject of the registration of voters. If that is so, then in the very last sentence of the same section we have placed in the Constitution an inconsistency which nullifies the preceding portion of the very section. We first say that the Legislature can pass a law requiring the registering of votes in order to obtain a fair and proper election, and in the last sentence we say that although they have the right to pass such a law, yet it is immaterial whether they do so or not. I say that is inconsistent; it is ridiculous to place such a sentence as that in the Constitution. We must not perpetuate anything so preposterous in the Constitution of the State. We say that a man can be required to be registered before he shall vote. We say that in order to have a fair and proper election the Legislature can require the voters to be registered in every city and county of the Commonwealth. Yet, here you say that a man can vote without being registered, notwithstanding such a law is passed. Why pass a law on the subject of registering voters when we ourselves declare in the Constitution that it is immaterial whether a vote is registered or not? This nullifies what we have in view. I believe that everybody will say it is proper to have a list of voters, if it is even only the old-fashioned assessor's list, but shall we say at the same time that a man's name need not be on the list, but that he may go to the polls and vote anyhow, like any other good citizen?

Mr. HUNSICKER. That is just what we have now, in the country, all over the State.

Mr. HANNA. No, sir! You have not. Here we say that such a law can be passed, and yet we say that if we go the Legislature and procure such a law, and a list of registered voters be made, it is to avail nothing, and any man can vote whether his name be on the list or not.

I believe that it is proper for us to amend the section and to stop with the enunciation of the principles contained in the first part of this section, namely, that the Leg-

islature can provide for a registration of voters.

Mr. MACVEAGH. Mr. President: I trust that the amendment will not be adopted precisely in the form the gentleman suggests, because the omission of a name might be by reason of the error or neglect or wilful misconduct of the registering officers. It might be construed to put it entirely in the power of corrupt officers of registry to deprive legal electors of their votes; but on the other hand, as the section now reads, the neglect of the citizen cannot prevent him from voting.

A registration law as the section now stands seems to me to be utterly without force, because if you pay no attention to the registry law, if the law is passed and the elector disregards it wholly, the absence of his name from the registry shall not prevent him from voting, says the section. Now, why not allow the Legislature to put the duty upon the honest elector of seeing that his name is registered, but say that no elector shall be deprived of the privilege of voting by reason of his name not being registered, if such omission shall occur by any error or neglect of such registration?

If you are opposed to registry laws, if you are opposed to obliging the honest elector to register, then you ought to strike out the entire section. I believe in requiring the honest elector to see himself registered and requiring the registry to be published a considerable time before the election, with the residence of the electors upon it; but I do not believe in denying a man the right to vote if the registry officers have combined to keep his name off the list.

Mr. HANNA. If it be in order, I would accept the suggestion.

The PRESIDENT. The motion will be so modified and will be read as modified.

Mr. MACVEAGH. It is to add to the end of the section "if such omission shall occur by any error or neglect of the officers of registration."

Mr. WORRELL. Allow me to ask a question. When and by whom is it to be determined that the omission occurred by the neglect of the registration officers?

Mr. MACVEAGH. By the officers of the election, who would be liable to an action as in other cases.

Mr. HUNSICKER. Mr. President: I am surprised that this question should be sprung upon the Convention again after it has been heretofore so thoroughly discussed; but I rise now simply to say that

if the constitutional qualifications which we have prescribed here can be nullified by the mere omission to have a man's name registered, we might as well strike out all the preceding part of the article and allow the registration officers to decide absolutely who shall vote. And let me say to the gentleman from Philadelphia that to-day there is a registry law in force all over Pennsylvania, and yet everybody knows that outside of Philadelphia a voter may vote who is not registered, and if he possess the constitutional qualifications the election officers do take his vote, and are required to take his vote. It is only by reason of a decision of the Supreme Court affirming the validity of the registry law in Philadelphia, that a citizen here must possess the additional qualification that he passes the board of canvassers. That, as a constitutional qualification, will be inserted in the Constitution if this amendment prevails.

MR. DALLAS. MR. President: I so sincerely deprecate the extension of debate on third reading that I rise with honest hesitation to reply to the arguments which have been made against this section; but it has been denounced as preposterous and useless. If it is preposterous and useless, then I proposed to this Convention a preposterous and useless thing. It is natural that I should desire to show to the body that I did nothing of the kind. It is not preposterous or useless; and that is demonstrated in one word by the illustration of the gentleman from Montgomery. The fact that a registry law exists throughout the entire Commonwealth of Pennsylvania, and that men can vote though not registered, unless they happen to be residents of Philadelphia, shows that there may be a registry law and may be some use for it, though it may not be a compulsory prerequisite to a man's right to vote that his name shall appear upon the registry. It may be very well to have a registry law for the purpose of convenience; but to put it in the hands of three irresponsible canvassers, such as we have in Philadelphia, to determine in each case whether a citizen of this city, otherwise qualified, shall vote or not, is an outrage upon the voters of this city; and it is one of those outrages which this Convention have decided, after very full debate, that they ought to correct.

Now, by this amendment it is proposed that where, by the error or neglect of a canvasser, my name is left from the list, I may still be entitled to vote; but, sir,

that is a suggestion by which you "keep the word of promise to" the "ear and break it to" the "hope."

The Legislature might continue to do in the future as it has done in the past, make the correction of the errors and the negligence, and the worse than either, the frauds of the canvassers, so hard to reach as practically to deprive honest citizens of their votes where they happen not to be of the party of the majority of the canvassers. That is the evil which this section is proposed to remedy, and still to leave it possible to have a registry law for purposes of convenience, for purposes of good, but to make it impossible, for purposes of evil.

It is vain, sir, to tell us that we shall be entitled to vote though not registered, in case the error or omission be the fault of the canvassers, if we are still to be told, as we have heretofore been told by the courts, that those canvassers are judicial officers whose decisions upon our highest and dearest rights we cannot review in the ordinary tribunals. Sir, this section means but one thing, to put upon us in Philadelphia exactly what you have throughout the rest of the State, neither more nor less. More we do not ask; less you should not give us.

MR. EWING. MR. President: I feel a little like doing that which has not been done in this Convention heretofore, make a speech for history; nobody has done that, [laughter,] or a speech to go on the record.

SEVERAL DELEGATES. Oh, don't!

MR. EWING. I listened, I think, for about three weeks to a discussion on this article without saying anything myself, and I went away, and about a week afterward the Convention adopted it, and I did not get to make my speech.

I dislike this section, not merely "because it is useless" as it stands, but because I think it is injurious. It provides practically, as I read it, that *you shall have no registry law in the State*. It would have practically the same effect if you were to write in its place "there shall not be any registry law in the State of Pennsylvania."

Now, in the first place, I think there is a mistake in providing that you shall have a uniform registry law throughout the State. There is no necessity for any registry law in the country districts except the assessor's list. In the townships no man can come to the poll to vote, who has a residence and is entitled to vote,

without being known by half the men who vote at that poll. There is no difficulty there. In cities, though, it is different. A man may live for years on a street and not know who lives next door to him. And you do not help the matter when you divide a city up into small districts of two hundred and fifty inhabitants each, as is done in this article. A registry law that will be effective in a city will be useless and oppressive in the country, and there should be a distinction made. I believe that you can make no election law and have no constitutional provision that will insure an honest election unless you have honest elections officers; but further, I undertake to say that if you have honest election officers, you cannot, in a city where there is any attempt to cheat, secure honest elections, unless you have an efficient registry law. I think the experience of all the large cities in this country has shown it—New York, New Orleans, Philadelphia and all the rest.

It is objected by the gentleman from Philadelphia (Mr. Dallas) and the gentleman from Montgomery (Mr. Hunsicker) that you deprive a citizen of a great right when you say he shall not vote because his name is not on the registry list; and they say he should be allowed to vote though not on the registry list, because at the present day, outside of Philadelphia, you have a registry law which does not make the registry conclusive. That is just the reason that we cannot have strict elections in other parts of the State, and why the registry law is not effective anywhere in this State. It is because the registry is not conclusive. I can see no greater injustice in allowing the registry officers to determine that right than there is in allowing the election officers to determine it. The decision of some officers must be conclusive and final at some stage of the case. The provision I should like to see would be one that would provide, if possible, for honest registry officers; then make them close their registry ten, twenty or thirty days before the election, and allow the right of appeal by any citizen who claimed that he should have been registered and that the officers refused to register him, and allow any citizen who thinks that some name is put on the registry that should not be there, to have an appeal for the purpose of striking off that name, or putting it on, as the case may be. Then allow your election officers to pass merely on the identity

of the voters, take in the votes and count them. When you have this, and have honest election officers, you will have honest elections in cities, and not until then.

And this section not only does not provide such security, but it positively prohibits the passage of any efficient law on the subject.

There are some provisions of the article of which I approve.

I intend to vote against this whole article unless it is considerably amended, (and I hardly suppose it will be,) for the reasons given, and because in section four it provides for a numbering of the ballots, which in my judgment will inflict on us all the evils of the endorsed ballot or the *viva voce* vote, without any of the benefits of either. There are a number of other provisions that are of very doubtful character, that would be doubtful legislation. This article seems to have been drafted on the assumption that we knew all the tricks that dishonest men would ever invent for cheating in elections. I do not believe we do. I believe this article will prevent the Legislature of Pennsylvania from passing suitable laws to secure honest elections and independence of the voters.

Mr. CURTIN. Mr. President: I am in favor of this section of this article precisely as it stands, but not because I believe a registry law of any use at all. At best it affords but little protection to the elector, while it may afford opportunities to the persons appointed to make the registry to commit great, glaring and outrageous frauds upon the rights of electors.

Mr. President, we have provided in this article of the Constitution that the elector shall have resided two months in the precinct, township or ward where he proposes to vote; that he shall have paid a tax assessed within two years, and that he shall have paid that tax thirty days before he votes; if he be a naturalized citizen, that he shall have been naturalized thirty days before. All these are duties imposed upon the elector before he exercises this sacred and highly important function of the American citizen. Now, it is proposed, in addition to all this, to empower the Legislature to require a registration of the voters. I trust, notwithstanding I shall vote for the section, that the Legislature never will do it, because after saying that we give the citizen all the rights and privileges he ought to have

and make it his duty to perform certain acts before he shall be entitled to vote, one of which is to see that he pays his dues to the State and another that he has resided within the precinct where he offers to vote two months before the election, then we turn him over to the tender mercies of a registration, and with the man who makes that registration he has no connection. That is to say, after the faithful, true and loyal citizen, regarding this right to vote as a high privilege, has performed all the duties imposed on him, there can come in a third man, appointed by an independent authority, who can deprive him of his right to vote. I accord to no such principle in a democratic form of government. This section as it stands merely gives the Legislature the right to pass a registration law provided that the legislation is general all over the Commonwealth, that men in Philadelphia, and in Allegheny, and in Erie, and in the county in which I live shall all be treated alike. I have not the least idea that the Legislature will ever exercise the power granted by this section, for we have guarded the ballot so thoroughly in the preceding sections of this article that it will be unnecessary.

The argument and the reasoning and the history of my friend from Allegheny (Mr. Ewing) are perfectly correct on his theory, and I agree with him that this section is entirely unnecessary. I would not have a citizen of this Commonwealth, after he has performed all his positive and relative duties to the State to entitle him to the rights and privileges of an elector, placed at the entire mercy of any rogue or scoundrel who may have power to put his name on a registration or leave it off and deprive him of his right of suffrage.

THE PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Hanna.)

The motion was not agreed to.

MR. LITTLETON. I move to go into committee of the whole for the purpose of striking out the entire seventh section.

The motion was not agreed to.

MR. WORRELL. I call for the previous question on the article.

MR. BUCKALEW. I hope the gentleman will permit me to move an amendment from the committee.

MR. WORRELL. I withdraw the call.

MR. H. W. SMITH. I move to go into committee of the whole for the purpose of amending section four, by striking out all after the word "ballot," in the

first line. I do not intend to make a speech, because there has been gabbling enough about this subject, but I want to place myself fairly on the record.

The words proposed to be stricken out were read as follows:

"Every ballot voted shall be numbered in the order in which it shall be received and the number recorded by the election officers on the list of voters opposite the name of the elector who presents the ballot."

MR. NEWLIN. I call for the yeas and nays on this motion of the gentleman from Berks.

MR. BARDSLEY. I second the call.

MR. COCHRAN. I hope the amendment of the gentleman from Berks will prevail and that we shall return to the right of voting by secret ballot by the citizen.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Addicks, Ainey, Baer, Baily, (Perry,) Bardsley, Beebe, Biddle, Bowman, Broomall, Carter, Cochran, Corson, Davis, Elliott, Ewing, Gibson, Hall, Hanna, Horton, Howard, Littleton, Mann, Minor, Newlin, Niles, Patterson, D. W., Porter, Pughe, Purviance, John N., Smith, Henry W., Stanton, Turrell, Van Reed and Walker, *President*—33.

NAYS.

Messrs. Alricks, Armstrong, Baker, Bannan, Boyd, Brodhead, Buckalew, Calvin, Church, Clark, Corbett, Cronmiller, Curry, Curtin, Dallas, Darlington, De France, Dodd, Finney, Gilpin, Guthrie, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Lamberton, Lilly, MacConnell, M'Clellan, M'Culloch, Mitchell, Mott, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Russell, Smith, H. G., Struthers, Wetherill, J. M., White, J. W. F., Woodward, Worrell and Wright—50.

So the motion was not agreed to.

ABSENT. — Messrs. Achenbach, Andrews, Bailey, (Huntingdon,) Barclay, Bartholomew, Bigler, Black, Charles A., Black, J. S., Brown, Bullitt, Campbell, Carey, Cassidy, Collins, Craig, Cuyler, Dunning, Edwards, Ellis, Fell, Fulton, Funck, Green, Heverin, Kaine, Knight, Landis, Lawrence, Lear, Long, MacVeagh, M'Camant, M'Michael, M'Murray, Mantor, Metzger, Palmer, H. W.,

Reynolds, Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, Jno. Price, Wherry, White, David N. and White, Harry—50.

Mr. DAVIS. I move to go into committee of the whole for the purpose of amending section four, by striking out in the fifth line the word "upon," and inserting "on the back of," so as to restore the section to the shape in which it was passed on second reading and to make the sentence read: "Any elector may write his name on the back of his ticket." The proposition is that the elector may write his name upon the ticket for the purpose of identification. If the name is on the back of the ticket, that answers the purpose, but if it be written on the face, it may interfere with the names of the officers to be voted for and give trouble to the election officers.

It may be objected, perhaps, that if a man puts his name upon the back of his ticket, it may be seen and known by those who are present; but that will not follow, because a man can so hold his ticket in his hand as to conceal his name upon it. I think it will lead to confusion to allow the voter to place his name anywhere on the ticket, and therefore I make this motion.

Mr. BUCKALEW. I will state the reason for suggesting this change. It is intended only for exceptional cases, where the voters of a district distrust their own election officers. Then they can by arrangement outside, put their names on their tickets so as to be able to trace their votes and vindicate them if necessary. If any of them happen to write their names on the top of the ticket or anywhere else than on the back, as the section stood, and as it is now proposed to restore it, it would be a pretext to the officers to throw out such tickets. I do not see any reason why the voter should not be allowed to put his name on the top of his ticket, as well as on the back, if he chooses. I think it is best not to have a requirement as to the place. The voter will take care that he does not write his name over that of one of the officers and thus lose his vote for that officer. I am therefore against the amendment.

The PRESIDENT. The question is on the motion of the delegate from Monroe (Mr. Davis.)

The motion was not agreed to.

Mr. BROOMALL. I move to go into committee of the whole for the purpose of striking out all of the second sentence

of section four, in these words: "Every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers on the list of voters opposite the names of the elector who presents the ballot."

The design of preventing frauds is substantially secured in the following sentence of this section allowing the elector to write his name upon his ticket if he chooses. It is the sentence that I move to strike out which destroys the secret ballot. I am unwilling to destroy the secret ballot. I think it would be dangerous to allow large employers and large corporations always to know exactly how their employees vote. When we strike this out, any person who mistrusts the election officers may guard against fraud by writing his name upon his ticket. I am willing to do that, but I desire to preserve the secret ballot. I ask for the yeas and nays on my motion.

Mr. BIDDLE. I concur entirely in that view, and second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Baily, (Perry,) Bardsley, Beebe, Biddle, Bowman, Broomall, Carter, Cochran, Corson, Darlington, Davis, Edwards, Elliott, Ewing, Finney, Gilpin, Hall, Hanna, Horton, Howard, Littleton, MacConnell, Mann, Minor, Newlin, Niles, Patterson, D. W., Porter, Pughe, Purviance, John N., Reynolds, Rooke, Smith, Henry W., Stanton, Struthers, Turrell, Van Reed and Walker, President—40.

NAYS.

Messrs. Armstrong, Baker, Bannan, Boyd, Brodhead, Buckalew, Calvin, Church, Clark, Corbett, Cronmiller, Curry, Curtin, Dallas, De France, Dodd, Gibson, Guthrie, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Lamberton, Lilly, M'Clean, M'Culloch, Mitchell, Mott, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Russell, Smith, H. G., Wetherill, J. M., White, J. W. F., Woodward, Worrell and Wright—45.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks Andrews, Baer, Bailey, (Huntingdon,) Barclay, Bartholomew, Bigler, Black, Charles A., Black, J. S., Brown, Bullitt,

Campbell, Carey, Cassidy, Collins, Craig, Cuyler, Dunning, Ellis, Fell, Fulton, Funck, Green, Heverin, Kaine, Knight, Landis, Lawrence, Lear, Long, MacVeagh, M'Camant, M'Michael, M'Murray, Mantor, Metzger, Palmer, H. W., Ross, Sharpe, Simpson, Smith, William H., Stewart, Temple, Wetherill, John Price, Wherry, White, David N. and White, Harry—48.

Mr. STRUTHERS. I move to go into committee of the whole for the purpose of amending the fifteenth section by striking out all after the word "citizen," in the second line, to and including the word "inspector," in the third line. The words to be stricken out are: "Each elector shall have the right to vote for the judge and one inspector." This proceeds on a false theory. It is the entering wedge to the introduction of the obnoxious principle of limiting the right of suffrage. I have heretofore expressed my views on it, and will not occupy time now.

The PRESIDENT. The question is on the motion of the delegate from Warren.

The motion was not agreed to.

Mr. STRUTHERS. I move to go into committee of the whole for the purpose of striking out in section sixteen, lines ten and eleven, all after the word "boards," the words, "being in each case members of different political parties." On that question I desire to say just one word. This is directly establishing in the Constitution the necessity of parties and making it a constitutional duty to support and maintain in the Commonwealth at least two political parties. I object to that.

The motion was not agreed to.

Mr. AINEY. I move to go into committee of the whole for the purpose of striking out section thirteen. In the impatient condition in which the Convention now are, I will not detain them more than a single moment.

If the members will glance at this section they will find that it provides for three different classes of persons who are to be affected by it. The first is those who are in the military service of the State or the United States. That is unnecessary, wholly, because section six of the same article provides that whenever any qualified electors of the Commonwealth are in military service, they shall have the right to vote under such regulations as shall be provided by the Legislature. The next is that any voter who is engaged in the navigation of the waters of

the State or the United States, or of the high seas, shall not gain or lose a residence for the purpose of voting. That is simply absurd. No person can possibly gain or lose a residence on the high seas, nor while engaged in the navigation of the waters; unless it means that a person engaged in navigating a canal, for instance, in the interior of the State, say the Schuylkill canal, if at present a resident of Norristown and in the pursuit of his occupation should desire to change his residence to Reading, will by this constitutional provision be prevented from doing so. ["No."] If it does not mean that it does not mean anything.

The only other class that is singled out are students studying at an institution of learning. This singles out students in an institution of learning and proscribes them. I desire, also, to remark with reference to persons employed in the navigation of the waters that persons engaged in the commerce which is carried on upon the railroads, more important to us now in this State than the canals, are left untouched by this section; and if this is adopted it is an inference that the rules of law which would apply to persons engaged in the navigation of a canal, or in commercial transportation on the canals, do not apply to persons engaged in commercial transportation upon railroads.

It singles out students at institutions of learning. Students at law, medical students, dental students, students of music, all of these in the office of their preceptors, are not included in this section. Why this distinction? It is special legislation in the most objectionable and obnoxious form.

I said there were three classes covered by it, but there are four. The fourth applies to persons in the alms houses. I suppose the intention of that is to prevent any person from voting who is confined in an alms house. I think this is wholly unnecessary, as well as every other portion of it, for the first section of this article imposes a tax qualification. It says that no person shall vote unless he has paid a tax; and section eight prevents any person from paying any money to an elector or for an elector, or giving him any other valuable thing; so that a person confined in an alms house could not vote if he wished to, for he is not able to pay his tax, and no person is allowed by this article to pay it for him.

Therefore the section is wholly unnecessary. Our Constitution is already loaded

down with unnecessary provisions, I think, and if we can get rid of one, we have done so much of the work. This is special legislation in an obnoxious form, in my judgment, and ought to be stricken out. It is borrowed from the rejected Constitution of New York, which was voted down by the people, and this was one of the sections they objected to. I hope this will be stricken out.

The PRESIDENT. The question is on the motion of the delegate from Lehigh.

The motion was not agreed to.

Mr. BUCKALEW. I propose that the Convention go into committee of the whole in order to amend the sixteenth section by restoring the language stricken out in committee of the whole in the twelfth line, by striking out the words "a majority of said board and said overseers acting together," and inserting "the overseers if they shall be agreed thereon." The member who offered the amendment making this change, I believe, is satisfied that it operates differently from what was intended, and therefore I shall say nothing about the proposition.

As the section now stands, a majority of the elected board and the two overseers would just tie each other, which would be an absurd result. By the amendment I propose, and as the committee had the section originally, when the election boards differ and the overseers agree, the decision of the overseers governs.

The question being put, a division was called for and the ayes were thirty-nine.

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

Mr. D. W. PATTERSON. I second the call.

The PRESIDENT. The Clerk will call the names of delegates.

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

YEAS.

Messrs. Alricks, Armstrong, Baer, Bailly, (Perry,) Bannan, Bowman, Brodhead, Buckalew, Calvin, Cassidy, Church, Clark, Corson, Cronmiller, Curtin, Dallas, De France, Edwards, Elliott, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Lamber-ton, Landis, Lilly, M'Culloch, Mann, Mitchell, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Porter, Pughe, Purman, Read, John R., Reed, Andrew, Sharpe, Smith, H. G., Smith, Henry W.,

Van Reed, Wetherill, J. M., Worrell and Wright—50.

NAYS.

Messrs. Baker, Bardsley, Beebe, Broomall, Davis, Finney, Hanna, Howard, Littleton, MacConnell, M'Clean, Minor, Patterson, D. W., Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Runk, Russell, Stanton, Struthers, Turrell, White, J. W. F. and Walker, *President*—24.

ABSENT—Messrs. Achenbach, Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Barclay, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brown, Bullitt, Campbell, Carey, Carter, Cochran, Collins, Corbett, Craig, Curry, Cuyler, Darlington, Dodd, Dunning, Ellis, Ewing, Fell, Fulton, Funck, Green, Heverin, Horton, Kaine, Knight, Lawrence, Lear, Long, MacVeagh, M'Camant, M'Michael, M'Murray, Mantor, Metzger, Mott, Newlin, Palmer, H. W., Patton, Ross, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, John Price, Wherry, White, David N., White, Harry and Woodward—59.

So the motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Carter in the chair.

The CHAIRMAN. The committee of the whole have had referred to them section sixteen, with instructions to strike out in the twelfth and thirteenth lines the words, "a majority of said board and said overseers acting together" and to insert "the overseers, if they shall be agreed thereon." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Carter) reported that the committee of the whole had made the amendment referred to them.

Mr. CALVIN. I move to go into committee of the whole for the purpose of amending section four by adding thereto the following:

"The officers and clerks of the election boards shall be sworn (or affirmed) not to disclose how any elector has voted unless they shall be required to do so by law."

Mr. President, it has always been regarded in this country as important that the ballot should be secret and that it should not be known how the elector has voted. Now, the section as it has been passed on second reading enables the officers of the boards to know and to

state how every elector has voted, and I think it should be an important part of the oath administered to them that they shall not disclose how any voter has voted, unless they shall be required to do so by law.

The PRESIDENT. The question is on the motion of the delegate from Blair (Mr. Calvin.)

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Horton in the chair.

The CHAIRMAN. The committee of the whole have had referred to them section four, with directions to add thereto the following words: "The officers and clerks of the election boards shall be sworn (or affirmed) not to disclose how any elector has voted, unless they shall be required to do so by law." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Horton) reported that the committee of the whole had made the amendment referred to them.

Mr. DARLINGTON. I move that the Convention resolve itself into committee of the whole for the purpose of striking out the sixteenth section.

I have but a very few words to say with regard to this motion. I think the whole machinery proposed to be contrived by this section is clumsy, useless and calculated only for mischief. The election officers consist of a judge and two inspectors, the judge being voted for by everybody in the district, and the inspectors selected upon the limited vote, thus always securing one of each political party in the election board. It is very rare indeed in practice that any dispute arises as to a vote, that is not settled without the inspectors disagreeing. There is not one case in a hundred in elections in our county in which it is necessary to call for even the judgment of the judge of election.

Now, what do you propose to do by this section? Your officers of election elected by the people are to be supervised by the appointees of the court. To be sure, they are fellow-citizens, but they are no more apt to be right or well informed and of clearer judgment or better character than those whom the people themselves select. It is a new and untried scheme, and I apprehend it exists nowhere else—if it does I have never heard of it—that the court, a single judge, as will be the case in a

large number of counties, and of course with the prejudices of his previous life as to politics, is called upon to appoint two persons to supervise the officers selected by the people and sworn to do their duty. It seems to me most anomalous, and I wish the privilege of recording my vote at all events against the section.

Mr. BEEBE. While I was content with this section as it was adopted by the Convention. I feel very much inclined to give my vote in favor of the proposition of the gentleman from Chester. The device as an amendment suggested by the gentleman from Columbia (Mr. Buckalew) was to reinsert the original provision in substance, which this Convention after full debate and deliberate determination struck out; and now by this change—said to be made by the committee, although we have not heard from any of them except the gentleman from Columbia, and nothing in their report indicates it—the whole judicial power is to be placed in the hands of overseers appointed by a judge, who may himself, by virtue of the present Constitution, be a candidate at the election; the whole of the voting at every precinct is to be supervised and controlled by them. I think it is time that we called the previous question on this article, instead of adopting in haste such amendments as we have done in the last instance, striking out words which were inserted after full debate and consideration, and that, too, upon a mere motion, without one particle of consideration or time for debate.

The PRESIDENT. The question is on the motion of the delegate from Chester (Mr. Darlington.)

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

Mr. MINOR. I second the call.

The question being taken by yeas and nays, resulted as follow:

Y E A S .

Messrs. Baker, Beebe, Bowman, Broomall, Darlington, Davis, Edwards, Ewing, Hanna, Horton, Littleton, MacConnell, M'Clean, M'Culloch, Mann, Minor, Niles, Patterson, D. W., Porter, Purviance, John N., Purviance, Samuel A., Rooke, Runk, Russell, Stanton, Struthers, Turrell, White, David N., White, J. W. F. and Walker, *President*—30.

N A Y S .

Messrs. Alricks, Armstrong, Baer, Baily, (Perry,) Brodhead, Buckalew, Cal-

vin, Carter, Cassidy, Corbett, Corson, Cronmiller, Curtin, Dallas, De France, Dodd, Dunning, Elliott, Gibson, Gilpin, Guthrie, Harvey, Hay, Hazzard, Hemp-hill, Howard, Hunsicker, Lamberton, Landis Lilly, MacVeagh, M'Murray, Mitchell, Parsons, Purman, Read, John R., Reed, Andrew, Sharpe, Smith, H. G., Smith, Henry W., Van Reed, Wetherill, J. M., Woodward, Worrell and Wright—45.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brown, Bullitt, Campbell, Carey, Church, Clark, Cochran, Collins, Craig, Curry, Cuyler, Ellis, Fell, Finney, Fulton, Funck, Green, Hall, Heverin, Kaine, Knight, Lawrence, Lear, Long, M'Camant, M'Michael, Mantor, Metzger, Mott, Newlin, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Pughe, Reynolds, Ross, Simpson, Smith, William H., Stewart, Temple, Wetherill, John Price, Wherry and White, Harry—58.

SEVERAL DELEGATES. Question on the article!

Mr. BUCKALEW. I have one more amendment to suggest before the subject passes from the Convention. I refer again to the sixteenth section, and I will state that the Committee on Revision and Adjustment have struck out a considerable number of words in the early part of this section in order to make it harmonious with itself. By the restoration of this section to its original form these words would still be retained as reported by the Committee on Suffrage, Election and Representation.

I desire to amend the section as follows: Commencing with the words, "to make report to the court as may be required, such appointments to be made for a part or for all the districts in a city or county, or in a ward or other division thereof, whenever the same." I leave them stand, and then I strike out the words, "shall be asked for by the petition of five citizens, lawful voters of such election division, setting forth that such appointment," inserting in lieu thereof the words, "be made to appear to the court to be." That will restore the section to its original form. Now, a word of explanation. When the article was under consideration before the gentleman from the city (Mr. Cuyler) made a motion to amend

by inserting "upon the petition of five citizens of the district." His intention was to enlarge the section and give the court appointing power, or rather to compel them to make appointments whenever five citizens of a district should apply therefor. He did not accomplish his purpose, but he produced a disastrous effect upon the section, and obliged the Committee on Revision and Adjustment to strike out all the words in brackets in the report now before us.

The section as drawn authorizes the proper court to make appointments for a part or for all of the election divisions of a city or county of overseers of election whenever it should be made to appear to them in some proper mode that such appointments were a proper precaution against fraud. The amendment of the gentleman from Philadelphia, however, took away that whole power, and though it was not his idea, confined the court in making appointments to a single precinct, precinct by precinct, upon the petition of five citizens residents thereof. The section ought to be restored as I have proposed to amend it.

Mr. HUNSICKER. Will the gentleman permit an inquiry?

Mr. BUCKALEW. Certainly.

Mr. HUNSICKER. As I understand your amendment, it will leave this matter in the hands of the court to determine whether or not overseers shall be appointed.

Mr. BUCKALEW. It will leave the power generally with the court. The gentleman from the city, misunderstanding the section, by getting in his amendment about five voters limited the power of the court to make appointments, whereas it was designed to make the power general.

Mr. HUNSICKER. The section as it now is states that the overseers shall only be appointed for the particular election district which applies for them.

Mr. BUCKALEW. But in every other case the court is not compelled to make appointments of anybody.

Mr. HUNSICKER. I think the gentleman from Columbia is mistaken. The section says:

"Such appointments to be made for a part or for all the districts in a city or county, upon petition of five citizens, lawful voters of such election division, setting forth that such appointment is a

reasonable precaution to secure the purity and fairness of elections."

Now, I take it, under the section as it stands on our files, if any five citizens, lawful voters, in an election district, petition the court, the court is compelled to appoint overseers for that precinct.

Mr. BUCKALEW. For that precinct.

Mr. HUNSICKER. Yes, sir.

Mr. WORRELL. That is the fair understanding of the clause.

Mr. HUNSICKER. Certainly, there can be no misunderstanding about that.

Mr. DALLAS. I find myself very reluctantly differing from the gentleman from Columbia on this question. In the first place, as to the true construction of this section as it stands, whilst the section is a grant of power to the courts simply, which they might or might not exercise—for it says "the courts of common pleas of the several counties of the Commonwealth shall have power to do this thing"—further down it says, "and to make report to the court as may be required, *such appointments to be made.*" Now, there is a mandatory direction to the court. After granting the power, it says, such appointments to be made for any district in any city or county, whenever the same shall be asked for by the petition of five voters.

Therefore we have first only a grant of power to the court, it is true; but we have secondly a mandate to the court to exercise that power whenever five voters shall require that it must be exercised. If it be necessary to make that more clear we can amend the fourth line by striking out after the word "appointments" the word "to," and inserting the word "shall," so as to have it read, "such appointments shall be made." That can be done readily, though I do not think it necessary.

So much as to construction. Then as to the proposed amendment, it would have the effect to require that an entire city should be supplied with overseers upon application. Now, it frequently happens that only in a small portion of a city are these appointments made, and it would not be right for any city or county, where it would be desirable, to have overseers for one or two election divisions, to obtain them only by compelling them to be appointed everywhere else.

Another objection to this proposed amendment is that the court has nothing to do but pass, as the section requires it to pass, upon the qualifications of the

overseers. If you now require the courts also to pass upon the question in every case, as to whether it is a reasonable precaution or not, you will make the jurisdiction so burdensome as to make it almost impossible to be exercised by the judges. The object of the amendment offered by the gentleman from Philadelphia, (Mr. Cuyler,) which is the part proposed to be stricken out by the gentleman from Columbia, was that any five citizens who would swear that they believed it was a necessary and reasonable precaution should have the right to have proper overseers of election, appointed, and that the court should not examine the question as to whether it was or was not a reasonable precaution. Otherwise, you would have applications made to a bench of known partisan proclivities; it might be a bench entirely all one sided, and then when an application is made from the opposite side, you have an unpleasant doubt thrown around the decision against the views of five citizens voting in the district, if it should be determined against them.

I trust the amendment will not be adopted, and that the section will remain as it is.

Mr. BUCKALEW. I have a word only to say. If the gentleman from the city of Philadelphia —

The PRESIDENT. The delegate has spoken once on this subject.

Mr. DALLAS. I hope he will be allowed to proceed.

Mr. BUCKALEW. I desire only to explain my position in regard to what the gentleman from Philadelphia has said.

The PRESIDENT. The delegate can make a personal explanation.

Mr. BUCKALEW. My position on this question is, that if the section be allowed to remain as it is, with the changes that the Committee on Revision and Adjustment have been compelled to make in order to make the section harmonize with itself, it will contract the power of the courts to make these appointments, and give them a power only to do so in a particular district upon the sworn application of five men. I want the court to have more general powers, more efficient authority on this subject; but of course if the Convention think otherwise, I shall not insist upon it.

Mr. MACVEAGH. Of course. I think the legal construction is as the gentleman from Philadelphia states it to be. I cannot see any ground for the legal

opinion of the delegate from Columbia. In other words, I believe this section, without the gentleman's amendment, allows and requires the judges upon the petition of any five people, without affidavit—for there is nothing about affidavits in it—upon the statement of any five voters that they think it wise that the election officers should have no right, if any one of them differs from the rest, to decide anything upon the election, to appoint election officers to decide the matters which the election officers elected by the people thenceforward have no power to decide. There will always be differences of opinion; there will always in an election board elected by the people arise contested questions, and on every question on which they are not united it gives the decision to the judge of the county court, and that I believe is what this Convention desires.

Mr. BEEBE. I trust this amendment will prevail so as to make this section accomplish what it was intended by the gentleman from Columbia and its friends to accomplish, namely; to give over our elections entirely into the power and control of the judiciary, and utterly subvert the will of the people as expressed through the ballot-box, although in the bill of rights we have entirely forbidden any interference by civil or military authority.

The PRESIDENT. The question is upon the motion of the gentleman from Columbia to go into committee of the whole to make the amendment he has indicated.

The motion was rejected.

Mr. HUNSICKER. Now I call the previous question.

Mr. DARLINGTON. Before that is done I desire to make a verbal correction in one section, and I ask the gentleman from Montgomery to withdraw his call for a moment.

Mr. MACVEAGH. If it is only a verbal alteration, it can be made by unanimous consent.

Mr. HUNSICKER. I call for the previous question.

The PRESIDENT. Is the call for the previous question seconded?

MANY DELEGATES. Yes, sir.

The PRESIDENT. Those seconding the call will rise.

Messrs. Andrew Reed, De France, Beebe, Russell, Lilly, MacVeagh, Van Reed, Howard, Worrell, Brodhead, Joseph Bailey, Calvin, T. H. B. Patterson,

Wright, Edwards, Bowman, MacConnell, Clark, Carter, S. A. Purviance, Davis, C. A. Black, Niles, Mott, H. G. Smith, Church, Parsons, Mitchell and Hazzard rose.

The PRESIDENT. The call for the previous question is sustained. Shall the main question be now put?

The question was determined in the affirmative.

The PRESIDENT. Shall the article now pass?

Mr. D. N. WHITE. On that I call for the yeas and nays.

Mr. HANNA. I second the call.

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

YEAS.

Messrs. Alricks, Armstrong, Baer, Bailly, (Perry,) Baker, Bannan, Black, Charles A., Brodhead, Buckalew, Calvin, Carter, Cassidy, Church, Clark, Corbett, Corson, Curtin, Dallas, De France, Dunning, Elliott, Gibson, Gilpin, Green, Guthrie, Harvey, Hay, Hazzard, Hunsicker, Lamberton, Landis, Lilly, MacConnell, MacVeagh, M'CLean, M'Culloch, M'Murray, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Runk, Russell, Sharpe, Smith, H. G., Van Reed, Wetherill, J. M., Woodward, Worrell and Wright—58.

NAYS.

Messrs. Beebe, Biddle, Bowman, Broomall, Darlington, Davis, Edwards, Ewing, Finney, Hanna, Horton, Howard, Mann, Minor, Newlin, Patterson, D. W., Pughe, Reynolds, Smith, Henry W., Stanton, Struthers, Turrell, White, David N., White, J. W. F. and Walker, *President*—25.

So the article was passed.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Boyd, Brown, Bullitt, Campbell, Carey, Cochran, Collins, Craig, Cronmiller, Curry, Cuyler, Dodd, Ellis, Fell, Fulton, Funck, Hall, Hemphill, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long M'Camant, M'Michael, Mantor, Metzger, Palmer, H. W., Porter, Rooke, Ross, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, Jno. Price, Wherry and White, Harry—50.

TAXATION AND FINANCE.

The PRESIDENT. The next article is number nine.

Mr. BROOMALL. Let us go on with it.

The PRESIDENT. Is it the pleasure of the House to take up the article? ["It is."] The amendment of the Committee on Revision and Adjustment will be read.

The CLERK read the amendments of the Committee on Revision and Adjustment.

Mr. MACVEAGH. I move that the report of the Committee on Revision and Adjustment be adopted.

The motion was agreed to.

Mr. MACVEAGH. I move now that the article be transcribed for a third reading.

The motion was agreed to.

The article was read the third time as follows:

ARTICLE IX.

TAXATION AND FINANCE.

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 for, public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

SECTION 2. All laws exempting property from taxation, other than the property above enumerated, shall be void.

SECTION 3. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, or to repel invasion, suppress insurrection, or defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate at any one time one million dollars.

SECTION 4. All laws authorizing the borrowing of money by and on behalf of the State, shall specify the purposes for which the money is intended, and the money so borrowed shall be used for the purpose specified and no other.

SECTION 5. The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association, nor shall the Commonwealth become a joint owner or stockholder in any company, association or corporation.

SECTION 6. The General Assembly shall not authorize any county, city, borough, township or incorporated district, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for or to loan its credit to any corporation, association, institution, or individual.

SECTION 7. The debt of any county, city, borough, township, school district or other municipality or incorporated district, except as herein provided, shall never exceed five per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new 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 by law 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.

SECTION 8. 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.

SECTION 9. Any county, township, school district or other municipality incurring any indebtedness, shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

SECTION 10. To provide for the payment of the present State debt and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principle thereof by a sum not less than two hundred and fifty thousand dollars; the said sinking fund shall consist of the proceeds of the sale of the public works or any part thereof, and of the income or proceeds of the sale of any stocks owned by the Commonwealth, together with other funds

and resources that may be designated by law, and shall 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.

SECTION 11. 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 the State.

SECTION 12. All moneys of the State shall, as far as possible, be kept at interest for the sole benefit of the State in, or in loans upon the security of, the bonds of the United States or of this State, in such manner as shall be provided by law; 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, at what rate of interest and on what security.

SECTION 13. 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 PRESIDENT. The article is before the Convention on third reading.

Mr. MACVEAGH. Allow me to make one suggestion. If the gentleman from Delaware, (Mr. Broomall,) who was the chairman of the Committee on Revenue, Taxation and Finance, and the delegate from Columbia, (Mr. Buckalew,) who was acting chairman of the Committee on Revision, will tell what changes have been made, I think we shall be in a condition to vote without further debate, in all probability.

Mr. BROOMALL. The alterations made by the Committee on Revision are mainly verbal, and really make no substantial change in the article. They have stricken out one of the sections, but it is because it is found in another article; that is the original section five.

The Convention will remember that on section twelve there was a good deal of criticism when the article was on second reading, and a motion was made to re-

consider, which would seem to have been informally passed over, and we find the matter now before us, without being embarrassed by it. At the instance of some of those who criticised that section, I have very carefully drawn two sections which are in print as numbers twelve and thirteen, to take the place of it. They are on slips at the Clerk's desk, I think. The slip contains a section at the head, numbered two and a half, which I will not speak of at this time; but the two sections twelve and thirteen are those I desire to speak of. I move to go into committee of the whole for the purpose of striking out section twelve, and inserting in lieu thereof the two sections on the slip marked section twelve and section thirteen.

The CLERK read the sections proposed to be inserted, as follows:

"SECTION 12. The moneys held as the necessary reserve shall be limited by law to the amount required for possible current expenses, and shall be secured and kept as and where the General Assembly shall require. The General Assembly shall provide for the publication, once in every month, of a statement showing the amount of such moneys, where the same are deposited, and how secured.

"SECTION 13. The General Assembly shall constitute the offence of making profit out of the public moneys, or using the same for political purposes, by any officer of the State, or member or officer of the General Assembly, or any candidate for election or appointment, a misdemeanor, and shall provide proper punishment for such offence. A part of such punishment shall be the inability to hold office for a period of not less than five years, and a pardon of the offence shall not remit or effect that part of the punishment."

Mr. MACVEAGH. Had not the gentleman better make "possible," in the second line, read "probable," so as to read, "for probable current expenses."

SEVERAL DELEGATES. Strike it out altogether.

Mr. BROOMALL. It would be better to strike out the word "possible" and I will do so.

Mr. D. W. PATTERSON. I suggest that publication once a month is oftener than is necessary.

Mr. BROOMALL. It has been suggested that I should modify "every month" into "every three months." ["No!"] As first written it was "every three months," but many gentlemen preferred "every

month," and in deference to their views I changed it to every month before I submitted it for printing.

The PRESIDENT. The question is on the motion to go into committee of the whole to make the amendment indicated.

The motion was agreed to; and the Convention resolved itself into committee of the whole, Mr. Bowman in the chair.

The CHAIRMAN. The committee of the whole have had referred to them an amendment to strike out the twelfth section of this article and insert in lieu thereof two sections, which will be read.

The CLERK read as follows:

SECTION 12. The moneys held as the necessary reserve shall be limited by law to the amount required for current expenses, and shall be secured and kept as and where the General Assembly shall require. The General Assembly shall provide for the publication, once in every month, of a statement showing the amount of such moneys, where the same are deposited, and how secured.

SECTION 13. The General Assembly shall constitute the offence of making profit out of the public moneys, or using the same for political purposes, by any officer of the State, or member or officer of the General Assembly, or any candidate for election or appointment, a misdemeanor, and shall provide proper punishment for such offence. A part of such punishment shall be the inability to hold office for a period of not less than five years, and a pardon of the offence shall not remit or affect that part of the punishment.

The CHAIRMAN. The amendment is made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Bowman) reported the committee of the whole had made the amendment ordered by the Convention.

Mr. DARLINGTON. I suggest to the gentleman from Delaware by unanimous consent to make the word "inability" read "prohibition," so that the punishment shall be a prohibition to hold office.

Mr. BROOMALL. Is not the meaning the same? ["Yes."] We say "ability to hold office," and I think "inability" is just the opposite.

Mr. ARMSTRONG. I suggest that the word "offence" seems to be unnecessary.

Mr. MACVEAGH. I should like to suggest to the gentleman the propriety of changing the thirteenth section to make it read: "The General Assembly shall declare the making of profit," &c., "a mis-

demeanor," instead of "shall constitute the offence of making profit," &c.

Mr. BROOMALL. I have no objection to that, and I hope unanimous consent will be given to make that change.

Mr. MACVEAGH. Let it read:

"The General Assembly shall declare the making of profit out of the public moneys," &c., "a misdemeanor,"

Mr. BEEBE. I ask unanimous consent for that change. ["Agreed!"]

The PRESIDENT. The change is made.

Mr. BROOMALL. Another verbal change has been suggested, that the word "inability"—and that indeed may suit my colleague better—should be changed into "disqualification"—"A part of such punishment shall be disqualification to hold office,

Mr. DARLINGTON. Leave out "a"

Mr. CURTIN. I suggest whether it would not be better to say "shall be ineligible to hold office."

Mr. BROOMALL. "Disqualification" is a better word.

The PRESIDENT. Is unanimous consent given to strike out the words "the inability" and insert "disqualification?" ["Aye!" "Aye!"] The Chair hears no objection and the modification will be made.

Mr. BROOMALL. Now I ask unanimous consent to make another modification suggested by the gentleman from Philadelphia behind me (Mr. Biddle.) He remarks that the words "of the offence," in the next to the last line, are unnecessary; and that is a good reason for striking them out. I ask unanimous consent to strike them out, so as to read, "and a pardon shall not remit or affect that part of the punishment."

The PRESIDENT. Will the Convention unanimously agree to the modification? ["Aye."] It is agreed to.

Mr. ARMSTRONG. There is a part of this section which appears to me to be harsh and unnecessary: "And a pardon of the offence shall not remit or affect that part of the punishment." Why, a man might be convicted by perjury, might be convicted under such circumstances that it would subsequently appear to have been grossly and clearly an improper conviction in every sense, and whilst a pardon would remit the actual punishment it would leave the weight of the severest punishment to remain forever.

Mr. BROOMALL. I withdraw, then, the request to change that part of the sentence, letting it stand as it is.

Mr. ARMSTRONG. Is that part stricken out?

Mr. BROOMALL. No, I withdraw that request so as to leave the words "of the offence" in.

Mr. ARMSTRONG. That is not what I called attention to: "And a pardon of the offence shall not remit or affect that part of the punishment." I think that is harsh and severe. Suppose a man is convicted on false testimony, where is the remedy?

Mr. MACCONNELL. Mr. President: We have voted these sections in, and it seems to me to be singular to be going on to make change after change until we get them into a shape different from what they were when we voted them in. I object to these changes. I ask now for the reading of these sections as they stand corrected.

The PRESIDENT. The Clerk will read the sections as they stand corrected.

The CLERK read as follows:

SECTION 12. The moneys held as the necessary reserve shall be limited by law to the amount required for current expenses and shall be secured and kept as and where the General Assembly shall require. The General Assembly shall provide means for the publication, once in every month, of a statement showing the amount of such moneys, where the same are deposited and how secured.

SECTION 13. The General Assembly shall declare the making of profit out of the public moneys, or using the same for political purposes, by any officer of the State, or member or officer of the General Assembly, or any candidate for election or appointment, a misdemeanor, and shall provide proper punishment for such offence. A part of such punishment shall be disqualification to hold office for a period of not less than five years, and a pardon of the offence shall not remit or affect that part of the punishment.

Mr. ARMSTRONG. I move to go into committee of the whole for the purpose of striking out the words, "and a pardon of the offence shall not remit or affect that part of the punishment."

The PRESIDENT. The question is on the motion of the delegate from Lycoming.

Mr. BROOMALL. Before the vote is taken on that motion I desire to say that I consider that part of the section vital. I think if there is any combination to use the public moneys for corrupt purposes, the Governor of the State is just as likely

to be a party to it as any other human being, and I do not want him to have the chance to pardon those who helped him to commit the offence. I except the punishment outside of the disqualification; I am willing to leave him power to pardon that.

The PRESIDENT. The question is on the motion of the delegate from Lycoming.

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

Mr. BOYD. I second the call.

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

YEAS.

Messrs. Armstrong, Baily, (Perry,) Bannan, Beebe, Bowman, Calvin, Corson, De France, Elliott, Ewing, Finney, Gibson, Green, Howard, Lamberton, MacVeagh, Mann, Minor, Niles, Patterson, D. W., Reed, Andrew, Runk, Stanton, Struthers, Wetherill, J. M. and White, J. W. F.—26.

NAYS.

Messrs. Alricks, Baer, Baker, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Church, Clark, Curtin, Darlington, Davis, Edwards, Gilpin, Guthrie, Hall, Horton, Hunsicker, Landis, Lilly, MacConnell, M'CLean, M'Culloch, M'Murray, Mitchell, Mott, Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Turrell, Van Reed, White, David N., Woodward, Worrell, Wright and Walker, President—47.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Brown, Bullitt, Campbell, Carey, Carter, Cassidy, Cochran, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Dallas, Dodd, Dunning, Ellis, Fell, Fulton, Funck, Hanna, Harvey, Hay, Hazzard, Hemphill, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, M'Michael, Mantor, Metzger, Newlin, Palmer, G. W., Palmer, H. W., Porter, Rooke, Ross, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, John Price, Wherry and White, Harry.—60.

Mr. BROOMALL. I hold in my hand a section that was voted out when the article was upon second reading, and I simply

desire to get a vote upon it. I think it is unnecessary myself, but I move to go into committee of the whole for the purpose of inserting as a new section, to come in after section two, the following:

"In classifying subjects for taxation the General Assembly shall have power to do equity between municipalities which have been or shall be united where the proportion of their municipal debts to their taxable property differs. And also to impose special assessments on lands specially benefited thereby for the making and renewing of local improvements in cities and boroughs."

Now, Mr. President, if there is any doubt about it, this section should go in. I think the Legislature would have power to classify so as to meet both those matters, because we have been careful to give them the power to classify in the section, but many gentlemen here are doubtful about it, and some have insisted upon the matter being considered again. While I am perfectly willing to put it in by way of over-caution, and shall vote for it, yet I have nothing further to say in its favor than that.

Mr. HOWARD. In the first place, it seems to me about supplying all that the Committee on Revenue, Taxation and Finance have supplied to the Convention to take the whole three sections together. The Convention has stricken out two or three most valuable sections and they have supplied them with others. Now, we understand by the general law that cities have the right to tax for permanent improvements, such as grading and paving the property that is benefited by them, but the cost of altering and changing the streets afterwards is defrayed by a general tax. I have no idea of changing the law so that every time a street is patched you are to have a special assessment upon the property benefited. There is no necessity for this section at all, and I hope it will be voted down.

Mr. EWING. I trust the Convention will give a little attention to this subject. It is one of very considerable importance.

The first section of this article is new in our Constitution; it is a provision that does not now exist; and it limits taxation in a way it was never limited before in this Commonwealth. It provides that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." I understand that to mean, and it

was understood in committee when it was drafted to mean—the chairman understood and stated that he understood it to mean—that when the city of Philadelphia, for instance, levied a tax on real estate say of five mills or ten mills, or whatever it might be, that tax should be assessed on all the real estate in the city of Philadelphia; and so of the city of Pittsburg, if it assessed any tax on real estate, it would be equally assessed on all the real estate in the city of Pittsburg; if it assessed a tax on personal property, it would be on all the personal property in the city of Pittsburg. If the section means anything, it means to prohibit any other mode or manner of taxing property.

There are two branches to the section now offered as an amendment, both of which I think are necessary to prevent very serious difficulties. The city of Pittsburg consists of the old city as it was in 1867, and some eight or ten other municipalities that have been consolidated with it. Those municipalities were consolidated by an act of Assembly which provided that a commission should be appointed to value the public property that they held, and also to ascertain the debts of each municipality, and after the amount of the property of each municipality was turned into the common property, it was deducted from the debt of that particular division, and then the balance was kept as a separate debt. The consolidated city assumed the debt, but provided for special taxes to be assessed in those old districts until the debt was paid. The city of Pittsburg now assesses, I think, six mills each year on the territory of the old city to pay the debt of the old city; it assesses, I think, twelve mills in the borough of Lawrenceville to pay the old debt of the borough; in three of the townships I think there is no special tax; and so several other boroughs have their special taxes. It was on the faith of that contract and pledge that the consolidation was made. Section one, which we have already adopted, would, I think, entirely exclude any such taxation.

Again, if ever the city of Allegheny is consolidated with Pittsburg, it will be under a similar provision. An act of Assembly passed in March last makes the same provision in regard to the separate debts and separate property of the two cities and provides for the consolidation on a vote, and we can never have consolidation without some such provision.

Then the first part of this section certainly would be necessary to enable the city to carry out the contract made in consolidation.

Now, in regard to local improvements, I think the first section of this article would prohibit a city or borough from grading any streets—

Mr. MACVEAGH. Allow me to ask the gentleman, does he want this section in?

Mr. EWING. Yes, sir.

Mr. MACVEAGH. I think if a vote is allowed to be taken it will be put in.

Mr. EWING. I desire to call attention to the second portion of the section, which refers to local improvements, to the opening, grading and paving of new streets in the cities. The plan of making those improvements in most of the cities and boroughs has been to assess the cost of them on the property that was especially benefited, and not to levy a general tax on the property of the whole city or borough. I believe that to be just and proper. At any rate it is the system that has been established; millions of dollars every year are expended in that way; and it would be very unjust *now* to the old parts of the cities to adopt a provision which would exclude that sort of taxation for local improvements. It applies to sewers also, and all those local improvements. An improvement may be made for the benefit of one part of a city in which another part is not interested at all, and the cost of that improvement ought to be assessed on the part benefited. For instance, a street was opened in the eastern part of the city of Pittsburg, about two years ago, in which my friend on my right (Mr. Howard) was very much interested, I think, as he had property there that was trebled in value by its being opened, and the cost of opening and paving that street was assessed on the property abutting, and within six months of the time it was done, property along that street more than doubled in value, and it is more than trebled now. That improvement was of no use to the old part of the city.

The streets that are being opened in the northeastern part of the city of Philadelphia to-day are benefiting and increasing the value of property there, but instead of benefiting that portion of the city where this Hall is, they are really an injury to it; they are taking away its trade and business.

There should be a provision for assessing this tax equitably; and the section now offered does not apply to the patching of streets, as my friend supposes.

Mr. HOWARD. Yes, sir, it does.

Mr. EWING. No, sir, it does not. It only applies to cases where they are entirely worn out and have to be renewed.

Now, the chairman of the committee says that he thinks this section is not necessary. I think it is. It is barely possible that the Supreme Court, when they come to pass on this first section, may, from the nature of the case and from the necessities of the case, be compelled to evade the direct provisions of the section and say that these taxes for local improvements are not taxes, but "assessments," but it would be an evasion. The chairman of the committee did think at one time that they were excluded by this first provision when he drafted the section, because he provided in the fourth line in regard to exemptions for "special assessments herein provided for;" that is, these same local special assessments. I think this is a very important matter for the Convention to pass upon, and to avoid any question about it, it ought to be made certain that there will be the right to provide for making these local improvements by special assessment on the property benefited by them. I think that is excluded by the first section, and I trust that the amendment offered, or something similar, will pass.

Mr. HUNSICKER. I move that the Convention adjourn.

Mr. BIDDLE. I second the motion.

The PRESIDENT. The hour of three o'clock having arrived, the Convention stands adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND SIXTY-SECOND DAY.

FRIDAY, October 10, 1873.

The Convention met at half-past nine, o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by the Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. PORTER asked and obtained leave of absence for a few days from Monday next.

Mr. J. N. PURVIANCE asked and obtained leave of absence for a few days for Mr. D. L. Imbrie, Chief Clerk, on account of sickness.

Mr. COCHRAN. I ask leave of absence for myself for Monday, because I cannot return here in time for the meeting of the Convention.

Leave was granted.

Mr. BIDDLE. I ask leave of absence for Mr. Reynolds and myself to-day after eleven o'clock for a couple of hours. We have an important engagement at that time.

Leave was granted.

Mr. HORTON asked and obtained leave of absence for himself for Monday next.

Mr. LILLY asked and obtained leave of absence for Mr. Davis for a few days from to-day.

Mr. HOWARD asked and obtained leave of absence for Mr. Mann for Monday and Tuesday next.

Mr. CARTER asked and obtained leave of absence for himself for Monday next.

Mr. CLARK asked and obtained leave of absence for himself for Monday and Tuesday next.

Mr. RUSSELL asked and obtained leave of absence for Mr. M'Culloch until Wednesday morning.

Mr. J. M. WETHERILL asked and obtained leave of absence for himself for Monday and Tuesday next.

Mr. LANDIS. I desire to ask leave of absence for myself for Monday, so that I may return home, on account of important business.

Mr. DARLINGTON. Will you be back Tuesday morning?

Mr. LANDIS. I shall be back Tuesday morning.

Leave was granted.

Mr. DUNNING asked and obtained leave of absence for himself for Monday and Tuesday next.

Mr. W. H. SMITH. I ask leave of absence for the Convention until Wednesday morning next. [Laughter.]

The PRESIDENT. The Chair cannot entertain that motion.

Mr. ANDREW REED asked and obtained leave of absence for himself for a few days from Monday next.

Mr. BUCKALEW. I ask leave of absence for the gentleman from Elk (Mr. Hall) and myself on Monday, as we can not get back on that day.

Leave was granted.

EVENING SESSIONS.

Mr. D. N. WHITE offered the following resolution, which was read:

Resolved, That on and after next Monday an evening session shall be held, commencing at seven o'clock.

The question being put on proceeding to the second reading and consideration of the resolution, it was determined in the negative.

OFFICERS' PAY.

Mr. STANTON submitted the following resolution, which was read twice and considered:

Resolved, That the Committee on Accounts and Expenditures of the Convention be hereby directed to report a resolution authorizing warrants to be drawn for one-half the salaries of the clerks and other officers of the Convention yet remaining unpaid.

Mr. STANTON. I will only say that this is asked for by the clerks and other employees and not by members. It is very much needed by some of the employees.

Mr. BEEBE. I move to amend by inserting the words "members and" before "clerks."

Mr. COCHRAN. I hope neither the amendment nor the original resolution will be adopted. We certainly expect now to adjourn in two weeks; and what

is the necessity for drawing so many warrants for partial payment when the whole thing will be closed up in two weeks?

Mr. BEEBE. I withdraw the amendment.

The PRESIDENT. The question is on the resolution.

The resolution was agreed to.

FINAL REFERENCE OF ARTICLES.

Mr. BUCKALEW offered the following resolution, which was read twice and considered,

Resolved, That articles passed on third reading be referred to the Committee on Revision and Adjustment for final report.

Mr. BUCKALEW. I will not take up time in explaining this resolution, but it is necessary that certain small errors be corrected, that sub-headings be furnished to the different articles as has been partially done in the article on the judiciary, that punctuation be made accurate before the members are called upon to sign the Constitution, and that possibly some rearrangement of the articles be made. Of course no amendment of substance will be reported.

Mr. D. N. WHITE. I should like to know what the object of this resolution is. After we have passed through the third reading, it appears to me that it is beyond the power of the Convention to make any revision of any article so passed. If the Committee on Revision and Adjustment is to make any revision, we may have the whole debate over again.

Mr. BUCKALEW. Certainly not.

Mr. HUNSICKER. I should like to ask a question of the Chair. If the articles that are finally passed are referred back to the Committee on Revision and Adjustment, must they not necessarily be acted upon again by this Convention?

Mr. BIDDLE. Yes, certainly.

Mr. HUNSICKER. I hope then the resolution will not prevail.

Mr. BIDDLE. Suppose the Committee on Revision make important changes as they have heretofore done in many articles, not mere verbal changes, must not this House again pass on them?

The PRESIDENT. Unquestionably.

Mr. BIDDLE. Very well, that is tantamount to a fourth reading. We do not know what changes they may make, and judging from the past they may make very important changes. I deprecate any action outside of the Convention being

again brought before the Convention on any articles which we have passed.

Mr. BEEBE. I should like to suggest to the gentleman from Philadelphia that the resolution be so amended that the report of the committee be confined to verbal corrections alone.

Mr. D. N. WHITE. I rise to a question of order. When the Convention finishes a report on third reading, can it be further acted on?

The PRESIDENT. The Chair cannot sustain the point of order as applied to this resolution.

Mr. BUCKALEW. I am perfectly willing to modify my resolution by saying, "but no amendment of substance shall be reported by the committee." We have no committee to compare bills, as legislative bodies have, to make final corrections of bills before they pass from the control of the body.

Mr. DARLINGTON. I do not see any possible difficulty that can result from referring these articles to the Committee on Revision and Adjustment. We certainly all have some pride in having our work go out in a scholarly shape. It ought to have all corrections of grammar and phrase made; and that committee certainly will not take more than that upon itself. It was precisely what was done by the Convention of 1838 with great advantage.

Mr. BOYD. I offer the following amendment, to come in at the end of the resolution: "But the committee shall not strike out or substitute sections, nor in any way change the substance of the article."

Mr. BIGLER. Mr. President: I agree with the gentleman from Chester that there ought to be the utmost care in closing up our work, and it does seem to me that there ought at the last moment to be some revisory power, some committee that would look specially to the form and specially to the language and punctuation; but I desire to suggest to the delegate from Columbia that it seems to me this could be accomplished better by instructions to the Committee on Revision than by attempting to commit the articles. I do not see how you can commit the entire instrument back to the committee and receive it from that committee, that committee meanwhile having done some kind of work, unless the body in the regular form sanction that work. Now, it would appear to me that if the gentleman from Columbia would modify his proposition so that the Committee on

Revision should be instructed to present for the consideration of the body any errors in phrase or punctuation which they might discover, that would meet the case.

Mr. BUCKALEW. I rise to explain. That is precisely the resolution, that we authorize the committee to report to the Convention. They cannot do anything beyond this.

Mr. BIGLER. But you propose to commit back to the committee the entire work.

Mr. BUCKALEW. It is that they be authorized to report to the Convention.

Mr. BIGLER. The Committee on Revision never made any report of any kind; it simply returned the articles, and when you return them with any kind of amendment they must take the forms of some reading in this body.

Mr. BUCKALEW. No, sir.

Mr. BIGLER. Amendments relating to the phraseology or the punctuation, suggested by the committee, would always be accepted by unanimous consent by the body. We could go through in that way without getting into any confusion as to rules of order.

Mr. CORSON. Mr. President: It seems to me that it would be more proper to refer this work to a Committee on Orthography, Etymology, Syntax and Prosody, and not to the Committee on Revision and Adjustment; but to a special committee who shall read it with some reference to the rules of grammar, and let them make a report. They would have no right to change the substance; they would have no right to substitute one section or part of a section for another; but would give it a complete finishing touch and make it a rhetorical work.

Mr. LILLY. I take it that if this committee is appointed to make a report, one objection from any member of this body will prevent any of its alterations being adopted, because the articles have passed third reading and then it takes unanimous consent to alter them. Their report has got to be adopted unanimously by this Convention, or else it is not accepted.

Mr. MANN. Rule thirty-one reads:

"All articles of amendment proposed to the Constitution shall receive three several readings in the Convention previously to their passage."

Now, I submit that after they have received these three several readings, they are passed, and they are conclusively disposed of. The only remaining duty is

for some committee to transcribe them according to their passage, and there can be no deviation from that except by unanimous consent. They cannot be referred to a committee after their final passage, under this rule or under any parliamentary rule that I ever heard of. The articles can now only be amended by unanimous consent.

Mr. LILLY. I should like to ask the gentleman a question. Can these articles that have passed through third reading be altered by the unanimous consent of this House? That is all this committee can do.

Mr. MANN. My point is that the articles after they have been read three times are passed and they cannot then be referred. They can be amended by unanimous consent and they should not be amended in any other way. I trust this Convention will say that these articles now remain in the Convention. Let the Committee on Revision go over them if they choose and ask unanimous consent to such changes as are needed.

Mr. BIGLER. I will move the amendment that I suggested.

The PRESIDENT. There is an amendment pending.

Mr. MANN. I rise to a point of order, that the resolution is not in order. My point is, that a motion to refer articles after they have passed third reading is not in order.

The PRESIDENT. The Chair cannot sustain the point of order. The resolution may be offered, and it is in the power of the House to say what disposition it will make of it. The question is on the amendment of the delegate from Montgomery (Mr. Boyd.)

SEVERAL DELEGATES. Let it be read.

The CLERK. The resolution is as follows:

Resolved, That articles passed third reading be referred to the Committee on Revision and Adjustment for final report.

The amendment proposes to add these words:

"But the committee shall not strike out or substitute sections, nor in any way change the substance of the article."

The amendment was agreed to, ayes forty-nine, noes not counted.

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

Mr. BIGLER. Now, I desire to move to amend the resolution by striking out the

original resolution, together with the amendment, and inserting:

"That the Committee on Revision be instructed to report to the Convention any inaccuracies in language or punctuation that may appear in the several articles, for the action of the Convention thereon."

That leaves the article here.

Mr. D. N. WHITE. I second that proposition.

Mr. MANN. Do I understand the Chair that these articles can now be referred to a committee?

The PRESIDENT. The Chair has not so said.

Mr. MANN. How does this motion come in order then?

The PRESIDENT. It is for the House to decide what action to take on the resolution. The amendment offered by the delegate from Clearfield will be read.

The CLERK read as follows:

"That the Committee on Revision and Adjustment be instructed to report to the Convention any inaccuracies in language or punctuation that may appear in the several articles, for the action of the Convention thereon."

Mr. CURTIN. I desire that the Convention shall pause to understand where we are. If the delegate from Potter (Mr. Mann) is correct—and he is generally correct on everything that relates to parliamentary usage or law—the articles that we now pass are out of the reach of this Convention at all, because no one can hope to obtain unanimous consent to make any change in any of the articles that have passed third reading; in our anxiety to go home there will always be objection to it; and I cannot but think that some of the articles that have passed third reading are so crude that this Convention, when they come to review them deliberately, will desire to make some changes in them. I will not refer to many articles, but I will refer to one, that in regard to the judiciary system of the State. The intelligent and learned chairman of that committee, with a majority I believe of his colleagues, reported a judicial system for the State, the great central point of which was that an intermediate court should be established, and defining its jurisdiction, so as to relieve the Supreme Court, and all his theory hung upon that great central point. The Convention, in its wisdom, struck that out, and the theory fell into confusion, and has been in confusion ever since. It

is like the planetary system with the sun withdrawn, a watch without a main spring, or a man without a belly. [Laughter.] It is like the play of Hamlet with the principal character withdrawn, by a vote of the players, on the motion of the man who digged the grave. [Laughter.]

I should deprecate very much the fact if, by any parliamentary rules or regulations, this Convention should be forced to the necessity of putting before the people any of the articles which have passed this body because they have passed the usual third reading, however crude and imperfect they may be. We are here to make amendments to the Constitution that are right, and it is our deliberate and sworn duty to stay here until we do make them right and proper, and unless we do that, our work will not commend itself to the approbation of the people. I trust therefore that no resolutions will be passed or new rules introduced until we arrive at a point when we have examined all these articles and seen whether they did not require some reconsideration.

Mr. FUNCK. Is it the delegate's idea that articles adopted on third reading should be referred to the Committee on Revision, and afterwards, when their report comes before the Convention, that that report should be again opened for discussion and amendment?

Mr. CURTIN. I know nothing about parliamentary law. I know perfectly well what I am here for and what you are here for. We are here by the will of the people of Pennsylvania, and we have made a covenant with them to which we are sworn, and it is our duty to stay here, however inconvenient it may be, until the end of the year if it be necessary to make a perfect instrument. That is my idea exactly, and I have no other opinion or regard of the measure of our duty; and if the chairman of the judiciary article finds that he can improve that article by an examination of a week or so at his leisure, surely he should be permitted to introduce his amendments, and it will be our duty to pass upon them and assent to such as may improve the article, and if possible make our judiciary in harmony with the wants and wishes of the people of this Commonwealth.

Mr. ARMSTRONG. I desire to correct what I believe to be somewhat of a misapprehension on the part of the distinguished gentleman from Centre. He was very earnestly with the Judiciary Committee in approval of that part of their

report which proposed an intermediate court. I need not say to this Convention how earnestly I desired that such a provision should be introduced into the Constitution; but it is distorting and putting out of their true relation the facts of the case, to assert that because that part of the report of the committee failed therefore the whole report has been a failure. On the contrary, the substantive propositions which are now embodied in the article as it has passed on third reading are substantially embraced within the original report of the Judiciary Committee. I will only cite to the gentleman the fact that the organization—

The PRESIDENT. The Chair is compelled to rule that this discussion is out of order. The pending question is on the amendment offered by the delegate from Clearfield, (Mr. Bigler,) which will be read again for information.

Mr. ARMSTRONG. I submit, Mr. President, that the gentleman from Centre having made a statement upon the floor which the chair received, a reply to it should also be received.

Mr. CURTIN. Allow me to explain. I only cited that as one instance. I could have cited also the article on the executive department, which needs some amendment. I desire to amend the article coming from the committee of which I was chairman.

Mr. ARMSTRONG. I only desired to correct what I conceived to be a misapprehension. I can state to the Convention that the judiciary article as it has passed on final reading embodies substantially the report of the Judiciary Committee as it was originally presented upon the parts which have not entirely been stricken out.

Mr. BIGLER. I desire to say a word or two in explanation of the amendment that I have offered. I agree that no rule should interfere with the completion of our work and putting it in the most perfect form; and the amendment which I submit would tend to that end without confusion or trouble. When the committee makes its report, I have very little doubt, its amendments will be accepted by this body; but I desire to avoid the conclusion that will result from committing the articles and taking them out of the possession of the body. I do not believe the rule read by my friend from Potter would exclude this body from going into committee of the whole and amending any one of these articles in

substance. The body cannot in that way part with its power. The power is complete and must remain complete until we adjourn *sine die*.

The PRESIDENT. The question is on the amendment of the delegate from Clearfield.

The amendment was agreed to.

Mr. BUCKALEW. I move now to add to the resolution as amended: "and to report sub-headings to the articles." If I could have obtained the floor before the vote was taken I would have suggested to the gentleman from Clearfield to accept that modification.

The PRESIDENT. The Chair would like to understand what is meant by "sub-headings?"

Mr. BUCKALEW. As in the judiciary article. There are sub-heads to the different parts of the article to show what the subjects-matter are.

Mr. BIGLER. I will accept that as a modification of my motion.

The amendment was agreed to.

Mr. BUCKALEW. Now, Mr. President, as the resolution is still pending, allow me to say this: It is very true that by general rule every article passed is to have three readings. The Committee on Revision would have no power to propose any amendment of substance. But what this Committee on Revision and Adjustment was appointed for was to revise and adjust the work of the Convention when the work was done. That was my understanding of it when the committee was originally established. I understood then and understand yet that appropriately its work is performed after the Convention have gone through the three readings of an article; but the Convention thought proper to refer the articles on second reading to that committee, so that they might report them amended or revised for third reading. That was an extraordinary duty cast upon the committee. But to revise and adjust, within the meaning of the rule establishing this committee, is to revise and adjust the work as the Convention leaves it on third reading, so that it shall be in perfect accord. My resolution does not contemplate any amendment which shall change the substance of the Constitution or shall introduce any substantially new matter. It relates simply to matters of form, of correction, of arrangement, so that our work shall have a proper and intelligent form. These ideas of gentlemen that that com-

mittee is going to report something new, are altogether a mistake.

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

The resolution was agreed to.

SCHEDULE AND SUBMISSION.

Mr. MACVEAGH. I should like to ask the chairman of the Committee on Schedule, or the gentlemen representing it, whether or not it is engaged at present on the articles we have already passed, and when we may expect a partial report from it.

Mr. HANNA. The gentleman from Lancaster (Mr. D. W. Patterson) is the acting chairman, and I think he will be ready to make a report in a short time.

Mr. CORBETT. I am a member of that committee, but I have been away for some five or six days. Since my return, I have understood that the committee had one or two meetings in my absence, and they had a session before I left, and I was informed by the gentleman from Lancaster that they had referred certain things to a sub-committee to put in form, and they are at work, but how far they have progressed I cannot answer now.

Mr. MACVEAGH. The Chair will remember that when we reassembled I introduced a resolution for the appointment of a special committee upon the subject of the submission of the Constitution to a popular vote; but I withdrew it because I understood some committee had the matter in charge and was considering it. When we conclude third reading, as we shall in a few days, there will be but two matters yet to be considered; the report of the Committee on Schedule and the question of submitting the Constitution; and I should be glad to ask the delegate from Columbia, who I think said he was considering that matter, whether or not we may expect a report on that subject, or if any other member knows whether any committee is actually considering and digesting a plan for that work, so that we may not be kept here a week or ten days after we have finished, waiting for a report.

Mr. LILLY. The Committee on Suffrage, Election and Representation had referred to them a proposition made by the gentleman from Philadelphia (Mr. J. Price Wetherill) on that subject, which is before the committee and will be considered as soon as we can get a meeting of that committee. Several of its members are also upon the Committee on Revision

and Adjustment, which is in session every evening, and our chairman is one of them. That is the reason why, so far, we have not been able to get our committee together. We have been assured by the chairman that he will call the committee together in ample time to report a plan.

Mr. MACVEAGH. I warn the Convention that there is great danger of delay.

Mr. HAZZARD. I think we ought to understand each other in regard to this matter. The member from Carbon says that Mr. Wetherill's proposition was referred to the Committee on Suffrage. There is another committee who think it was referred to them and who are at work upon that matter. It ought to be settled in some way whose duty it is to take charge of it.

The PRESIDENT. Resolutions are still in order.

THE JUDICIARY ARTICLE.

Mr. BAER submitted the following resolution, which was read:

Resolved, That the vote by which the judiciary article was adopted be and hereby is rescinded, and that the article be referred to a select committee of thirty-three, of which the President of the Convention shall be chairman, with instructions to report on Wednesday next.

The Convention refused to order the resolution to a second reading.

ADJOURNMENT SINE DIE.

Mr. BAER submitted the following resolution, which was read:

Resolved, That the Convention will adjourn *sine die* on Monday, the twentieth inst., at one o'clock, P. M.

The Convention refused to order the resolution to a second reading.

ADJOURNMENT TO WEDNESDAY.

Mr. BAER submitted the following resolution, which was read:

Resolved, That when this Convention adjourns to-day, it will meet again on Wednesday morning next at half-past nine o'clock.

The Convention refused to order the resolution to a second reading.

TAXATION AND FINANCE.

Mr. MACCONNELL. I move that we proceed to the consideration of the unfinished business of yesterday.

The motion was agreed to, and the Convention resumed on third reading the consideration of article number nine, on taxa-

tion and finance, the pending question being on the motion of Mr. Broomall, that the Convention resolve itself into committee of the whole for the purpose of inserting the following amendment, as a new section after section two.

"In classifying subjects for taxation the General Assembly shall have power to do equity between municipalities which have been or shall be united, where the proportion of their municipal debts to their taxable property differs; and also to impose special assessments on lands specially benefited thereby, for the making and renewing of local improvements in cities and boroughs."

Mr. BROOMALL. Those who are in favor of this section desire a modification of it; and understanding that under the rules it cannot now be modified, I ask that it be voted down, and I hold in my hand a modified proposition which I shall then offer.

The PRESIDENT. The question is on the motion to go into committee of the whole for the purpose of making the amendment proposed by the delegate from Delaware.

The motion was not agreed to.

Mr. BROOMALL. Now, I move to go into committee of the whole for the purpose of inserting after section two what I send to the Chair. This is precisely the same as before, except that in the fourth line the words, "the making and renewing of," are stricken out, so that it will read, "also to impose special assessments on lands specially benefited thereby for local improvements in cities and boroughs."

The making and renewing part seemed objectionable to many.

The CLERK read the amendment as follows:

"In classifying subjects for taxation the General Assembly shall have power to do equity between municipalities which have been or shall be united where the proportion of their municipal debts to their taxable property differs, and also to impose special assessments on lands specially benefited thereby for local improvements in cities and boroughs."

Mr. S. A. PURVIANCE. If the chairman of the Committee on Revenue, Finance and Taxation will allow me, I have an amendment to the last section which I think will include all that is intended to be embraced by this amendment.

Mr. BROOMALL. I now learn, Mr. President, that another section better than that, and which will answer the

purpose of the last section in the article, section thirteen, is about to be offered by the gentleman from Pittsburg. I therefore withdraw my amendment to allow the gentleman from Allegheny to present his.

The PRESIDENT. The motion of the gentleman from Delaware is withdrawn.

Mr. S. A. PURVIANCE. Then I move that the Convention go into committee of the whole for the purpose of amending the last section by substituting as follows:

"No laws shall authorize special taxation upon any class of persons or property except where the same is levied for the special benefit or advantage of the persons or property so taxed."

Mr. MANN. What does that mean?

Mr. HOWARD. I very much doubt whether that is desirable.

Mr. S. A. PURVIANCE. It will be remembered by the Convention that on the second reading of this article, section thirteen was inserted at my suggestion. An explanation of its effect was given by me, which was followed by a speech from the gentleman from Philadelphia, (Mr. Woodward,) when the Convention unanimously agreed to the insertion of the section. Upon an examination of its language now, the direct question will be found to be whether it will cover the class of cases to which I referred in the remarks I then made. It is agreed upon all hands that something must be done to cover that class of cases. Such as, for instance, the Legislature have passed laws authorizing the assessment of taxes upon a certain class for the benefit of another special class.

I cited in my remarks then the case of Johnstown, where the Legislature authorized the levy of a tax upon saloon keepers for the purpose of maintaining a police force.

I cited also the case of Allegheny county. The Legislature there authorized the assessment of a tax upon a class of property within two or three miles on either side of a certain road, for the purpose of making and maintaining that road.

I cited the case of the levy of a tax upon the town of Towanda of \$500 more than that which was uniformly assessed upon the people of the county, for the purpose of building a court house.

I cited other cases, and Judge Woodward followed me by referring to a case in Lehigh county, where the hauling of ore across a certain road cut up the road

bed, and parties came to Harrisburg and obtained the passage of a certain law authorizing the levy of twenty-five cents per ton for all ore hauled over that road.

It is for the purpose of arresting this species of special taxation that this clause should be adopted. I believe the language as now used is all right, but whilst it covers the class of cases to which I have referred, it does not affect the right of making special assessments by valuation upon the improvements made in cities and towns. I believe that the substitute I have offered, as now drawn, is in conformity with the views of my colleague across the way, (Mr. Ewing,) who had some doubt as to the language of section thirteen as originally framed. I regret that Judge Woodward is not in his seat, because he has this section very much at heart, and he is very clear in the opinion that this difficulty calls for something which will afford the remedy I have indicated.

THE PRESIDENT. The question is upon the motion of the gentleman from Allegheny, to go into committee of the whole in order to make the amendment which he has indicated.

MR. S. A. PURVIANCE. On that motion I call for the yeas and nays.

MR. CLARK. I second the call.

MR. MACVEAGH. Before the vote is taken I desire to say that after careful consideration I cannot see any necessity for either the section or the amendment.

MR. C. A. BLACK. Not a bit.

MR. MACVEAGH. I have no doubt whatever that the article without the last section and without this amendment is a perfectly good article and will enable the Legislature, by general laws, as is required by the article on legislation, to provide all the remedy that is necessary in this instance. There is even some language in the first section of this article that I think is utterly unnecessary. Taxation must be by general law. The evils of the special legislation enumerated are prevented by the article on legislation; and when you come to pass a law that shall affect every man in this Commonwealth you will find that members of the Legislature will prevent even if the character of the Legislature is not improved, the passage of laws of this character.

Heretofore it has been the rule that if a member from a locality asked for a law, no matter how wretched it might be, the law was passed; but in the future every man will be interested in all the legisla-

tion that is asked from the Legislature, because whatever is passed will immediately affect every man's constituents. Now, undoubtedly, under the reading of the first section of this article the Legislature is not prohibited from making a general law for one class of subjects; for instance, if the class of property benefited be improved, that is one class of subjects. Undoubtedly that is a class of property benefited by the improvement.

Let the Legislature make a general law on the subject. Who pretends to say that the right is forbidden them by this article? The Legislature ought not, however, have the right to provide one way of assessing damages in Pittsburg, another way in Philadelphia and a third way in Harrisburg; so that when the laws have to be general, when a power is given, it seems to me that now it would be wise to vote down the proposition that we incautiously voted in on second reading, and to vote down also the amendment now proposed.

MR. TURRELL. I am opposed to the amendment. It is not as good, in my judgment, as the original section, and I think if delegates will look at the original section and compare it with the substitute that is now offered, they will see the force of this remark. The original section is general in its character and explicit:

"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."

Now, it is proposed to change that and to authorize the Legislature to tax an individual, for instance, where they may think that a certain thing is for his benefit. This will give them the right to assess taxes upon any man without allowing the individual to say whether it will be a benefit to him or not, or whether he wants it.

This proposition, if I remember aright, was presented in Convention once before, and was voted down. Now it is thrust in upon us at this time, and we are asked to accept suggestions on third reading, without our having time for mature consideration. I think the whole practice is wrong. We have put things into this article which have changed its whole character. We did so yesterday with reference to other articles particularly in reference to the sixteenth section of the article on suffrage, election and repre-

sentation, were, at the suggestion of the gentleman from Columbia, we struck out a provision which placed the elections of the State in the hands of election officers chosen by the people, and placed the subject in the hands of two men who are to be appointed by the judges of your courts. I hope that this amendment will be voted down, and that if we put anything upon this subject into this article, it will be the original section which we have now before us.

Mr. PURMAN. The thirteenth section, for which this amendment is intended to be a substitute, is a limitation in favor of equality. The thirteenth section is: "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 benefitting another class."

It does not prohibit special taxes upon certain classes of property for the special benefit of that property, or of individuals or classes of individuals.

Mr. TURRELL. "Persons and property."

Mr. PURMAN. The language of the amendment is "persons and property." The limitation in the substitute is of a very different character from the limitation in the original section. By it no special tax shall be levied unless it is for the benefit of that particular class or that particular person. The thirteenth section, as it stands reported by the Committee on Revision, Taxation and Finance, is a restraint in favor of equality. The other is a limitation in favor of a particular person or particular property, a very different thing in effect and in its consequence. The substitute for the thirteenth section will be found very mischievous in practice. I suppose that it was conceived because it is supposed that the first section of the article prohibited the levying of special assessments upon particular property or classes of property for the grading of streets and paving the side-walks, which grading and paving is for the special benefit of the property to be improved by the expenditure of the money.

Whilst I admit that the subject of taxation is a very difficult one, and ought to be dealt with very cautiously, we ought to be cautious in tying up the hands of the Legislature on the subject, because no man can say what difficulty there will be in this State ten or fifteen years from this time. A careful reading of the first section is sufficient to satisfy the Convention

that it will not prevent such assessments as is here apprehended. The section says: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

That is, within the region of the city or borough proposed to be improved taxation shall be uniform, but it will not prevent the Legislature from singling out one subject and imposing upon it a different rate of taxation from that which is imposed upon some other subject. For illustration, they can levy a different rate of taxation upon real estate from that which they would levy on personal property. The first section of this article is not a grant of power, but a limitation upon the exercise of the taxing power. The Legislature can define, by general law, the territorial limits of the authority levying the tax, and can class the subjects so as to reach this whole subject, and make these special assessments.

Mr. HOWARD. Mr. President: I am opposed to this section, and I hope it will not be adopted. We have been endeavoring to get rid of special legislation; but this is a proposition by which we are to have special taxation expressly authorized by undertaking to make an exception. We authorize special taxation for every possible purpose whenever a board of viewers can be got to say that a man is in the remotest degree benefited by an improvement. If a man had a way to get out by a convenient road, and somebody within a mile and a half or two miles should make a road a little better, you could get a set of viewers, under this section, to come and say that he was benefited, whether he was or not. It is forcing you to be benefited when you would swear you were not benefited; that is the whole idea of this section. It is offered for one purpose, but it is full of a hundred fold more mischief than all the benefit that it can ever be to the people of this Commonwealth; there is no question about it. It is singular because we can see some little place of benefit we would open Pandora's box and let loose all these evils in the Commonwealth. The most obnoxious form of taxation that ever was conceived is special taxes.

I understand that cities and boroughs have submitted to it; they have acquiesced in it; and by a provision reported by the committee here, the first section, we have made ample provision for all kinds of taxes to be collected under gen-

eral law. There is no doubt about it, there is no necessity for any provision of this kind unless it is to extend the most obnoxious species of taxes. Under this provision any man or set of men who choose to project any improvement have nothing to do but to get a board of viewers and get them to go and sight around, and although it may be a mile or two or three distance, they can say that you are in some way benefited by it, and you wake up some morning and find that you are assessed a heavy bill for benefits that you cannot see. The Legislature will have ample power to authorize assessments upon property *directly* benefited by the grading and paving of streets, under the first section of this article.

Mr. President, I say again, there has not been a more obnoxious section offered in Convention than this :

"No law shall authorize special taxation upon any class of persons or property—

—That part is very good—

—"Except when the same is levied for the special benefit or advantage of the persons or property so taxed."

Now who is to decide that? You leave this system of special taxation upon everybody that a set of viewers will say should be taxed, to the Legislature of the State, and then you leave it to any set of speculators to begin the foundation upon which to base the tax. A few men who want a contract, perhaps, will put their heads together and say, "We will tax this man, we will tax that man, and another man for the making of a certain improvement; we do not tax the public at large, but we take it out of the pockets of a few individuals," and the whole scheme of the contract and the tax and everything is devised beforehand by the contractors. They get an act of the Legislature authorizing some special improvement; they get the job, and they know just whose pockets they are going to take it out of beforehand.

It is the worst form that ever was devised for collecting taxes. The plan is bad enough for the grading of streets, because that is now principally run by contractors. They select the councilmen beforehand; they make up their schemes, and carry around petitions to grade streets, because they say, "We will take this money out of the pockets of this individual and that." The individual may be skinned and fleeced; but because the public are not fleeced, there is no great

voice against it; the individual has to stand it; he has to pay it; they tell the property holder, "You have been benefited, now foot the bill." He says, "I have not." He is told, "No matter; you have, and you shall pay, because the viewers say that you are benefited."

I hope that we shall get rid of this kind of special legislation and this most obnoxious form of special legislation on the subject of assessing taxes for remote benefits in improvements.

The PRESIDENT. The Clerk will call the names of delegates.

SEVERAL DELEGATES. Let the amendment be read.

The CLERK. The amendment is to strike out section thirteen and insert :

"No law shall authorize special taxation upon any class of persons or property except where the same is levied for the special benefit or advantage of the persons or property so taxed."

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

YEAS.

Messrs. Ainey, Armstrong, Bannan, Brodhead, Clark, Cochran, Edwards, Ewing, Hall, Hanna, Littleton, M'Culloch, Patterson, T. H. B., Porter, Purviance, Samuel A., Reed, Andrew, Van Reed and White, David N.—18.

NAYS.

Messrs. Alricks, Baily, (Perry,) Baker, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Buckalew, Calvin, Carey, Carter, Corbett, Corson, Curry, Curtin, Dallas, Darlington, Davis, De France, Dodd, Dunning, Funck, Gibson, Guthrie, Hazzard, Hemphill, Horton, Howard, Hunsicker, Lamberton, Landis, Lilly, Long, MacConnell, MacVeagh, M'Camant, M'Clean, M'Michael, M'Murray, Mann, Minor, Mott, Newlin, Niles, Parsons, Patterson, D. W., Patton, Pughe, Purman, Read, John R., Reynolds, Rooke, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Struthers, Turrell, Wetherill, J. M., White, J. W. F. and Walker, *President*—63.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Ad-dicks, Andrews, Baer, Bailey, (Huntingdon,) Barclay, Bardley, Bartholomew, Black, J. S., Broomall, Brown, Bullitt, Campbell, Cassidy, Church, Collins, Craig, Cronmiller, Cuyler, Elliott, Ellis, Fell, Finney, Fulton, Gilpin, Green, Har-

vey, Hay, Heverin, Kaine, Knight, Lawrence, Lear, Mantor, Mentzger, Mitchell, Palmer, G. W., Palmer, H. W., Purviance, John N., Noss, Runk, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, J. Price, Wherry, White, Harry, Woodward, Worrell and Wright—52.

Mr. ARMSTRONG. I have re-written section twelve, which was voted in by the House yesterday, and if gentlemen will oblige me by looking at their print, I have endeavored to preserve all that was embodied in that section but shortening its phraseology. I will read it.

"The moneys held as the necessary reserve shall be limited by law to the amount required for current expenses, and shall be secured and kept as may be provided by law. Monthly statements shall be published showing the amount of such moneys, where the same are deposited, and how secured."

I ask unanimous consent that that be substituted for section twelve, which was voted in yesterday.

Mr. BROOMALL. I hope that will be granted. It is really shorter.

Mr. HOWARD. I do not know whether to grant it or not.

The PRESIDENT. The delegate from Lycoming will forward his proposition, so that the Clerk may read it.

The CLERK read the proposed substitute for section twelve.

Mr. LAMBERTON. I would suggest to the delegate from Lycoming to insert after the words "monthly statements" the words "verified by affidavit."

Mr. ARMSTRONG. That is a matter of detail which the Legislature can provide for by law. I have no objection to it, but I think it better to leave it to the Legislature.

The PRESIDENT. Will the Convention unanimously agree to the modification of the twelfth section proposed by the delegate from Lycoming? ["Aye."] It is agreed to.

Mr. MANN. I move to go into committee of the whole for the purpose of striking out section thirteen as it is numbered in the printed article before us, which reads as follows:

"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."

Mr. MACCONNELL. Was not that section stricken out yesterday?

The PRESIDENT. It was not. The motion of the gentleman from Potter is before the Convention.

Mr. MANN. I make this motion because I believe it to be in harmony with the vote just taken. I think the purpose of this Convention is to provide against any special taxes, and yet this section clearly does authorize such a tax. It says there shall be no special tax for the special purpose of benefiting another class, thereby implying that if it is for the purpose of benefiting the class taxed the Legislature may levy a special tax. I understand the Convention to have said by its vote just taken that it will not permit that to be done, and I do hope that we shall not authorize any special taxes in the Constitution. The first section of this article, it seems to me, is the spirit with which the whole article should be imbued, that taxes shall be uniform, and I think this section was put in by the Convention under a misapprehension of what its meaning was. It never had the careful consideration of the Committee on Taxation and Finance, and I do not think they ever approved it, and I do not believe that it is in accordance with the ideas and purpose of the article. It is a flat contradiction to say in the first section that taxes shall be uniform, and then wind up in the last section by saying they shall not be uniform, but that the Legislature may authorize the levying of special taxes for all purposes except the one named in this section.

The PRESIDENT. The question is on the motion of the delegate from Potter (Mr. Mann.)

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Stanton in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on taxation and finance, with directions to strike out the thirteenth printed section. That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Stanton) reported that the committee of the whole had made the amendment referred to them.

Mr. D. N. WHITE. I rise to a privileged question. I move to reconsider the vote by which the House refused to strike out the last clause of section thirteenth, as it is numbered in the printed amendments submitted by the delegate from

Delaware. That clause reads as follows : "and a pardon of the offence shall not remit or affect that part of the punishment."

Mr. ARMSTRONG. I hope the House will reconsider that vote.

Mr. BROOMALL. Is that debatable in its present shape?

The PRESIDENT. It is not.

Mr. BROOMALL. I hope it will be reconsidered. It ought to be reconsidered.

The motion was agreed to.

The PRESIDENT. It is now before the Convention.

Mr. ARMSTRONG. I have re-written the thirteenth section, and I will submit it to the House. I will state that it omits simply that part which has now been reconsidered, and the question can come up upon that afterwards. If gentlemen will take the printed section, they will see what I have omitted and that part which I have changed in its phraseology merely as I read what I have drawn :

"The making of profit out of public moneys or using the same for any purpose not authorized by law by any officers of the State or member or officer of the General Assembly shall be a misdemeanor, and shall be punished as may be provided by law ; but part of such punishment shall be disqualification to hold office for a period not less than five years."

Mr. BROOMALL. Do I understand that the amendment of the gentleman from Lycoming is now in order, or is the question first on the clause which has been reconsidered?

The PRESIDENT. It is on the clause which has been reconsidered.

Mr. BROOMALL. That is the question and is now debatable. All I desire to say is, that the change we have made in the pardoning power would seem to my mind to render that clause less necessary than I had thought it ; and being not much in favor of unpardonable offences, I desired that the Convention should vote upon it again without having much choice as to which way should be decided.

The PRESIDENT. The question now recurs on the motion to go into committee of the whole for the purpose of striking out the last clause of the thirteenth section as numbered in the printed amendments.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. John R. Read, in the chair.

The CHAIRMAN. The committee of the whole have had referred to them section

thirteen of the printed amendments, with instructions to strike out the last clause ; "and a pardon of the offence shall not remit or affect that part of the punishment." That amendment will be made.

The Committee then rose, and the President having resumed the chair, the Chairman (Mr. J. R. Read) reported that the committee of the whole had made the amendment referred to them.

Mr. ARMSTRONG. Now I move to go into committee of the whole for the purpose of striking out section thirteen and inserting in lieu thereof the following :

"The making of profit out of the public moneys or using the same for any purpose not authorized by law, by any officer of the State, or member or officer of the General Assembly, shall be a misdemeanor, and shall be punished as may be provided by law ; but part of such punishment shall be disqualification to hold office for a period of not less than five years."

Mr. BROOMALL. Before the vote is taken I desire to call attention to the fact that one class of persons omitted are in the amendment, who are proposed to be embraced in the original section. The words, "or any candidate for election or appointment" are left out. The gentleman from Lycoming purposely leaves them out. I think they had better be left in. It is possible for candidates for election to high offices, by some contrivance, to get hold of the public moneys, and I would rather the clause was left in. If the gentleman will leave that in, I shall be entirely in favor of the change of phraseology that he proposes.

Mr. ARMSTRONG. I submit to the Convention, in reply to the gentleman from Delaware, that in my judgment it would be better to strike out the words, "or member of the General Assembly," for the reason that the public moneys are not in their custody, and cannot be used or controlled by them unless by complicity with the Treasurer, and his offence would be sufficiently defined by leaving it to read : "Any officer of the State." But I do not see why we should put in here "any candidate for election or appointment," because candidates cannot possibly get hold of the money unless, as I have said, by complicity with the State Treasurer.

Mr. BROOMALL. Then why not punish them, too?

Mr. ARMSTRONG. I think it should not be done in this way.

Mr. ANDREW REED. Let me ask the gentleman what objection there would be to inserting "any person whatsoever," so as to include everybody?

Mr. ARMSTRONG. No objection so far as the offence is concerned, but it would be better to define it by law, if such an abuse existed. As we are now providing for the custody of the State funds, I think we should limit the provision to the officers who have them in charge.

Mr. MACVEAGH. Why not say "any person whatever making unlawful profit out of the public moneys?"

Mr. BROOMALL. That is too broad.

Mr. MACVEAGH. No; "unlawful profit" is not too broad. The trouble on the other side would be this, for instance, if banks compete for the custody of the State funds under a public law, why should the officers or the directors or stockholders of those banks be prohibited from being candidates for election to the Legislature? And yet they would be making profit out of the public moneys. What you want to prevent is unlawful profit or profit not authorized by law.

Mr. BROOMALL. The term "unlawful" would include only that which was prohibited by law.

Mr. MACVEAGH. No; "unauthorized."

Mr. BROOMALL. I am not sure that the ingenuity of the Legislature will be sufficient to contrive laws to keep the public moneys out of the hands of these politicians altogether. I would prefer the phraseology of the section as it is.

Mr. DARLINGTON. The difficulty is in permitting in the Constitution the suggestion that a politician can get at the public money at all. He cannot get it but by authority of law. The State Treasurer has it, and I would make it as highly penal as possible for him to improperly use it; but do not make it penal for a man who cannot get it at all.

Mr. ARMSTRONG. I think on reflection it is much better to leave those officers out. It makes the Constitution more compact and gives to it every efficiency which the exigencies of the case require.

The PRESIDENT. The question is on the motion of the delegate from Lycoming (Mr. Armstrong.)

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Darlington in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the thirteenth section, with instructions to strike

it out and insert a substitute in lieu thereof. That amendment will be made.

Mr. MINOR. I move to go into committee of the whole for the purpose of amending the seventh section in the third line by inserting the following words —

Mr. BROOMALL. I ask the gentleman to withdraw his amendment for the purpose of offering another section in the place of section seven.

Mr. MINOR. I think the amendment I propose ought to go in anyhow, and then if a better substitute is proposed, very well. It is to insert after the word "therein," in the third line of the seventh section, the words, "for State and county purposes." The object is to give a basis for the indebtedness. As it stands now there is no basis, because there are several kinds of assessments, which differ. This should be the standard, and for that reason I offer the amendment.

The motion was not agreed to.

Mr. BROOMALL. Section seven, as originally drawn by the gentleman from Columbia, (Mr. Buckalew,) was not very clear, was drawn hastily, and was not satisfactory to himself; and I hold in my hand one which I think he is satisfied with, if the Convention is. I move to go into committee of the whole for the purpose of striking out section seven and inserting the following in lieu thereof:

"The debt of any county, city, borough, township, school district, or other municipality or incorporated district, shall never exceed seven per centum upon the assessed value of the taxable property therein, except that any city, the debt of which now exceeds seven per centum of such assessed valuation, may be authorized by law to make loans not exceeding three per centum in addition thereto."

I trust the idea of that section will be preserved; it is simple; and that the figures will be changed if anything is changed in it.

Mr. NILES. I simply rise to inquire whether I heard the amendment read aright in relation to the limitation of indebtedness. I understood it to be read "seven per cent." ["Yes."] Well, it is five in the article. I move to strike out "seven" and insert "five."

The PRESIDENT. That amendment is not now in order.

Mr. DARLINGTON. I have always doubted the wisdom of placing any limitation whatever upon the power of a city or town or county or district in this respect. Certainly the inhabitants of those

municipalities are the best judges of the amount of debt which it is proper for them to incur, and the improvements which it is proper for them to make by means of that indebtedness. If there be any danger that a proper limit will not be placed upon the debt in that way, my word for it the lender will take care to impose that limit; he will not trust them too far. I think it is perfectly safe to leave every municipality in the Commonwealth to the control of supply and demand. Whatever they want, and anybody is willing to lend, why should they not borrow and why should it not be lent?

Mr. HOWARD. This substitute leaves out a large portion of the seventh section as it has passed two readings, and as it has passed the committee. It seems to me, Mr. President, that we are getting very wild. It may be a good way to make a Constitution for delegates to come here and make such motions. When we wipe out a section we understand what we are doing; but when we sweep out one section and put in a new one, that is another thing. Upon a subject of such vast importance as is covered by the seventh section, it seems to me that propositions to strike out and insert should be printed and laid before this body for our consideration. I am opposed to this way of making a Constitution. I hope the proposition of the delegate from Delaware will be rejected. It does not nearly cover the ground that is covered by this seventh section. This section was intended as a limitation, and I hope it will be allowed to stand as it is.

Mr. TURRELL. There is another important item left out in this section as offered which is in the original section. We guarded this section when we inserted it here by requiring any such increase of debt to be submitted to a vote of the people.

Mr. HOWARD. And that it should not exceed two per cent.

Mr. TURRELL. That is all left out.

Mr. HOWARD. That is all stricken out.

Mr. MACCONNELL. I shall vote against this amendment because if I understand it, it directly conflicts with our thirty-first rule. That rule says:

"All articles of amendment proposed to the Constitution shall receive three several readings in the Convention previous to their passage, the first of which shall be in committee of the whole, and the Convention shall order the printing of the

same for the use of the members as they shall think expedient."

That was put in to prevent precipitate action, or action without a chance of full consideration. We have put in this section on second reading. Now we are at its third reading, and it is proposed to strike it out and to put in another section that will only be read once. I shall vote against it for that reason.

Mr. BUCKALEW. This section was drawn by me at my desk in some haste, as I recollect, to get rid of the subject. Now I am satisfied that the section as it stands is imperfect and should be amended. However, I am not in favor of striking out that part of it which reserves to the people the right to decide by public election whether or not they will incur a new indebtedness or increase their debt over a certain per centum upon the assessed value of their taxable property. That is the middle part of the section, and I propose to allow that to stand, because there can be no possible objection to it.

Yet I think the limitation of five per cent. is not a judicious one. You will find in the Constitutions of other States, where this subject has been perhaps more carefully considered than it has been in this Convention, that ten per cent. is a common limit. There are several exceptions, perhaps, that go as low as five, but ordinarily, I think, the limitation is higher. I am satisfied that five per cent. is too low. For instance, in school districts where it is proposed to erect new and valuable school houses, to last for half a century or even a century to come, it is impossible within a limit of three or four per cent. to establish the improvements, and by distributing the payment for them over a long period of time render the burthen tolerable to be borne.

Observe, we are fixing an arbitrary limit. Of course, a large part of the municipalities will not require a debt as high as seven per centum for purposes of improvement. But we are now fixing a maximum, and we ought to fix it at a point where it will cover all the reasonable necessities of our local governments.

Again, fixing the maximum at seven per centum will agree with the provision at the end of the section. Philadelphia has now a debt of about ten per centum, and the debt of Pittsburg also is large. The members from those cities inform us that large improvements are being made there which will necessitate the making

of loans, not necessarily permanent or which will remain for a very long period of time, yet it will be necessary to make loans for the purpose of carrying out existing engagements. For instance, in this city public buildings are being erected and improvements are being made to the park which require the expenditure of large sums of money. If you allow the latter clause to stand which provides that when the debt of any city now exceeds seven per centum of the assessed valuation of property the debt may be increased in the manner provided, you do not necessarily keep the debt of these municipalities at more than an average limit of seven per centum, because gentlemen will find that in the article on counties, townships and boroughs we have carefully provided for the creation of sinking funds which will work upon these existing debts and reduce them gradually until they will fall below this limit of seven per centum.

As the section stands, it reads that no county, city or borough, &c., shall create a debt over five per cent., and a new county, city or borough that may hereafter be created can never go above that limit. Then there is another class of those already in existence that now have debts of about four or five per cent., and who will find it necessary to increase that debt two or three per cent. This limit will operate injuriously upon them, and there are more of that class than there are of the higher or the lower ones. Therefore I am in favor of fixing the maximum at a higher limit than five per cent., although I am not in favor of that portion of the gentleman's amendment which strikes out the part of the section which requires the question of the incurring of a new debt or the increase of an indebtedness to be submitted to the people for their vote.

I shall vote against the present amendment, therefore, in the hope that this clause may be retained, and that in some other way we may increase the maximum limit.

The PRESIDENT. The question is on the motion of the delegate from Delaware (Mr. Broomall.)

The motion was rejected.

Mr. BUCKALEW. Now, I move to go into committee of the whole, in order to amend the section in the third line, by striking out "five," and inserting "seven."

Mr. D. W. PATTERSON. And to change in fifth line the "two per centum" to "four per centum."

Mr. TURBELL. No, sir. You cannot do that.

The PRESIDENT. The question is upon the motion of the gentleman from Columbia to go into committee of the whole in order to amend as he has stated.

Mr. BUCKALEW. On that question I call for the yeas and nays.

Mr. CORBETT. I second the call.

Mr. BUCKALEW. One-half of the cities in this State cannot establish water works unless my amendment is carried.

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

Y E A S.

Messrs. Beebe, Bigler, Black, Charles A., Broomall, Buckalew, Carter, Clark, Corbett, Corson, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, Dodd, Gibson, Hall, Horton, Landis, Littleton, MacConnell, MacVeagh, McCulloch, M'Michael, Newlin, Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Sharpe, Smith, H. G., Smith, Henry W., Stanton, White, David N., and White, J. W. F. —39.

N A Y S.

Messrs. Ainey, Alricks, Bailly, (Perry,) Bannan, Bowman, Boyd, Brodhead, Calvin, Carey, Cochran, DeFrance, Dunning, Edwards, Ewing, Finck, Guthrie, Hanna, Hazzard, Howard, Hunsicker, Lamberton, Lilly, Long, M'Camant, M'Clean, Mann, Minor, Mott, Niles, Parsons, Patterson, T. H. B., Struthers, Turrell, Van Reed, Wetherill, J. M., Wright and Walker, President—37.

ABSENT.—Messrs. Achenbach, Adicks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Brown, Bullitt, Campbell, Cassidy, Church, Collins, Craig, Cronmiller, Elliott, Ellis, Fell, Finney, Fulton, Gilpin, Green, Harvey, Hay, Hemphill, Heverin, Kalne, Knight, Lawrence, Lear, M'Murray, Mantor, Metzger, Mitchell, Palmer, G. W., Palmer, H. W., Pughe, Reed, Andrew, Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, John Price, Wherry, White, Harry, Woodward, and Worrell—57.

So the motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Brodhead in the chair.

The CHAIRMAN. The Convention has resolved itself into committee of the whole for the purpose of striking out the word "five," in the third line of section seven, and inserting the word "seven." The amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Brodhead) reported that the amendment directed by the Convention, had been made.

Mr. BUCKALEW. I want to correct the phraseology of the section in one particular. I ask unanimous consent to strike out in the ninth line the words, "to make loans not exceeding" and to insert the words, "increase the same," so that the section will read; "May be authorized by law to increase the same three per centum in the aggregate." There is certainly no objection to that.

The PRESIDENT. Shall unanimous consent be given to make the alteration suggested by the gentleman from Columbia?

Unanimous consent was given and the correction was made.

Mr. BUCKALEW. I move now that the Convention go into committee of the whole for the purpose of amending the section by striking out all after the word "valuation," in the tenth line.

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

The CLERK read as follows:

"Any increase of its indebtedness until its debt shall be increased below seven per cent., upon such assessed valuation."

Mr. BROOMALL. That is a good suggestion and makes the proviso shorter and better.

Mr. EDWARDS. I now ask for the reading of the section as it would be if amended.

The CLERK read as follows:

"SECTION 7. The debt of any county, city, borough, township, school district or other municipality or incorporated district, except as herein provided, shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new 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 by law to increase the same three per centum, in the aggregate, in existence at any one time, upon such valuation."

Mr. CUYLER. I merely want to say one word as to the effect of this section upon the city of Philadelphia. The debt of the city of Philadelphia I believe to be about fifty-two millions of dollars, and upon the present valuation of our property that would approach very closely to ten per cent. We are now coming upon the Centennial; we are erecting large and costly public buildings; we have a great park to improve and develop, we have a system of sewerage to establish for the entire city, and we have to look in the face substantially the re-paving of the whole city without the aid of the power to assess taxes upon those who are immediately and locally benefited by the work. In other words, as I understand it, the Convention has refused to insert into this article any provision whereby local assessments may be imposed upon those who are immediately benefited by local improvements. The policy of such a thing strikes me as utterly inadvisable, and the practical effect upon the city of Philadelphia will be that just at the very moment when these large and necessary expenditures have to be encountered, the power to meet them will be paralyzed by the limitation which it is proposed to establish in this section. For that reason I am opposed to the section as it stands. I am willing to trust to the people themselves the determination of the extent to which they should be taxed.

The PRESIDENT. The question is on the amendment.

Mr. CUYLER. So I understand. I just desired to make a remark on the whole section as it affects my own city.

Mr. HOWARD. There is no necessity for inserting this amendment offered by the delegate from Columbia for the purpose of increasing the revenue, making it "seven" instead of "five" per centum, because all they have to do if they want more money is to put up the assessment.

The PRESIDENT. That amendment has been made.

Mr. HOWARD. I understand it, and I understand the delegate from the city is afraid they cannot raise money enough. All they have to do is to increase the assessed value of the property and then they can get just as much as they want.

The PRESIDENT. The question is on the motion of the delegate from Columbia.

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

The CHAIRMAN. The Convention have instructed the committee of the whole to make a certain amendment to the tenth section. It is made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Joseph Bailly) reported that in pursuance of the direction of the Convention the amendment had been made.

Mr. LANDIS. I move that the Convention resolve itself into committee of the whole for the purpose of striking out section seven.

Mr. President, it is very evident that in regard to the question of a constitutional section controlling cities and towns as to the amount of their taxation, the Convention is floundering. We cannot arrive at a harmonious conclusion, because what may be found to be entirely suitable to the wants of one community will be found to be entirely unsuitable to another.

The objection made by the gentleman from Philadelphia (Mr. Chyler) applies, I know, to some of the towns in the interior of the State. I know that as the section stands it will not suit my own town.

The indebtedness of our town far exceeds the maximum prescribed by this section, and the wants of the town can only be met by a rate of taxation that will not be allowed by the section. I can see that many of the towns in the State are in precisely the same fix. Nor do I see that it is necessary that we should have any restriction on the subject. The wants of the people can control it; the interests of the people can control it; their own prudence will control it. Why, then, should we attempt to restrict them on a question which they directly understand, in which they are directly concerned, and which they, by their own notions of prudence, can regulate among themselves?

I therefore hope we shall strike out the entire section.

Mr. MACVEAGH. I submit that the Convention will do unwisely if it strikes out this section. If there is one crying evil that needs constitutional inhibition, it is the evil of piling up these vast municipal debts. The tendency to run in debt on every side by the smallest municipality for every purpose, is to-day one

of the appalling evils that we have to meet, and no reform Constitution has yet been enacted, to my knowledge, that has not struck at the root of that evil in some form or other.

The PRESIDENT. The question is on the motion of the delegate from Blair (Mr. Landis.)

The motion was not agreed to.

Mr. BRODHEAD. I move to go into committee of the whole for the purpose of making the following amendment, to come in after the word "but," in the third line of the first section:

"In the valuation of real estate for the purposes of taxation, all interest-bearing incumbrances of record shall be deducted."

I offer this proposition for the purpose of meeting a growing evil in this country. The real estate of this State is now bearing the largest proportion of the taxation. The holders of bonds, stocks and mortgages, by means of their soliciting the Legislature, have nearly all been released from taxation. Take the cities, the towns, the townships and the boroughs of this State, and nine-tenths of the tax is paid by the real estate; and not only are persons obliged to pay tax on what they own but they are obliged to pay tax on what they owe. That is the point I want to get at. I want to have it so that the interest which a man has in his property shall be taxed, and not that portion which he does not own.

I call for the yeas and nays on this proposition.

Mr. MANN. I second the call.

Mr. CORSON. The amendment does not seem to fit to come in at the place indicated. Let it be read.

The amendment was read.

Mr. CORSON. Then it is not a grammatical sentence; it does not suit me at all. I raise the point of order.

The PRESIDENT. That is not a point of order.

Mr. CORSON. That is not grammatical?

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

YEAS.

Messrs. Beebe, Boyd, Brodhead, Cochran, Curtin, Davis, De France, Dunning, Finney, Fulton, Funck, Gibson, Howard, Hunsicker, Lilly, Long, McClean, Mann, Mott, Newlin, Palmer, G. W., Parsons, Patterson, D. W., Patton, Purviance

John N., Purviance, Sam'l A., Sharpe, Struthers, Turrell, Van Reed and White, David N.—31.

N A Y S.

Messrs. Alricks, Baily, (Perry,) Baker, Bannan, Bigler, Black, Charles A., Bowman, Broomall, Buckalew, Calvin, Carey, Carter, Cassidy, Clark, Corbett, Corson, Cuyler, Dallas, Darlington, Edwards, Hall, Hanna, Hazzard, Lamberton, Littleton, MacConnell, MacVeagh, McCamant, McCulloch, M'Michael, Minor, Mitchell, Niles, Patterson, T. H. B., Pughe, Purman, Read, John R., Smith, Henry W., Stanton, Whetherill, J. M., White, J. W. F., Woodward and Walker, *President*—43.

So the motion was not agreed to.

ABSENT. — Messrs. Achenbach, Adicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Brown, Bullitt, Campbell, Church, Collins, Craig, Cronmiller, Curry, Dodd, Elliott, Ellis, Ewing, Fell, Gilpin, Green, Guthrie, Harvey, Hay, Hemphill, Heverin, Horton, Kaine, Knight, Landis, Lawrence, Lear, M'Murray, Mantor, Metzger, Palmer, H. W., Porter, Reed, Andrew, Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple, Whetherill, John Price, Wherry, White, Harry, Worrell and Wright—59.

Mr. CUYLER. I move to go into committee of the whole for the purpose of amending the article, by adding at the end of the first section, the following words:

"The General Assembly shall have power to authorize special assessment on property specially benefited thereby, for the making and renewing of local improvements in cities and boroughs."

Mr. HOWARD. That has been voted down.

Mr. CUYLER. It is a mistake to suppose that this has been voted down. As part of an additional proposition it has been voted down; but in the form in which it is now presented and in its present verbiage it has not been before this body before in this discussion.

I do not desire to take up the time of the Convention by any argument in support of this amendment. It is a vital necessity to the large cities; it is especially so to the city of Philadelphia. If we cannot renew the pavements

of this city by assessing the cost of these improvements upon the property along the borders of the streets, we cannot raise the amount of money necessary to do it at all.

Mr. FUNCK. Will the gentleman have any objection to applying that provision to the city of Philadelphia exclusively?

Mr. CUYLER. I have not the slightest objection so far as I am concerned.

Mr. CONSON. No; we want it all over the State.

Mr. CUYLER. I think it ought to exist all over the Commonwealth.

There are gentlemen of acute minds in this Convention who see this amendment written already in the first section and who make logical arguments, convincing to their own reason, that it is there. I am not able to see it with that distinctness; but if they are correct, and if it is there by implication, what earthly objection can there be to writing it there in plain and direct words so that nobody can mistake it? The power is a necessary power; it is a reasonable and a fair power; it is in harmony with all the previous practice of our people; and therefore I can see no reason why it should be excluded from the new Constitution.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Cuyler.)

Mr. D. N. WHITE. I suggest to the gentleman from Philadelphia that he offer it as a separate section. It comes in very awkwardly at the close of the first section.

Mr. CUYLER. I am not tenacious as to the method in which it comes in, but I think it naturally becomes a part of the first section. If gentlemen prefer to have it a separate section, it is equally agreeable to me.

Mr. HOWARD. I do not like to debate this question. We have been over it again and again this morning. This principle has been rejected by the Convention twice this morning by two decisive votes, and I do not see why it is necessary that this same idea should be put upon the Convention again. I understand perfectly well that a great tribe of contractors has grown up over this State who understand this business of special assessments and special taxes for special purposes. It is a whole piece of jobbery from beginning to end. I hope this will be voted down. There is sufficient authority given to the Legislature by the first section of this article without this:

"All taxes shall be uniform upon the same class of subjects."

Authorizing the Legislature to classify and specify and arrange for the mode of taxes throughout the Commonwealth; and there is no necessity for a provision of this kind.

Mr. CUYLER. Will the gentleman pardon a question? If it is already in the section by implication, where is the objection to writing it so distinctly that no man can doubt it.

Mr. HOWARD. Because it is in a great deal better shape in having it provided that this system of taxes shall be by general law; that is the reason.

Mr. D. N. WHITE. I consider this section of exceeding importance. I will just point to the city of Allegheny, a city extending about five or six miles long and about a mile broad. All over it there were no pavements at all, but by means of a section like this, by assessing the cost of the paving upon the property benefited, the whole city was paved from end to end, sewers made all through it, and nobody was the worse for it. It never could have been done by special taxation of the whole population. It has met with the approbation of the people, and I can see that you will stop all improvements in municipalities and cause continual trouble and vexation unless this goes on.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Cuyler.)

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

Mr. CORSON. I second the call.

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

YEAS.

Messrs. Bally, (Perry,) Bannan, Beebe, Bigler, Broomall, Carey, Carter, Cassidy, Church, Corson, Curry, Curtin, Cuyler, Darlington, Dodd, Dunning, Ewing, Hanna, Hazzard, Littleton, MacConnell, M'Michael, Minor, Niles, Palmer, G. W., Parsons, Patterson, D. W., Purman, Purviance, John N., Purviance, Sam'l A., Read, John E., Reed, Andrew, Sharpe, Stanton, Van Reed, White, David N., White, J. W. F. and Woodward—38.

NAYS.

Messrs. Alricks, Baker, Black, Charles A., Bowman, Boyd, Brodhead, Buckalew, Corbett, Dallas, Davis, De France, Edwards, Finney, Funck, Gibson, Guthrie,

Hall, Horton, Howard, Hunsicker, Landis, Lilly, Long, M'Clellan, M'Culloch, Mann, Mitchell, Patterson, T. H. B., Patton, Pughe, Smith, H. G., Smith, Henry W., Struthers, Turrell, Wetherill, J. M., Wright and Walker, *President*—38.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Ballely, (Huntingdon,) Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Brown, Bullitt, Calvin, Campbell, Clark, Cochran, Collins, Craig, Cronmiller, Elliott, Ellis, Fell, Fulton, Gilpin, Green, Harvey, Hay, Hemphil, Heverin, Kaine, Knight, Lamberton, Lawrence, Lear, MacVeagh, M'Camant, M'Murray, Martor, Metzger, Newlin, Palmer, H. W., Porter, Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, William H., Stewart, Temple, Wetherill, John Price, Wherry, White, Harry and Worrell—57.

Mr. HOWARD. I now call the previous question on the article. It is time the call was sustained.

The PRESIDENT. Gentlemen seconding the call will rise.

Messrs. Hunsicker, Corson, Horton, Niles, Van Reed, Parsons, Funck, Church, Hazzard, M'Culloch, Edwards, Turrell, Guthrie, Mott, MacConnell, Bowman, Wright, Lilly, Corbett and T. H. B. Patterson rose.

The PRESIDENT. The question is, shall the main question be now put?

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

Mr. BOYD. I second the call.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Bally, (Perry,) Beebe, Bowman, Carey, Carter, Church, Clark, Cochran, Corbett, Corson, Curry, Davis, De France, Edwards, Funck, Guthrie, Hall, Hazzard, Horton, Howard, Hunsicker, Landis, Lilly, Long, MacConnell, M'Culloch, Mann, Minor, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Pughe, Stanton, Turrell, Van Reed, Wetherill, J. M., Wright and Walker, *President*—42.

NAYS.

Messrs. Alricks, Baker, Black, Chas. A., Boyd, Buckalew, Cassidy, Curtin, Darlington, Dunning, Ewing, Gibson, Hanna, Littleton, M'Clellan, M'Michael, Newlin, Patterson, D. W., Purman, Purviance, John N., Purviance, Samuel A., Read,

John R., Reed, Andrew, Sharpe, Smith, Henry W., Struthers, White, David N., White, J. W. F. and Woodward—28.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Ad-dicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Biddle, Bigler, Black, J. S., Brodhead, Broomall, Brown, Bullitt, Calvin, Campbell, Collins, Craig, Cronmiller, Cuyler, Dallas, Dodd, Elliott, Ellis, Fell, Finney, Fulton, Gilpin, Green, Harvey, Hay, Hemphill, Heverin, Kaine, Knight, Lamberton, Lawrence, Lear, MacVeagh, M'Camant, M'Murray, Mantor, Metzger, Palmer, H. W., Porter, Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple, Wetherill, Jno. Price, Wherry, White, Harry and Worrell—63.

The **PRESIDENT.** The question now is on the passage of the article.

Mr. D. W. PATTERSON. I hope it will be voted down. It is only an experiment.

Mr. DE FRANCE. Debate is not in order.

Mr. D. W. PATTERSON. That is all I wish to say.

The **PRESIDENT.** The Clerk will call the names of delegates.

Mr. BRODHEAD. I wish to vote against this article, and I wish to give my reasons for doing so.

The **PRESIDENT.** Debate is not in order. You can file your reasons on record.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Alricks, Bailly, (Perry,) Bannan, Beebe, Bigler, Black, Charles A., Boyd, Broomall, Carey, Carter, Cassidy, Church, Cochran, Corbett, Corson, Curry, Dallas, Darlington, Davis, De France, Dodd, Edwards, Ewing, Finney, Funck, Gibson, Green, Guthrie, Hall, Hazzard, Horton, Howard, Hunsicker, Lilly, Littleton, Long, MacConnell, M'Gulloch, Mann, Minor, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Sharpe, Smith, H. G., Stanton, Turrell, Van Reed, Wetherill, J. M., White, David N., Woodward, Wright and Walker, *President*—63.

NAYS.

Messrs. Baker, Bowman, Brodhead, Clark, Dunning, Hanna, Landis, M'Michael, Patterson, D. W., Smith, Henry W., Struthers and White, J. W. F.—12.

So the article was passed.

ABSENT.—Messrs. Achenbach, Ad-dicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Brown, Buckalew, Bullitt Calvin, Campbell, Collins, Craig Cronmiller, Curtin, Cuyler, Elliott, Ellis, Fell, Fulton, Gilpin, Harvey, Hay, Hemphill, Heverin, Kaine, Knight, Lamberton, Lawrence, Lear, MacVeagh, M'Camant, M'Clean, M'Murray, Mantor, Metzger, Newlin, Palmer, H. W., Porter, Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, John Price, Wherry, White, Harry and Worrell—58.

Mr. BRODHEAD. Mr. President: I voted against this article and I wish to give my reasons for so doing. The first section, pretending to say *how* taxes shall be assessed, means nothing. It is intended to perpetuate the iniquitous system of taxation which now prevails in this State, by which the farmers and other real estate holders are made to pay all county, borough, township and school taxes, whilst the citizen who has made his investments in bonds, notes, judgments, mortgages and stocks is permitted to escape without any taxation whatever. I believe that this was one of the evils which the people wished to remedy when they voted in favor of calling this Convention. The Convention having failed, in this article, to provide any remedy for the evil, I vote against the article.

EDUCATION.

Mr. BUCKALEW. I move to consider the report of the Committee on Revision and Adjustment on article number ten, on education.

The motion was agreed to.

The **PRESIDENT.** The amendments of the Committee on Revision and Adjustment will be read.

The **CLERK** read the amendments.

Mr. DARLINGTON. It was directed that section eleven of the article on suffrage, election and representation should be inserted in the article on education in place of section three, which has been stricken out.

Mr. BUCKALEW. Section three of the article on education was stricken out by

the Committee on Revision and Adjustment, because that matter was provided for in the article on executive department. The section alluded to by the gentleman from Chester should take its place.

The PRESIDENT. It is not printed so.

The CLERK. It was furnished by the Committee on Revision and Adjustment for that purpose.

Mr. BUCKALEW. It was omitted by mistake.

Mr. DARLINGTON. I move that the Convention go into committee of the whole in order to re-insert the section.

Mr. BUCKALEW. That is not necessary. I suggest that the correction be made by the Clerk substituting section eleven of the article on suffrage, election and representation, in place of section three, stricken out by the Committee on Revision and Adjustment, in this article.

Mr. DARLINGTON. On what page of the pamphlet will that be found?

Mr. BUCKALEW. Page thirty-one.

SEVERAL DELEGATES. Read it.

The Clerk read as follows:

"Women of the age of twenty-one years or upwards shall be eligible to any office of control or management under the school laws of this State."

Mr. D. W. PATTERSON. Allow me to state that the Committee on Revision and Adjustment corrected that, so as to read:

"Women twenty-one years of age or upwards shall be eligible to any office of control or management under the school laws of this State."

That is the correction of the Committee on Revision and Adjustment, and ought to be included in this motion.

Mr. BUCKALEW. Certainly; it is included.

The PRESIDENT. A motion is not necessary. The correction will be made at the Clerk's desk.

Mr. BUCKALEW. I move that the report of the committee be adopted.

The motion was agreed to.

Mr. BUCKALEW. I now move that the article be transcribed for third reading.

The motion was agreed to.

The PRESIDENT. The article is now before the Convention on third reading.

The article was read the third time, as follows:

ARTICLE X.

EDUCATION.

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, and the Legislature shall appropriate at least one million dollars each year for that purpose.

SECTION 2. 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.

SECTION 3. Women twenty-one years of age or upwards shall be eligible to any office of control or management under the school laws of this State.

Mr. DARLINGTON. I now move to go into committee of the whole for the purpose of amending the first section, by striking out in the third line the words "above the age of six years."

I do not now propose to go into any discussion on this article. I merely wish to ask the attention of the Convention for three minutes to the question whether it is right and proper to put a limit of that kind to education. If it be proper even for us to do so to-day, it may not be proper for us to do so to-morrow. The subject is flexible, and therefore ought to be left to the Legislature. There is nothing of that kind in the present law that I know of; I certainly know of no such thing in the present Constitution. It is a matter that should be left to the Legislature, and I hope that therefore these words will be stricken out.

Mr. CARTER. I hope they will not be stricken out.

The motion was rejected.

Mr. DARLINGTON. I will make one other suggestion to the Convention. I move to go into committee of the whole for the purpose of amending the first section, by striking out all after the word "educated" in the third line.

Mr. HOWARD. Let us vote.

Mr. DARLINGTON. I merely want to say as to this clause that it was not originally intended to be a part of the report of the Committee on Education. After we came to the second reading of this article, we got into some confusion, and the article was referred back to the Committee on Education, with instructions to do certain things, which were hastily done. After, on the motion of the gentleman from Potter, (Mr. Mann,) we had stricken out part of this section as originally reported, this appropriation clause was added. My judgment is, and I submit it to the Convention for its consideration, that we ought not to say to the Leg-

islature that it shall appropriate not less than one million dollars, or any other sum. That is a matter entirely within the discretion of the Legislature, and should be properly left there. None of us need fear that the cause of education will not be sustained by the people, and as fully sustained as the ability of the people will warrant. I am perfectly willing to leave the question in that condition.

Mr. MANN. This clause was first reported in the article as it came from the Committee on Education. If it had not been reported to the Convention and then taken out by an extraordinary action of the Convention, I should not have moved to re-insert, but having been reported from the Committee on Education I felt that it could not be safely stricken out without discouraging by that action the friends of education everywhere throughout the State. Having been reported from the committee and having been sustained by every vote in this Convention upon the subject, I trust now that we shall not strike out these few lines of legislation when there are, in nearly every other section of the Constitution, as we propose to submit it, instances of legislation. I would consent now, gladly, to take this out if the Convention would resolve to take all legislation out of this Constitution. In such an event I would yield this point cheerfully, because I do believe that we have loaded down our Constitution by legislation in its various sections; but if we are to legislate at all, I insist that we shall legislate upon this most important of all the interests of the State.

Therefore I hope the Convention will stand by its repeated action on this question.

Mr. WOODWARD. Mr. President—

The PRESIDENT. The question is on the motion of the gentleman from Chester. As many as are in favor will say aye. ["Aye." "Aye."]

Mr. WOODWARD. Mr. President: I desire to say a word.

The PRESIDENT. Those against the motion will say no. ["No." "No." "No."]

Mr. DARLINGTON. Mr. President: Judge Woodward is on the floor.

The PRESIDENT. The noes have it. The motion is not agreed to.

Mr. C. A. BLACK. Mr. Woodward was on the floor before the vote was taken.

The PRESIDENT. Does the gentleman from Philadelphia desire to speak upon this question?

Mr. WOODWARD. From the sound of that vote, I do not know as I intend to say anything. I rose to support this motion.

The PRESIDENT. It is all right, anyhow. The motion was not agreed to. [Laughter.]

Mr. WOODWARD. I do not know that it is all right. The motion was to go into committee of the whole in order to strike out the clause, and the vote sounds as if it was in the negative. I am in favor of striking it out.

The PRESIDENT. The Chair will withdraw his decision. The Chair did not know that the gentleman wished to speak on this question.

Mr. WOODWARD. Gentleman should remember that this question of annual appropriations to our common schools is to be submitted to our new Legislature, a larger Legislature, a Legislature that will represent the people of Pennsylvania more fully and more thoroughly than any Legislature we have had before. I think if we can commit anything with safety to the Legislature, we can commit this question of annual appropriation, and we are bound to submit it to the Legislature. This Convention has no power to make any appropriation out of the public treasury. That is a matter which rests exclusively with the Legislature. They are the constitutional custodians of the public money, and it does not fall within any of the duties of this Convention to fix the amount of an appropriation, either by a minimum or a maximum. It is a violation of the duties that are assigned to us. It is an assumption of a duty that belongs to the Legislature, and I have no doubt that it can be safely entrusted to the Legislature. Therefore I hope the motion of the gentleman from Chester will prevail. I am sorry to hear from the negative vote that has been given that it is likely not to prevail.

Why, look at it! This Constitutional Convention undertakes to say what an appropriation by the Legislature shall be in the future. If we can say that it shall be a million, we can fix it beyond or below that sum. We make here a minimum appropriation. Now, who finds in his credentials as a member of this Convention any such power? It is not in the nature of a constitutional provision at all. It is a gross assumption of the power that

belongs to the Legislature, and I feel so entirely willing to entrust this matter to the new Legislature that we are to have under our amended Constitution that I sincerely hope the provision will be stricken out.

Mr. BEEBE. I think I can tell the gentleman from Philadelphia one reason perhaps why this clause was inserted. It is true that we have a Constitution that requires a system of public schools for the benefit of the poor at the expense of the State; but so far as its maintenance at the public expense equally by public appropriations is concerned, it has been a farce. The appropriations made by the Legislature heretofore in many instances have never exceeded from seven to ten or eleven dollars to a sub-school district, or in other words the appropriation has amounted to the paltry sum of from thirty to seventy cents per scholar, instead of the intention of the Constitution being realized that the property of the State should educate the children of the State by equalizing taxation thereon.

The result has been that in the poorer districts or portions thereof, of this State, the maximum tax would not keep up the public schools for the four months required by law; and that is perhaps why this clause is inserted here; at least it is a reason why it should be here, so that we shall not make a farce of our public school system by ordaining in the Constitution that we shall have public schools and then force the poorer counties to assess the maximum of tax authorized by law to support a four months' school, whereas, in the wealthier counties in the State a tax of two mills would be all that it would be requisite for them to have for better schools and for a longer term. The failure of the Legislature to make such appropriations as would equalize the burthens of supporting the system is therefore, I take it, a reason why this proposition is inserted.

Mr. HANNA. Mr. President: I support, heartily, the motion of the gentleman from Chester. In the first place, I doubt very much whether it is the duty of the Commonwealth to provide for the education of the children at large. I think it belongs, primarily, to the citizens of each locality. Each county of the State should, by its own direct taxation, provide for schools within that county. By this section we propose to say that the Legislature shall, annually, out of the revenues of the State, appropriate at least

\$1,000,000 to public schools. It is a matter entirely within the discretion of the Legislature whether the revenues of the State will allow them to expend that amount.

In the next place, this amount is to be raised by taxation over the whole Commonwealth, in addition to the taxes levied upon the people of the different counties to support their own schools.

Now take our cities and counties; they have a separate direct local school tax. Every citizen is obliged to pay his quota towards the support of the schools within his own county. I think that is proper and right; but here you propose to levy upon the citizen of every county, in addition to his separate school tax, a tax to pay for schools throughout the whole Commonwealth.

Sir, I am not satisfied that that is right. I think that every district within the State should support its own schools by its own local and direct taxes.

Mr. BEEBE. The principle is that the property of the State should educate the children of the State. If so, the burden should be equal.

Mr. HANNA. Waiving that question, but resting upon the argument of the gentleman from Chester, I think that we should not limit the amount, and his amendment should prevail. And further, I would call the attention of this Convention to this fact: I do not remember in any other article of this Constitution that we propose to the Legislature that they shall appropriate any sum whatever for the support of any particular department of the government. Do we say in the article on the executive department that they shall appropriate annually at least so many hundred thousand dollars; that they shall, for the expenses of the judicial department, appropriate not exceeding one or two or three million dollars? Do we say that they shall appropriate annually at least one million dollars for the support of the legislative branch of the government? Not at all. We are establishing a dangerous principle here. It is an anomaly upon the face of our Constitution that we say the Legislature shall peremptorily and without appeal, alteration or limitation, appropriate at least one million dollars towards the support of one distinct, separate branch of the State government.

For these reasons I am in favor of the amendment of the gentleman from Chester.

Mr. CARTER. I merely wish to say a word in answer to the gentleman from Philadelphia, who tells us that this is the only provision in which a certain specific sum is named, and that it is objectionable perhaps for that reason. That may be the case, but I think notwithstanding, it might be eminently proper to make this an exception, because a system of public school education is the most important interest of the State. If this designated a sum inflexible in amount that should never be exceeded, then of course, I apprehend, it would receive but little support or countenance in this body, or before the people; but an interest so vast, so important in its prospective results, so essential to the welfare of this great Commonwealth, I think should receive the sanction of declaration of this Convention, that at least one million dollars should always be appropriated for it.

This Commonwealth is not a State of decadence; its motion is upward and onward; and we can always, I think, trust that the State will be able to contribute that small sum, because it is relatively small, it is a mere bagatelle in comparison to the whole amount expended for the service of the public; but it serves as a nucleus, as something to encourage schools in the weaker and smaller districts and counties of the State.

I think it would be eminently unwise as well as unpopular to adopt the amendment of the gentleman from Chester.

Mr. STANTON. Mr. President: I only wish to correct the idea that comes from the chairman of the Committee on Education, with whom I had the honor to serve on that committee, that this clause requiring an appropriation of a million dollars annually did not come from that committee. It was recommended by the committee, according to my recollection; and he is in error when he says it was put in by this body in committee of the whole. The Committee on Education reported that million dollar clause, and in talking with a great many of the members of the Convention, they spoke to me of its being the only commendable feature on which they could sustain the report.

Mr. DARLINGTON. I ask leave to explain.

Mr. STANTON. The gentleman can explain when I am through.

Mr. DARLINGTON. I would rather do it now.

Mr. STANTON. I have only a word to say further.

Mr. DARLINGTON. Have I not a right to explain now?

The **PRESIDENT.** The delegate has a right to explain.

Mr. DARLINGTON. I did not say that it was first introduced by the committee of the whole.

Mr. STANTON. I beg the gentleman's pardon; I think he said the Committee on Education did not recommend it.

Mr. DARLINGTON. What I said was that it was in the report of the committee, but that the report was cut up by a sudden move, and then introduced as an amendment by the gentleman from Potter.

Mr. STANTON. My friend and colleague (Mr. HANNA) has arrayed himself against public education to a great extent, and now I am very sorry for it—

Mr. HANNA. I ask to explain.

Mr. STANTON. I would rather not be interrupted.

Mr. HANNA. I wish to correct my colleague from the city.

Mr. STANTON. While Philadelphia would not be benefited at all by this million dollars, while perhaps it might be to the disadvantage of our city taxpayers in a direct pecuniary view, still we are glad to have the opportunity to pay our taxes into the public treasury for the purpose of spreading education throughout the State, and especially in some of the now neglected districts in the west and northwest. They can receive a great advantage from it while we shall not, but we are glad, and every taxpayer in Philadelphia will be glad, to have the honor to contribute to it.

I cannot see why the gentleman from Philadelphia (Mr. Hanna) should oppose it. It will put money into some districts where they cannot raise among themselves the requisite amount to educate their children.

I hope, sir, the clause will not be stricken out.

The **PRESIDENT.** The Clerk will call the names of delegates on the motion of the delegate from Chester (Mr. Darlington.)

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

Y E A S.

Messrs. Bannan, Black, Charles A., Bowman, Brodhead, Broemall, Buckalew, Corbett, Corson, Darlington, De France, Ewing, Funck, Hanna, Mott, Purviance, Samuel A., Read, John R., Reed, An-

drew, Smith, H. G., Van Reed, White, David N. and Woodward—21.

N A Y S.

Messrs. Alricks, Bailly, (Perry,) Beebe, Bigler, Carey, Carter, Church, Cochran, Curry, Curtin, Cuyler, Davis, Dodd, Dunning, Edwards, Gibson, Green, Guthrie, Hall, Hazzard, Horton, Howard, Hunsicker, Landis, Lilly, Littleton, Long, MacConnell, McCulloch, Michael, Murray, Mann, Minor, Mitchell, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Sharpe, Smith, Henry W., Stanton, Struthers, Turrell, White, J. W. F., Wright and Walker, President—51.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Boyd, Brown, Bullitt, Calvin, Campbell, Cassidy, Clark, Collins, Craig, Cronmiller, Dallas, Elliott, Ellis, Fell, Finney, Fulton, Gilpin, Harvey, Hay, Hemphill, Heverin, Kaine, Knight, Lamberton, Lawrence, Lear, MacVeagh, McCamant, McClean, Mantor, Metzger, Newlin, Palmer, H. W., Patton, Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, Harry and Worrell—61

MR. DARLINGTON. I move to go into committee of the whole for the purpose of amending the article, by adding sections six and seven as originally reported by the Committee on Education, which will be found on page 364 of the Journal. I will offer the propositions separately. I first move to go into committee of the whole for the purpose of adding to this article the following section:

"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, sir, that this is substantially the provision of the present Constitution. I do not like this Convention to say that the arts and sciences shall not be promoted and encouraged.

SEVERAL DELEGATES. We do not say so.

MR. DARLINGTON. We virtually do by refusing to put in this clause where it belongs. ["No." "No."] I have stated my motion and I ask for the yeas and nays upon it.

THE PRESIDENT. Who seconds the call for the yeas and nays? ["None."] The call is not seconded. The question is on the motion of the delegate from Chester.

The motion was not agreed to.

MR. DARLINGTON. Now I move that the Convention resolve itself into committee of the whole for the purpose of inserting the other section to which I referred, viz:

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

I ask the vote of the Convention seriously upon this question. There has been no vote taken upon it save in committee of the whole, and I beg to state that when this came before the committee of the whole we were left without a quorum and there was no opportunity hearing it afterward. Now I wish the Convention to consider whether it is or is not proper to place these wards of the State in industrial schools whether the Legislature may not be allowed to provide industrial schools wherein the abandoned and neglected children of the Commonwealth may be taught the useful arts of life. That is what it is. It only requires to be stated to commend itself to the Convention, I am sure.

MR. BROOMALL. I desire to ask my colleague a single question, whether the Legislature has not that power without this section, and whether if we do not prohibit them, that is not sufficient.

MR. DARLINGTON. My answer to that is that the Legislature has entire control over the subject of education. If that is a sufficient reason, strike it all out. What I want is the admonition from this body to the Legislature that they ought not only to establish and support common schools, but that they should see to it that the neglected and abandoned children of the Commonwealth shall be taken care of, educated to be useful citizens and not permitted to grow up in vice.

MR. CHURCH. I would suggest to the gentleman to insert the word "shall" instead of "may."

MR. DARLINGTON. Very well, I will put in the word "shall."

MR. BEEBE. MR. PRESIDENT: I rise to express a single thought. We have prohibited appropriations to sectarian or private institutions. Now, by the insertion of this section we can for this class of children, by virtue of the legislative sanction, have throughout the State a uniform

law and a uniform system, and I hope there is no member of this Convention who would not want to have that.

Mr. CORSON. This is certainly a good section and it ought not to be hastily voted down. The chairman of the committee has explained why it was not carried before. We ought to carry it now.

Mr. BROOMALL. Is the word "shall" in?

The PRESIDENT. It is; the proposition has been so modified.

Mr. BROOMALL. Then I will vote for it.

The ARESIDENT. The question is on the motion of the delegate from Chester.

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

Mr. CORSON. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Bailly, (Perry,) Baker, Bannan, Beebe, Bigler, Bowman, Broomall, Carey, Carter, Church, Cochran, Corson, Curry, Curtin, Cuyler, Darlington, Davis, Edwards, Finney, Funck, Hazzard, Horton, Hunsicker, Landis, M'Michael, Mann, Minor, Mitchell, Mott, Palmer, G. W., Parsons, Pughe, Purviance, John N., Read, John R., Sharpe, Stanton, Struthers, Turrell, Van Reed, and White, David N.—40.

NAYS.

Messrs. Alricks, Black, Charles A., Boyd, Buckalew, Calvin, Corbett, De France, Dodd, Ewing, Guthrie, Hall, Hanna, Howard, Lilly, Long, MacConnell, M'Culloch, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Sam'l A., Reed, Andrew, Smith, Henry W., White, J. W. F., Woodward, Wright and Walker, *President*—29.

ABSENT—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Brodhead, Brown, Bullitt, Campbell, Cassidy, Clark, Collins, Craig, Cronmiller, Dallas, Dunning, Elliott, Ellis, Fell, Fulton, Gibson, Gilpin, Green, Harvey, Hay, Hemphill, Heverin, Kaine, Knight, Lambertson, Lawrence, Lear, Littleton, MacVeagh, M'Camant, M'Clean, M'Murray, Mantor, Metzger, Newlin, Palmer, H. W., Patton, Reynolds, Rooke, Ross, Runk, Russell, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple,

Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry and Worrell—64.

So the motion was agreed to; and the Convention resolved itself into committee of the whole, Mr. Struthers in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on education, with instructions to insert as a new section the following:

"The Legislatures shall establish industrial schools, and require the attendance therein of vagrant, neglected and abandoned children."

This amendment will be made.

The committee rose and the President having resumed the chair, the Chairman (Mr. Struthers) reported that the committee of the whole had made the amendment directed by the Convention.

Mr. DARLINGTON. I now move to go into committee of the whole for the purpose of adding the following section:

"They may by law require that every child of sufficient mental and physical ability shall attend the public schools, unless educated by other means."

That is compulsory education, and I ask for the yeas and nays.

Mr. BOWMAN. I rise for the purpose of seconding the motion made by the gentleman from Chester, to insert what is the tenth section of the original report of the Committee on Education, as it will be found in the Journal, on page 364. I voted this morning in favor of his amendment to strike from your Constitution the provision requiring an annual appropriation of one million dollars of money by the Legislature, while you leave the doors of your school houses throughout the State to be entered voluntarily or not. Gentlemen from Philadelphia tell us that there are twenty thousand children in this city who are not attending school, and it is so all over the Commonwealth. You are voting to take out of the State Treasury one million of money without compelling one single child to attend your public schools and receive benefit therefrom. Why was it proposed to take a million of dollars from the treasury? To keep up your public school system, you say. I am in favor of your common school system. I go for it all the time, everywhere, and under all circumstances; but it seems to me to be idle and bordering upon insanity to say that a million of money shall be taken from your treasury without compelling a single child in the Commonwealth to attend a public school.

I am in favor of this section. You have made ample provision now; you have got in your Constitution a provision that the Legislature shall make this appropriation. Now let us do the next thing that we ought to do, and that, I think, is the best we can do; that is, compel the attendance of children in the public schools, compel them to go there and receive some benefit from this bounty.

Mr. HANNA. Mr. President: My friend and colleague from the city (Mr. Stanton) seemed a while ago to desire to put me in the position of being opposed to public school education. I desire to say that I am in favor of public schools. I attended the public schools myself. All the education I ever obtained was at the public schools. I hope always to be a firm friend of public school education. And, sir, I am in favor of this proposition because I believe in the city of Philadelphia, while we have an admirable school system, those parents who neglect or refuse to send their children to school so that they may obtain an education fitting them to become useful members of society, should be obliged to send them to school under proper rules and regulations. I am therefore in favor of this section, because it gives the Legislature the power to do this, but it does not impose it upon them obligatorily as we did impose upon them the duty of appropriating a positive, certain annual amount for the support of the public schools.

Mr. D. W. PATTERSON. Mr. President: I am sorry to differ with my friend the chairman of the Committee on Education, and to oppose the section he has proposed. I am opposed to it all the time. I am opposed to inaugurate the feature of compulsory education into our common school system. I oppose it particularly, because I think it will injure our public school system which has been so successful, which has been going on step by step as the advocates of the system found that each successive step would meet public sentiment until it has attained its present proud position, hardly second to that of any Commonwealth in the Union. But, Mr. President, we do not yet live in Prussia, or in Norway, or under any royal government. We are not yet under the iron rod. Thank God, we are a free people, living under a government directed, controlled, executed and administered by the will of the people, and we must do only those things that meet the public sentiment, and that are supported

by the public sentiment. We the representatives of the people, must regard their will. If we go beyond that will, we cannot put our laws into execution.

Why, Mr. President, there is but a single State in all this Union that has taken the step which this section proposes. Michigan is the only State, and it was done there only two years ago, and the experiment is now operating in the estimation of the best school men of that State against the success of the whole system. Massachusetts, which is and ever has been in the vanguard in this particular, has not dared to do it yet. It is true that her legislature enacted laws last year and the year before that are partially compulsory, and provide for each district or ward in the cities and each town or county having supervisors to go over it to persuade and sometimes, in certain defined cases in a compulsory way, to bring children to the schools; but their system is not yet absolutely compulsory. They are too judicious for that; and I hope that we in Pennsylvania, considering the characteristics of our population, will see that we cannot sustain ourselves by adopting this proposition. No delegate on this floor will get up to-day and say, that if we had in eighteen hundred and thirty-four and since, as friends of the common school system attempted to impose any compulsion upon parents to send their children to the public schools, we should have been as successful as to-day shows that we are, or that our common school system in Pennsylvania would have attained its present proud and efficient position.

We have, more probably than in any other State, a vast number of different religious societies and associations, and almost all of them are opposed to any provision absolutely compulsory in regard to the common school system. We must not, in Pennsylvania, enter the domestic circle and interfere between parent and child. This clause inserted in the Constitution will cost us all the votes, even of the smallest of these societies in the county which I in part represent, against this Constitution, or at least against this article. Many of them have their own schools, but yet they pay their common school tax and support the common school system; but they prefer to have their own schools for their own children, and they get them up at their own expense. Why should we not permit them to do so, if they at the same time comply with the

law and contribute their portion to the support of the public schools? It would be far from acting wisely for this Convention to provoke, by adoption of the proposed amendment, a general opposition to our present beneficent common school system.

We have now, I think, gone as far as we should; we have gone beyond the former fundamental law and we have said that there must be an appropriation of not less than a million of dollars a year for the support of the public schools. Let us stand there, and do not let us take that step which in the State of Pennsylvania would be far more fatal to our school system than it is known to be injurious to the system in the State of Michigan. Even Massachusetts, which first inaugurated the system of common schools, has not adopted the compulsory principle. She has wisely gone on step by step longer than we have, and I may add more successfully than we have in supporting, cherishing and improving her common schools; and yet she has not attempted by any provision in the fundamental law to make attendance of her children compulsory. Mr. President, it was only a year ago that she began to make one step in that direction. But, sir, that step was made by legislation, not by a provision in the Constitution. Let this Convention leave this question to the Legislature—to the people where it should be left. Now, I hope that we shall not do injury to this great system by imposing this iron rod, this oppressive rule, this royal aristocratic principle into the fundamental law of Pennsylvania. Besides this amendment should not have been offered at this time. It is unfair and unwise to do so. It looks too much like sharp practice. I repeat it, because this amendment was debated at length when on second reading, and was after that mature discussion voted down by a vote of nearly two to one. To-day, with a House of about seventy members it should not have been introduced. I conclude by hoping that every real friend of the common school system on this floor will oppose and defeat the proposed amendment.

Mr. NILES. Mr. President: I desire simply to say a word in reference to the pending amendment. There are now upon this floor sixty-nine delegates, as shown by the last vote, barely a quorum, and I hope we shall reflect that we are now entirely changing the substance and form of the article on education as it

passed committee of the whole and the Convention on second reading, and that if this pending amendment passes the father will not own his own child. The amendment that has just been passed in reference to vagrant and abandoned children was at a previous stage voted down by a two-thirds vote when there were one hundred delegates present. The proposition now pending was voted down in June last by a vote of thirty-one yeas to sixty-two nays; and, sir, I apprehend that if the Convention was full to-day, instead of there being a bare majority here, the vote would have been otherwise on the preceding amendment.

Mr. BEEBE. Who is to blame that men are not here?

Mr. NILES. Nobody but the absentees, of course. I hope, Mr. President, that we shall consider well before we adopt this radical change in the educational policy of this State. I know very well that it has earnest advocates on this floor; but there are arguments against it as well as for it, and I understand that the superintendent of common schools of this State, after having made a thorough examination of the whole question, is decidedly opposed to it. I hope we shall pause and consider now before we change the whole tenor and effect of the article on education by adopting this amendment.

Mr. BOWMAN. I should like to ask the gentleman one question. Does he not know that there are seventy-five thousand children in this Commonwealth to-day not attending any schools.

Mr. HAZZARD. Mr. President: It seems to me that we have before us one of the most important provisions that has yet been considered in this Convention. There are probably one hundred and fifty thousand vagrant children throughout this State who are training for our jails and our penitentiaries, who are learning to steal, who have no employment, and I am somewhat astonished that the member from Lancaster (Mr. D. W. Patterson) does not comprehend the import of this provision. There is in it no compulsion that all children shall go to the public schools. We are not enforcing the iron rule of monarchical countries. We do not say here that all children shall go to the public schools. What we say is that all shall be taught somewhere to read and write. It ought to be so in this great State of Pennsylvania, that it should be a monstrosity if a citizen of Pennsylvania did not know how to read and write.

It was said in debate on a former occasion that there were children in the mines who were employed to pick up the refuse coal, whose parents were poor and could not afford to send them to school. We do not say here that they shall send them to the public schools; but let us say that every Pennsylvanian shall learn in some way or other how to read and write. That is an eminently proper thing. There need not necessarily be an appropriation of public money for it. All that is required is that those who employ little children in the mines and factories in their tender years shall see to it that their time is not frittered away so that when they grow up to be men they shall be so ignorant as not even to be able to read or write. We only provide here that they shall be taught in some way. Let them be taught at home, let them be taught in any schools, but let matters be so arranged that in a very few years no Pennsylvanian shall grow up in this State a vagrant and unable to read and write.

MR. TURRELL. Mr. President: It has been truly said by some gentleman in the course of this discussion that this is the most important question now before us. In whatever light we look at it, it is one of the highest importance.

It is objected to this measure that it is an infringement of the rights of a free people. Well, sir, there is something in that remark; but to my view it is a question of policy alone. As to the effect and result of it, we have the light of experience, and there can be no doubt as to the beneficial effects of the measure in some countries. I do not know whether in Pennsylvania we are advanced enough to adopt such a measure as this. I believe, however, that if we are, and if we can satisfy the people and induce them to adopt it, it will be found most decidedly beneficial.

It is objected that where it has been tried it has been in monarchical countries chiefly; but there is one error in the statement of the gentleman from Lancaster, who says that Michigan is the only State in this country which has tried it. Massachusetts has adopted it.

MR. D. W. PATTERSON. No, sir.

MR. TURRELL. Yes, sir. The gentleman is in error and he should not contradict me without the record, because when I make a statement I mean to justify it. I have before me a report of the Board of Education of the State of Massachusetts,

in which they cite the statute of that State of 1871 in this wise: "By the present law attendance at school for three months in each year is rendered compulsory for every child between the ages of eight and fourteen, except in certain specially excepted cases, and the towns are required to keep their schools six months in the year."

MR. CORSON. That is an act of the Legislature.

MR. TURRELL. It does not matter whether it is an act of the Legislature or a constitutional provision, it is equally binding. So the gentleman from Lancaster is wrong in that respect. The State of Texas, one of the newest States and one that we are perhaps accustomed to look upon as a little rude and uncultivated, has also adopted it. The young State of Nebraska submitted such a proposition as an amendment to her Constitution, but it was voted down because there were objections to a provision on taxation in the same amendment. We have, however, the expression of the Constitutional Convention of that State upon the subject. In the State of Maine and in the State of New York, the school superintendents of both have advocated it in their reports at great length, and enforced it by most cogent reasoning.

Now, sir, how is it with countries abroad? In Norway, after fourteen years of contest, this principle was adopted, and as a result it is stated that almost every Norwegian can read and write. A like result was obtained in Sweden, subsequently adopting it, I think as late as 1824; at any rate it was adopted after a contest on the part of the lower House, on behalf of the peasants, of some ten or fifteen years duration, and since its adoption ninety-seven per cent. of the children of Sweden are in their schools. I might follow it up by a reference to other countries. The school system of Prussia has been adverted to by the gentleman from Lancaster. Every man knows the history of the Prussian schools and their efficiency. It is not necessary that I should go over that. We know that Prussia has the most perfect system in the world; and its effect was seen in the recent war between that nation and the French. The superiority of the Prussian soldiers was attributed to the universal education of the Prussian people, and we can point with pride to the same thing which was said by correspondents from abroad in relation to the armies of our own country in

our recent war. A very celebrated correspondent said of our armies that they were the best *material* that the world ever saw, the best paid, the best fed and the best clothed, and that the reason why they were the best was because of the general intelligence which characterized them.

If this be true, the objection that these experiments have been tried and failed in monarchical countries does not apply. I might say further, that in England they have taken a step in the same direction in this matter.

Then, sir, I say that we are not without the light of experience. We have it from abroad; we have it to some extent in our own country, and we can consider this question in the light of that. As I said, I do not know that we are sufficiently advanced to adopt it in this State; but I can see very good reasons (in addition to the reasons which have been so hastily thrown out, for I had no intention of speaking on the subject until a few moments ago,) why we should provide in the Constitution for this system. If these children are found committing crime, then we pick them up, incarcerate them in jail, and if they are convicted of certain crimes we put them in the penitentiary. Is it not better to apply the compulsory course before they come to be criminals? Is it not better to take them by compulsory law and make them intelligent and useful citizens? Is it not better, is it not wiser, is it not better in every point of view, to take a step in advance and not wait until they are corrupted, not allow them to grow up ignorant criminals, and then lay the hand of the law upon them?

MR. STANTON. Mr. President: The question now pending, as has been already stated, is one of the most important that has been presented or that can be presented to the consideration of this body. We have just adopted a section which it is really necessary to follow up by adopting this. I think I can say, knowingly, that we have in the city of Philadelphia over twenty thousand children who do not attend any school, who are engaged in selling matches and oranges and such things, and in picking pockets; who find shelter at night in dry goods boxes and under the eaves of houses and in the station houses; and who are candidates for the penitentiary, and rapidly educating themselves for that institution. This amendment will complete what by the previous section you

have provided that the Legislature shall do.

The gentleman who has just taken his seat might have gone further and shown this Convention the great benefits reaped in England by their rescue schools, which are nothing more than the schools provided for by the previous section, adopted on the motion of the chairman of this committee, and these schools pay for the education of the children and their work brings to the English government quite a large revenue. I have the statistics at home, and I am only sorry that I did not know the article was coming up to-day or I might have produced them. They would furnish a most complete argument in favor of this system.

But, sir, after all, I hardly think argument is needed. There is wisdom enough in this Convention to see the necessity of this section without any argument. There is no occasion to refer to the action of Massachusetts. We are not making a law for Massachusetts. It is true it looked at one time as if we were going to adopt almost *verbatim* the Constitution of Illinois; but we are making a Constitution for Pennsylvania; let us confine ourselves to that alone and let Massachusetts take care of herself. If our people were as educated in proportion as those of Massachusetts we should have more intellect here to-day than we have. I think every member of this body must have seen the importance of this provision, not only from the expression of the views of his constituents, but from the representations of the president of the board of charities of this State. He has sent to every member of this Convention papers showing the importance of a compulsory educational provision. He sees it more clearly than any member of this Convention, much more clearly than I do, although it is known that I am identified with the department of education. He has given it more time than any of us, and his statements are entitled to great weight, and I hope will receive favorable consideration. I trust the section will be adopted.

MR. CURTIN. Mr. President: There is no part of our government in Pennsylvania which has progressed with more certainty and has developed more beneficial results to the people of the State than our system of common school education.

It was very hard to introduce into Pennsylvania a system of general education, and those who originated the system in

this State as early as 1835, have had rendered to them the testimony of the gratitude of the people of the State during their lives and since their death. At first a large part of the people of Pennsylvania refused to accept the system at all; but finally it was adopted by the whole State. Then about 1854, the system of county superintendents was introduced through the zealous advocacy of the modest delegate who sits by my side, (Mr. C. A. Black,) and afterwards we interpolated upon the system the normal schools of the State which gave us teachers; and the number of teachers and pupils is constantly increasing in proportion to the number of our people; but, as has been said, seventy-five thousand children of Pennsylvania who ought to be in the schools are still not there. We have already passed into the organic law a positive direction to the Legislature to establish industrial schools, where the vagrant children from the streets and by-ways and alleys can be collected and learn to become useful members of the community. And now we ask to put into the Constitution the mere declaration to the Legislature that that body may establish a system of compulsory education. The form in which that law shall be put, if they choose to pass it, will depend on the exigencies at the time. It is not proposed that it shall be done immediately, but that it shall be done as the necessities of the people may require.

The delegate from Lancaster (Mr. D. W. Patterson) seems to be afraid that we are putting into our Constitution a feature of monarchy, because, he says, in Prussia and in Norway they compel education. The delegate from Susquehanna (Mr. Turrell) has turned the attention of that gentleman to recent events, which show the effect of education upon a nation. Let that gentleman turn his attention to the statistics of this country and ascertain whether the Swedes, or the Norwegians, or the Prussians who come to our country make better citizens because of their education than the people we get from countries that are without compulsory education. The Swedes, the Norwegians and the Germans are educated people, and they fall into our ways and habits at once; they become good citizens; they till the soil, they pay their taxes and are obedient to the law. Where do the ignorant and the vile and the vicious go who come here from countries where but ten or fifteen per cent., of the whole people are educated, and we get the most ignorant

part of them? They pollute your cities; they make your candidates for the penitentiary; they corrupt the morals of the communities where they reside; and they will not send their children to school because they will work them to the last strain of their physical power to give themselves a living and keep themselves in their ignorance and dissipation.

It is merely asked that the Legislature shall have power to compel such a man to send his child to school; that if he is vile and vicious we shall declare that the Legislature shall have power to give that child education and moral instruction, so that the child shall not be like his father, but like the children of those who surround him.

The delegate from Lancaster says we are introducing a feature of monarchy into this country by compelling the education of the children. I do not think so. I do not think a great Commonwealth such as Pennsylvania, when she proposes like a generous mother to gather the children from the lanes and alleys and by-ways, from the homes of want and misery and crime, and give them moral instruction and education, so that they may become useful members of the community, instead of permitting them to go on in the vile and vicious ways of their parents and imitating their example, can be said to be adopting a feature of monarchy.

The delegate from Lancaster should remember also that this form of government of ours rests upon public opinion. That is the firm rock upon which all our institutions stand. Upon that has been built the beautiful structure of our government, and from thence comes the perfection of our matchless Constitution and system of laws. There is the equality of manhood. All are equal before the law in this country; and I would have the delegate to understand that if this structure rests upon public opinion, that public opinion must be educated to understand our system of government and the relative duties of the citizens of the State to himself and to his surroundings. If we fall it will never be because we are educated. If our system of government is destined to be short-lived, rest assured, Mr. President, it will never be because you educate all the people of the country to understand the relations of that system, the beneficence of our laws and the glorious principle of equality which underlies them all.

I would not compel the Legislature to institute a system of compulsory education at present. It may be quite enough now that we turn the stream of learning by the door of every man in the State, so that he can go and drink from its pellucid waters if he pleases, or send his children to do so; but with seventy-five thousand children now becoming vagrants and vagabonds, the time may come when it may be necessary to do a little more than that. If the parent will not send his child to school or give him any education to fit him to be one of this great brotherhood in a republican government, the time may come when under a proper organized and well digested law it will be proper to compel the attendance of the child and educate him if his parent will not. I am in favor of this section of the article, and as my friend from Washington (Mr. Hazzard) says, and I thank him for the suggestion, let this Convention indicate to the people of the State that we go so far as to think that every man and woman in this State should be able at least to read the Bible.

Mr. D. W. PATTERSON. I rise to make an explanation in reply to what my friend from Susquehanna (Mr. Turrell) said. I say that that act of Assembly of Massachusetts, although it is an act of Assembly, can be repealed if it be unpopular, and it does not compel the attendance of scholars in the public schools. There are exceptions, and exceptions meeting the public sentiment. I hope we shall leave this subject to the Legislature, which can reflect the popular will, and can do it at any time.

Mr. ANDREW REED. I propose before the vote is taken on this question to place the reasons for my vote on the record. If I understand the amendment rightly, it proposes that the Legislature shall provide by law for a system of compulsory education.

Mr. CURTIN. No, sir; the language is "may."

Mr. ANDREW REED. Then I shall vote against it for the reason that it is entirely useless. The Legislature of our State has full power now to compel the attendance at school of every child within its borders. I doubt very much whether an opinion sent down from this Convention to succeeding legislatures, that we are in favor of education, would have any very great weight. I do not propose to be carried away by these grandiloquent eulogiums upon the benefits of education. I do

not believe in putting into our Constitution anything which is mere *brutum fatum*, which does not amount to anything. I am in favor of education, and I do not know but that if I were in the Legislature I would vote for a system of compulsory education, though I am not clear. There are two sides to that question. But, sir, if established, it should only be done by an act of the Legislature, so that if it should be found to endanger our present enviable educational system or did not work well, it might be repealed. I shall vote against this proposition now because it does not amount to anything.

The PRESIDENT. The question is on the motion of the delegate from Chester, (Mr. Darlington,) on which the yeas and nays have been ordered.

The question being taken by yeas and nays resulted as follows:

Y E A S .

Messrs. Alricks, Baker, Bannan, Beebe, Bowman, Brodhead, Carey, Church, Cochran, Curry, Curtin, Cuyler, Darlington, Davis, Edwards, Finney, Gibson, Hanna, Hazzard, Heverin, Howard, Landis, MacConnell, M'Michael, Minor, Palmer, G. W., Parsons, Patterson, T. H. B., Reynolds, Sharpe, Stanton, Struthers, Turrell, Van Reed, White, David N., White, J. W. F., Wright and Walker, *President*—38.

N A Y S .

Messrs. Baily, (Perry,) Biddle, Bigler, Black, Charles A., Boyd, Broomall, Buckalew, Calvin, Corbett, Corson, De France, Dodd, Ewing, Green, Guthrie, Hall, Hunsicker, Lilly, Long, M'Culloch, Mann, Mitchell, Mott, Newlin, Niles, Patterson, D. W., Porter, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Smith, H. G., Smith, Henry W. and Woodward—35.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Black, J. S., Brown, Bullitt, Campbell, Carter, Cassidy, Clark, Collins, Craig, Cronmiller, Dallas, Dunning, Elliott, Ellis, Fell, Fulton, Funck, Gilpin, Harvey, Hay, Hemphill, Horton, Kaine, Knight, Lamberton, Lawrence, Lear, Littleton, MacVeagh, M'Camant, M'Clean, M'Murray, Mantor, Metzger, Palmer, H. W., Patton, Pughe, Rooke, Ross, Runk, Russell, Simpson, Smith,

William H., Stewart, Temple, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry and Worrell—60.

The Convention accordingly resolved itself into committee of the whole, Mr. Carey in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on education with instructions to insert the following as a new section :

"They may, by law, require that every child of sufficient mental and physical ability shall attend the public schools, unless educated by other means." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Carey) reported that the committee of the whole had made the amendment referred to them.

Mr. BUCKALEW. Mr. President: I am, for one, perfectly prepared to vote against this article, and unless it shall be submitted to a separate vote of the people of this Commonwealth, I do not know but that I shall vote against the entire instrument which contains it. I shall reserve my opinion on that subject.

What have we done with our common schools? Let us now review our work and see how this article stands. In the first place, we have made the head of that department a perfect instrument of subserviency to the Governor of the Commonwealth. He can turn him out of office whenever he pleases. That was decided gravely after debate, a few days since, on other article.

The PRESIDENT. There is nothing before the Convention.

Mr. BUCKALEW. The article is before the Convention and I am now proceeding to state my objections to the article.

The PRESIDENT. The question then is on the article.

Mr. BUCKALEW. I am speaking to that precise question.

The superintendent of common schools has heretofore held for a fixed term beyond the power of any authority in this Commonwealth to remove him except for official misconduct. He will stand now under our amendments as I have described.

In the next place we have here in the Constitution usurped the functions of the Legislature, and have appropriated a quarter of a million of dollars yearly to the support of the common schools in addition to the ordinary appropriations which are now made, a question with

which we have nothing to do, and the only effect of which will be with certain classes of our people to create antagonism to our work.

We have put into this article a new, radical provision that females shall be admitted into the administration of all our school system in existence in this State, a measure upon which public opinion is largely divided, although my individual one is in favor of that particular change which we have made.

We have adopted a provision here this afternoon in a lean Convention, by which all the juvenile vagrants of this State are quartered upon the public treasury. Twenty thousand in the city of Philadelphia, and God knows how many more in all the other cities and towns of this State, are hereafter to be supported by general contributions from the interior as well as by the cities, and not for education merely, because this burden will not stop there, but for their maintenance and support. That will be the necessary adjunct of taking them into these schools. They will have no other means of support; and you prevent the local liberality and the wealth of the city of Philadelphia or Pittsburg or any other city from contributing to this object hereafter; or at least you enjoin upon the Legislature the duty of providing for the support and education of those attending its juvenile schools. The whole expense may be charged upon the treasury of the State; and lastly you have here, by the last vote which you have taken, declared that compulsory education shall be the fundamental law of this State.

SEVERAL DELEGATES. "May be."

Mr. BUCKALEW. Well, sir, "may be." If it is to have no effect, why put it in. It will of course be understood that you have enjoined it; that by this provision you have declared it to be your judgment, and it is likely to be the fact hereafter, that compulsory education is to be the law of this State. Now, sir, is it certain that the majority of the people of this State will agree to that? Is it not very certain that a majority of the people of this State are not yet prepared for it, and yet it is to be put here into this article of the Constitution? I think it was voted down two to one on a former occasion when the Convention was full.

For one, I have to say, that if this sort of work is to go on, on third reading, which ought to be merely to revise errors and correct what has been inaccur-

ately framed, we still, before we are done with it, will have our instrument in such an undesirable form that the most ardent advocates of reform will be forced to vote against it.

Mr. HOWARD. I move to go into committee of the whole in order to amend section four, as it now stands, providing that:

"The Legislature shall establish industrial schools and require the attendance therein of vagrant, neglected and abandoned children," by adding to it these words:

"But each city or county, wherein such schools are located shall pay all the cost and expense thereof except their proportionate share of the common school fund appropriated by the State."

I suppose it is a very good idea that these vagrant and abandoned children should be gathered and in some way educated in the public schools; but the people of this Commonwealth have been educated in the belief that each city and county should provide for and take care of its own poor. In our county we have a County Home and we have a City Home where such children as ought to be supported at the public expense are just as well educated as they can be anywhere else. They have good teachers in our County Home, and they have good teachers in our City Home, and in Allegheny county we have the vagrant and abandoned children not only supported, but we have a compulsory system of education there, and we do not want either in our city or our county to be taxed to take care of the twenty thousand vagrants of Philadelphia. That is the plain English of it. We take care of our children, and they are supported and educated in that way. I have often visited these schools and witnessed the training year by year of these children in our County and in our City Home, and they are as well provided for as it is possible for the poor to be provided for when they have to be taken from the immediate care and protection of their parents, when they have them; and when they have none, I do not know of any way in which they could be better provided for.

I am perfectly willing that the city vagrants of Philadelphia should call me "Mister Scrouge" if they like. Let them do it, if they think it will do them any good, because I am not willing to have the Treasury of the Commonwealth given

to the support of the vagabonds in this city.

Why, time and again, we have had it dinned in our ears that Philadelphia has half the wealth and pays half the taxes of the Commonwealth. Why, this great district, this mighty city, does not want us in the balance of the State to come to its rescue and actually help to support its population! Philadelphia can certainly attend to her own children. If she wants industrial schools let her have them, but let her build them up just as she did her common schools. Let her build them up herself. Let her provide the means to support her own poor children and let the State appropriate to the public schools her share of the public money. That is right, that is justice, and it is in perfect accordance with the manner in which the people of the Commonwealth have always been accustomed to support of their own poor. Each locality, each city, each county should provide for the support of its own poor, but the State should appropriate means for their education.

I hope this Convention will adopt this amendment. I do not know that I shall have to join the delegate from Columbia and vote against the whole Constitution; but I do say, let us at least make this instrument as palatable as we can by adding an amendment like this. It is perfectly right in my judgment, entirely proper, perfectly consistent with the present system of providing for the poor throughout the Commonwealth.

Mr. C. A. BLACK. I have cast a silent vote throughout the entire consideration of this article; but I cannot consent that this important measure shall pass without a word of protest against it. I have had a great deal to do with the school system of Pennsylvania. I had much to do with the passage of the act of 1854 that established the present system; and have been intimately connected with it ever since, and very happily connected with it; and I think I know what would be acceptable to the people of the State. I am very sure I know what will be acceptable to my own constituents, and I am equally sure that if I wanted to defeat this entire article I would vote for the insertion of this provision here to-day. I repeat that if I desired to defeat the entire article I would vote for what has been done here upon this subject.

Look at it for a single instant. You have taken away from the Legislature the power to appropriate money. No mat-

ter what the exigency, less than one million cannot be at any time appropriated. We have thus far usurped the power of the Legislature, the proper authority to raise and disburse money, and appropriated absolutely one million of dollars annually to the common schools. That, in my judgment, does not belong to us as a Convention, as I understand it. That belongs to the representatives of the people, and it is for them to say whether that sum or more or less shall be appropriated, whether a million, or half a million, or one hundred thousand dollars. We have no right to say what that body shall do toward appropriating money for the support of the public schools. In this respect our action, if this article be adopted in its present form, is pure legislation. You have done worse than this. You have said that all the vagrant and destitute children of the Commonwealth shall be supported by and educated at the common expense of the Commonwealth. In the interior, in the rural districts, we have none, or few at least of that class, at all. We have none such, strictly speaking, in Greene, Fayette or Washington county. There all the children go to school when they get a chance, and the vagrants, if there be any, are otherwise cared for. But your action to-day will compel these rural counties to share the great expense of educating the vagrant children of the entire State, mainly if not confined to Philadelphia and other cities. That is not right, because it is unequal. It is no part of the common school system and should never, in my opinion, be incorporated into the Constitution at all as a part of its article on education. It naturally belongs to legislation to furnish provision for this class; it mars the symmetry of it. It is a matter in which the people of the rural districts at least have no part or lot, for it applies mainly to particular localities where destitute children are numerous, and I maintain that we have no right to saddle this vast expense upon the whole population of the State.

But you do not stop here. You have gone a step further. You have said to the Legislature: You shall appropriate one million of dollars annually to common schools; you shall establish industrial schools for the care and education of vagrants, at the public expense; but you have gone further, and say to the Legislature You may compel, by law, every child of the Commonwealth to attend school. Now, I concede that is not mandatory, as

the other objectionable sections. But the intimation even that the Legislature may do so will be regarded as a command, and I can think of no measure that could be presented to the people of the State which would be more unpopular. The mere declaration in our Constitution that this obnoxious thing may be done will help more to defeat this article of the Constitution than anything else we can do. The people claim the right, and they have the right, to regulate this matter for themselves, and we have no right to interfere with their prerogative. They claim the right to send their children to school or not, and the case of monarchical Prussia is no example for them.

I repeat that I think I understand the workings of the common school system and its defects, if any serious ones exist. I know, certainly, so far as my own people are concerned, what will be acceptable and popular with them. I end as I commenced, by saying that if I wished to defeat the entire article, I would vote for the amendments. They are destructive to the entire provision, wrong in principle, unsound in theory and actuated by a false sympathy for the destitute children. We have been carried away by our feelings and have done wrong in adopting any of them; and if possible to get back to the article as it passed this body on second reading, we had much better do so at once; rather than go to the people loaded with these, to me, very objectionable amendments. As it passed second reading it was entirely acceptable to a very decided majority of a much fuller house than we have to-day. These very amendments have been proposed and debated heretofore at every stage, and as often defeated. Why they should again be sprung upon the Convention, at this late hour of its sessions, and in so thin a house, is not for me to say. I can only say, however, that if these provisions are retained, I will have to vote against the entire article.

Mr. DARLINGTON. I am not willing, for one, to hear these assaults made upon this article, without at least endeavoring to defend it. If there is any one thing

— The PRESIDENT. We are considering the amendment of the gentleman from Allegheny.

Mr. DARLINGTON. I am aware of that, and I will stick to that amendment. If there is any duty more incumbent upon

the whole people of this Commonwealth than any other, it is to see that every child of the Commonwealth shall be educated and taken care of. Whether that shall be done in the manner proposed by the gentleman from Allegheny, (Mr. Howard,) or as they will be taken care of without that amendment being adopted, still the general principle ought to commend itself, and must commend itself, to every properly constituted mind. What do I care whether the gentleman from Greene is located, if he chooses, upon the top of a hill where no neglected or abandoned children can come? What does that signify to the general obligation that rests upon him, as well as upon me, that every child, wherever he is, or whoever he be, shall have proper education, and that we shall bear the expense of that education as a common burden? In Chester we may have some neglected and abandoned children; in Greene and other counties of the State perhaps there are none; but still there are such neglected and abandoned children, and we know that in great cities, where filth and poverty are side by side, these abandoned children concentrate. It is apparently a necessity of the population of these large cities that such children go there. It does not follow that the large towns are to bear the whole expense of their training, because if they are educated in the manner in which the gentleman would leave them, that is educate themselves in the streets, they will not stay in the streets, but they will spread abroad and infest the rural districts.

I say, then, that no man can shirk this duty. I say that there should be no person in Pennsylvania who ought not to be educated. Do we suppose that if there is a single man within the boundaries of our State who, if he is so lost to all sense of justice and propriety as to refuse to educate his children, the State has not enough interest in his children to compel him to do so if he has sufficient means? I totally deny the doctrine of the gentleman from Columbia, (Mr. Buckalew,) and the gentleman from Greene, (Mr. C. A. Black,) when they assert that this will be in the way of the adoption of the Constitution.

Why, sir, you could not place in the Constitution a more popular article than just this. Do we not know that all political parties throughout the State preach the same doctrine, that upon the intelligence of the people rests the permanency

of our institutions? And, inasmuch as the young will drive us off the stage very quickly, and take the lead themselves, do we not know that if that young population be not educated and made capable of coming into our shoes, a class more vile will; and instead of republican institutions being perpetuated you will have another form of government better suited to the control of those who are growing up to be men, if they live on in ignorance and vice?

Gentlemen, you must educate them and fit them for the government of themselves, or you must place over them a government that can control them like slaves. Now, which will you choose? The part of statesmen and the part of humanitarians is to educate them, and extend to them all the facilities not only afforded them now under our present system, but in the pleasant figure of speech used by the gentleman from Centre, (Mr. Curtin,) let your pellucid streams flow by them at which they may drink, if they are to grow up into strong, educated and upright men.

I want my fellow-citizens to take care of my poor children if it is necessary. If I neglect to take care of my children, I want my fellow-citizens to correct me, and say why I shall take care of them because the State has said that they shall be educated, and if I am not able to take care of them I want the State to do it for me. That is good for me, and whatever is good for me is good for every man within the sound of my voice, and good for every man in this broad Commonwealth.

Mr. H. G. SMITH. I have been a faithful attendant, allow me to say, upon the sessions of this Convention, and one thing I have learned is that the mistakes which we have made here have been almost invariably made when the House has been thin. If this article had been adopted by this Convention this morning as it was reported from the Committee on Revision and Adjustment, I believe it would have exactly met the wants of the people of this State.

Mr. C. A. BLACK. Undoubtedly it would.

Mr. H. G. SMITH. I think that in attempting to amend it here on a thin House, we have made blunders as we have made them on similar occasions before. If there has ever been one thing of which Pennsylvanians have boasted in the past more than of any other thing, it has been of their common school system

I have failed to hear a public speaker in Pennsylvania make a speech wherein he referred to his State, in which allusion was not made to the common school system of this Commonwealth.

Under a very brief article incorporated in the old Constitution of this State, the Legislature has advanced from the time of the adoption of that instrument until now just as fast as the people of this Commonwealth authorized them to do. Coming together, year by year, that body has expressed the voice and wish of the people of this Commonwealth, and their voice has been in favor of liberality, and we have made liberal steps constantly forward. When this Convention was called we heard no complaint of our common school system. It was a subject of universal laudation. The Legislature has had under the present Constitution of the State all the power that it needs. It has enjoyed all the power that you now propose to grant, for if the clauses which you have this morning undertaken to interpolate be not mandatory, then are they useless and mere waste lumber in the work you are doing.

Let us pause then here, now. Let us consider well the influence of what we have done this morning. Let us, if necessary, retrace our steps. Let us be willing to stand upon what we have in the past found to be a sure foundation. Let us upon this question vote down this article, encumbered as it is, and let us leave the people of this State, through their representatives chosen in the future, two hundred in the House and more than we have ever had heretofore in the Senate, and therefore more nearly related to the people, to advance in the future just as they have advanced in the past.

Trust them on this question if upon no other. They will have what they want in this regard. They will make no mistakes in this matter. They can be led to do all that is generous, all that is wise, all that is liberal; but I tell you, gentlemen, that the people of this Commonwealth cannot be driven one single inch. They are a stubborn people; they can be led, they cannot be driven. And if the members of this Convention desire that its work shall succeed, they must look to this peculiar characteristic of the people of Pennsylvania. You can safely trust them. If it becomes necessary to provide for compulsory education, the Legislature can be trusted to do it and will do it. If it becomes necessary to provide schools for the

paupers of the Commonwealth, they have the power and they will do it. You need put in the Constitution no such provisions as are here proposed. For one, I intend to stand by my principles and vote against the proposed article, because it has been put into such shape that it will burden the Constitution and endanger the good work you have done.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Howard.)

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

Mr. HOWARD. I second the call.

The amendment was read, being to add to the fourth section, which provides for the establishment of industrial schools:

"But each city or county wherein such schools are located, shall pay all the cost and expense thereof except their proportionate share of the common school fund appropriated by the State."

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

Y E A S .

Messrs. Alricks, Baily, (Perry,) Beebe, Bigler, Black, Chas. A., Brodhead, Broomall, Buckalew, Calvin, Carey, Church, Corbett, Curry, Curtin, Darlington, Davis, De France, Elliott, Gibson, Green, Hanna, Hazzard, Horton, Howard, Hunsicker, Landis, Lilly, Long, MacConnell, McCulloch, Mann, Minor, Mott, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Saml. A., Reed, Andrew, Reynolds, Smith, Henry W., Turrell, Van Reed, White, David N., White, J. W. F., Wright and Walker, *President*—50.

N A Y S .

Messrs. Baker, Biddle, Bowman, Boyd, Corson, Edwards, Finney, Guthrie, Hall, Heverin, Littleton, M'Michael, Newlin, Porter, Read, John R., Sharpe, Smith, H. G., Stanton, Struthers, Woodward and Worrell—21.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Brown, Bullitt, Campbell, Carter, Cassidy, Clark, Cochran, Collins, Craig, Cronmiller, Cuyler, Dallas, Dodd, Dunning, Ellis, Ewing, Fell, Fulton, Funck, Gilpin, Harvey, Hay, Hemphill, Kaine, Knight, Lamberton, Lawrence, Lear, MacVeagh, M'Camant, M'Clean, M'Murray, Mantor, Metzger,

Mitchell, Palmer, H. W., Patton, Paghe, Rooke, Ross, Runk, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wetherill, Jno. Price, Wherry and White, Harry—62.

So the motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Hazzard in the chair.

The CHAIRMAN. The amendment will be read.

The CLERK read the amendment.

The CHAIRMAN. The amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Hazzard) reported that the committee of the whole had inserted the amendment directed by the Convention.

Mr. HALL. Mr. President: In my judgment the article as it has been amended to-day by the Convention cannot meet the approbation of the people.

Mr. DARLINGTON. What is the question now?

The PRESIDENT. The question is on the article.

Mr. HALL. I think that not only will this article be defeated but that it will arouse an antagonism which will endanger every other article with it. We must retrace our steps if we would commend our work. With that view, I propose to offer a substitute for the whole article, believing that to be the better course. If we vote down the article we shall have to present a new article, which will have to go through three several readings and cause delay. I propose now that we go into committee of the whole for the purpose of amending the whole article in the manner which I shall indicate.

The words proposed to be inserted were 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.

"SECTION 2. 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.

"SECTION 3. Women twenty-one years of age and upwards shall be eligible to any office of control or management under the school laws of this State."

Mr. MANN. Mr. President: I want to know why the gentleman has omitted the clause that has been voted upon time and again and always sustained. It was not put in to-day.

Mr. HALL. I will tell the gentleman. If this amendment is adopted it will then be amendable and I should cheerfully vote with the gentleman to add that appropriating clause. But as many gentlemen are opposed to it, I did not wish to antagonize them against this.

Mr. MANN. If that will be in order, I have no objection. ["It will be."]

The PRESIDENT. The question is on the motion of the delegate from Elk (Mr. Hall.)

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

The CHAIRMAN. The committee of the whole has been instructed to make an amendment to the article by way of substitute. The amendment is made according to the instructions.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Turrell) reported that the amendment had been made as directed.

Mr. MANN. I move to go into committee of the whole to add at the end of the first section as it now stands, the words: "The Legislature shall appropriate at least one million dollars each year for that purpose."

This has been endorsed time and again.

The PRESIDENT. The question is on going into committee of the whole to make the amendment indicated by the gentleman from Potter.

Mr. CORBETT. I ask for the yeas and nays.

Mr. BIGLER. I second the call.

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

Y E A S .

Messrs. Baily, (Perry,) Beebe, Boyd, Carey, Carter, Church, Curtin, Davis, Edwards, Elliott, Finney, Gibson, Hall, Hazzard, Horton, Howard, Hunsicker, Lilly, Littleton, Long, M'Culloch, M'Michael, M'Murray, Mann, Minor, Niles, Parsons, Patterson, D. W., Porter, Pughe, Purviance, John N., Reynolds, Sharpe, Smith, Henry W., Stanton, Turrell and Worrell—37.

N A Y S .

Messrs. Biddle, Bigler, Black, Charles A., Bowman, Brodhead, Broomall, Buck

alew, Calvin, Corbett, Corson, Darlington, De France, Dodd, Dunning, Green, Guthrie, Hanna, Landis, MacConnell, Mott, Newlin, Palmer, G. W., Patterson, T. H. B., Purman, Purviance, Sam'l A., Read, John R., Reed, Andrew, Smith, H. G., Struthers, White, David N., White, J. W. F., Woodward, Wright and Walker, *President*—34.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Brown, Bullitt, Campbell, Cassidy, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Cuyler, Dallas, Ellis, Ewing, Fell, Fulton, Funck, Gilpin, Harvey, Hay, Hemphill, Heverin, Kaine, Knight, Lamberton, Lawrence, Lear, MacVeagh, M'Camant, M'Clean, Mantor, Metzger, Mitchell, Palmer, H. W., Patton, Rooke, Ross, Runk, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry and White, Harry—62.

The Convention accordingly resolved itself into committee of the whole, Mr. T. H. B. Patterson in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the first section of the article on education with directions to add at the end thereof the words: "And the Legislature shall appropriate at least one million dollars each year for that purpose." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. T. H. B. Patterson) reported that the committee of the whole had made the amendment referred to them.

Mr. CORBETT. Mr. President: What is the question now before the House.

The PRESIDENT. The question is on the passage of the article.

Mr. CORBETT. I move the previous question.

Mr. H. G. SMITH. I hope the gentleman will withdraw the call for one minute. I wish to make a motion to strike out section three.

Mr. CORBETT. No; I will not withdraw it.

The call for the previous question was seconded by Messrs. Boyd, Church, D. N. White, Mann, Howard, Horton, De France, Hunsicker, Green, Bigler, Beebe, Calvin, Newlin, Lilly, Broomall, Davis, Mott,

Hall, MacConnell, Guthrie and M'Culloch.

The PRESIDENT. Shall the main question be now put?

Mr. DARLINGTON. On that question I call for the yeas and nays.

Mr. BOWMAN. I second the call.

Mr. STANTON. If the main question is ordered, will it not cut out the provisions in relation to industrial schools and compulsory education?

The PRESIDENT. It will.

Mr. STANTON. Then I hope the call will not be sustained.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Baily, (Perry,) Bigler, Black, Charles A., Boyd, Broomall, Calvin, Carey, Carter, Corbett, Corson, Davis, De France, Elliott, Green, Guthrie, Hall, Hanna, Horton, Howard, Hunsicker, Landis, Lilly, Long, MacConnell, M'Culloch, M'Murray, Mann, Mott, Newlin, Niles, Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Smith, H. G., Smith, Henry W., Struthers, White, David N., Wright and Walker, *President*—42.

NAYS.

Messrs. Baker, Beebe, Biddle, Bowman, Brodhead, Buckalew, Church, Curtin, Darlington, Dunning, Edwards, Finney, Gibson, Hazzard, Littleton, Minor, Palmer, G. W., Parsons, Porter, Read, John R., Reynolds, Sharpe, Stanton, Turrell, White, J. W. F., Woodward and Worrell—27.

So the main question was ordered to be now put.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Brown, Bullitt, Campbell, Cassidy, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Cuyler, Dallas, Dodd, Ellis, Ewing, Fell, Fulton, Funck, Gilpin, Harvey, Hay, Hemphill, Heverin, Kaine, Knight, Lamberton, Lawrence, Lear, MacVeagh, M'Camant, M'Clean, M'Michael, Mantor, Metzger, Mitchell, Palmer, H. W., Patterson, D. W., Patton, Rooke, Ross, Runk, Russell, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry and White, Harry—64.

ONE HUNDRED AND SIXTY-THIRD DAY.

MONDAY, October 13, 1873.

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of the proceedings of Friday last was read and approved.

LEAVES OF ABSENCE.

Mr. LILLY. I have a telegraphic dispatch from Mr. Gilpin requesting me to ask leave of absence for him for a few days.

The PRESIDENT. Shall he have leave? ["Aye."] Leave is granted.

Mr. D. W. PATTERSON asked and obtained leave of absence for himself for to-morrow.

Mr. TURRELL. I ask leave of absence for to-morrow for Mr. M'Clean. He went home on Saturday in consequence of domestic matters and cannot be back here before Wednesday.

Leave was granted.

Mr. CHURCH. I ask leave of absence for Mr. Elliott, for a few days from to-day. He went home on Saturday on account of domestic matters, as the gentleman from Susquehanna said, [laughter,] and is not able to be here.

Mr. J. W. F. WHITE. On Friday evening Mr. Niles told me that he had just received a letter from his wife that she was sick, and he had to go home, and he requested me to ask leave of absence for him for to-day and to-morrow.

Leave was granted.

Mr. REYNOLDS asked and obtained leave of absence for Mr. H. G. Smith, of Lancaster, and himself, for to-morrow.

SUBMISSION OF THE CONSTITUTION.

Mr. S. A. PURVIANCE. I offer the following resolution:

Resolved, That the amended Constitution shall be submitted to a vote of the people in the following manner: To be voted upon by tickets labelled on the outside "Constitution," and on the inside for article No.—, 'or 'against article No.—, and if the voter is opposed to any one or more sections of said article to add upon

the face of the ticket the words "with the exception of section No.—." If a majority of the votes are in favor of the article without exception, it shall be carried as a whole, but if a majority of the votes are in favor of the article but opposed to the section or sections named, then the article shall be considered carried with the section or sections voted against omitted.

The articles shall be numbered in the following order, and voted upon as such by separate tickets for each number.

No. 1. Article on the Executive.

No. 2. Article on Legislation.

No. 3. Article on the Legislature.

No. 4. Article on the Judiciary.

No. 5. Article on Election, Suffrage and Representation.

No. 6. Article on Finance and Taxation.

No. 7. Article on Railroads and Canals.

No. 8. Article on Private Corporations.

No. 9. Article on Bill of Rights.

On Impeachment and Removal from Office.

On County, Township and Borough Officers.

On Oaths of Office.

On Education.

On Cities and City Charters.

On New Counties.

On Militia.

And on Future Amendments.

Mr. LILLY. I think that resolution had better go to the Committee on Schedules, as they have that matter under consideration, I understand.

Mr. S. A. PURVIANCE. I ask that the resolution be laid on the table and printed.

The PRESIDENT. That order will be made.

ADJOURNMENT SINE DIE.

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

Resolved, That on and after Monday, next the Convention will hold evening sessions, commencing at seven o'clock P. M.; that on Friday, the 24th inst., at twelve o'clock, the roll will be called and the amended Constitution signed, and at

three o'clock P. M., of said day the Convention will adjourn *sine die*.

On the question of proceeding to the second reading and consideration of the resolution.

Mr. S. A. PURVIANCE and Mr. CHURCH called for the yeas and nays, which were taken with the following result:

YEAS.

Messrs. Bailey, (Perry,) Bardsley, Beebe, Bowman, Boyd, Church, Curry, Ewing, Hunsicker, Long, MacConnell, M'Murray, Metzger, Mott, Palmer, G. W., Parsons, Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Struthers, White, David N., and Wright—22.

NAYS.

Messrs. Alricks, Baker, Biddle, Bigler, Black, Charles A., Brodhead, Broomall, Calvin, Carey, Corbett, Corson, Dallas, Darlington, DeFrance, Dodd, Dunning, Edwards, Guthrie, Hanna, Harvey, Hay, Hazzard, Hemphill, Howard, Knight, Lear, Lilly, Littleton, M'Michael, Mantor, Minor, Newlin, Patterson, D. W., Purman, Reynolds, Ross, Runk, Simpson, Smith, H. G., Stanton, Turrell, Van Reed, Wetherill, Jno. Price, White, J. W. F., Woodward, Worrell, and Walker, President—47.

So the Convention refused to order the resolution to a second reading.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Black, J. S., Brown, Buckalew, Bullitt, Campbell, Carter, Cassidy, Clark, Cochran, Collins, Craig, Cronmiller, Curtin, Cuyler, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Heverin, Horton, Kaine, Lamberton, Landis, Lawrence, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Palmer, H. W., Patton, Porter, Pughe, Read, John R., Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wherry and White, Harry—64.

JUDGE BLACK'S RESIGNATION.

Mr. WOODWARD. I rise to a question of privilege. Several days ago, in the performance of an unpleasant duty, I presented the resignation of the Hon. J. S. Black as a member of this body. Judge Black had a perfect right to resign, because in America no man can be compelled to hold an office against his

will. It is a part of the liberty where with we were made free, that a man may resign his office. Every man who wants an office cannot get into it, but every man who wants to get out of an office has the right to do so, and Judge Black exercised this right in resigning his place as a member of this body. When this was done, an act of Assembly made it the duty of the delegates at large who were elected by the same constituency as Judge Black to fill his place. The majority of this body has thus far obstructed the execution of that act of Assembly, by dilatory motions of one kind and another, by motions to lay on the table, and to appoint committees to wait on Judge Black, and to await other events. Every one of the gentlemen who have done this thing is under oath to obey the law of the land.

Now, sir, I gave notice to the Convention that I should move for the reference of Judge Black's resignation to the appropriate committee every day until the Convention disposed of it according to law. That motion was superseded by the motion of the gentleman from Allegheny (Mr. S. A. Purviance) to appoint a committee, and the Convention appointed a committee to wait on Judge Black. Now, the committee can inform the House whether they have waited upon him and what answer they have received. If they have telegraphed or written to him, I understand they have received no answer.

Mr. HOWARD. I rise to a question of order.

The PRESIDENT. What is the question?

Mr. HOWARD. My point of order is that the delegate from Philadelphia is out of order at the present time. We have appointed a committee on this subject, and that committee has not yet reported.

Mr. WOODWARD. The gentleman has now touched upon the very point I am going to make.

The PRESIDENT. The Chair cannot see how this subject can be brought before the Convention by the delegate from the city as a personal matter. The Chair cannot understand how it is personal to himself, and the delegate from Philadelphia, is not in order.

Mr. WOODWARD. I was charged with this duty, and I have been endeavoring to perform it.

Mr. HOWARD. I still insist upon my point of order, that the delegate has no

personal business here at all. His business is public. He has no more to do with the resignation of Judge Black than I have, or than any other of the delegates present has.

The PRESIDENT. It is certainly not a personal question, and the delegate from Philadelphia cannot bring it before the Convention in this shape.

Mr. S. A. PURVIANCE. I wish to say to the delegate from Philadelphia, that when we reach the order of "reports of committees," I shall be prepared to make a report on this very subject, which I suppose will thus bring the matter properly before the Convention.

Mr. WOODWARD. The gentleman just informed me that he had no answer to his communication from Judge Black.

Mr. S. A. PURVIANCE. Well, we are prepared to report any how.

Mr. WOODWARD. Well, I am not altogether satisfied with that. I want to make a motion.

Mr. HOWARD. I still insist upon my point of order.

Mr. WORRELL. The gentleman from Philadelphia desires to make a motion. He has a right to make a motion. What is the use of calling him to order.

Mr. BIGLER. I move to discharge the committee from the further consideration of the subject. I make that motion in order to give the gentleman from Philadelphia a right to make his statement.

Mr. BOYD. I hope he will wait until the report of the committee is made.

Mr. BIGLER. I make that motion only to allow the gentleman from the city to make a motion.

Mr. WOODWARD. I wish to make a motion.

The PRESIDENT. The Chair cannot understand what right the delegate from the city has to the floor.

Mr. WOODWARD. The Chair conceded it to me.

The PRESIDENT. I considered it proper for the delegate from the city to make a personal explanation. He has made no personal explanation and does not seem to be in the way, as the Chair sees, of making a personal explanation.

Mr. WOODWARD. Well, sir—

The PRESIDENT. The Chair cannot allow the gentleman to proceed. He will be pleased if the House will agree to hear the delegate.

Mr. WOODWARD. I am about to make a motion. The Chair will decide whether it is in order or not.

The PRESIDENT. Make your motion.

Mr. WOODWARD. I move that the resignation of Judge Black be taken from the table and referred to the appropriate delegates to elect his successor.

Mr. WORRELL. I second the motion.

The PRESIDENT. The Chair cannot entertain the motion for the reason that the resignation of Judge Black is not on the table. It is with a committee, and that committee must be discharged or report.

Mr. S. A. PURVIANCE. I will make a report from that committee.

The PRESIDENT. It would not now be in order. Resolutions are still pending.

ADJOURNMENT OVER ELECTION DAY.

Mr. D. W. PATTERSON. I offer the following resolution:

Resolved, That to-morrow, being the general election day of the State, the Convention when it adjourns to-day will adjourn to meet on Wednesday next at one o'clock P. M.

MANY DELEGATES. "No!" "No!"

Mr. D. W. PATTERSON. I move to proceed to the second reading and consideration of that resolution, and I want to say a word or two upon the subject.

The PRESIDENT. It is not debatable until it is taken up and considered.

Mr. D. W. PATTERSON. Then I call the yeas and nays on the motion to proceed to the second reading and consideration.

Mr. BARDSLEY. I second the call.

Mr. D. W. PATTERSON. I desire to see whether this Convention will disregard the will of the people upon this subject.

The PRESIDENT. The gentleman cannot debate the question at this time.

YEAS.

Messrs. Baker, Bardsley, Carey, Corson, Dunning, Ewing, Hanna, Harvey, Knight, Littleton, Long, M'Michael, Metzger, Newlin, Patterson, D. W., Patterson, T. H. B., Ross, Runk, Simpson, Smith, H. G., Van Reed, White, J. W. F., and Worrell—23.

NAYS.

Messrs. Alricks, Bailly, (Perry,) Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Calvin, Church, Corbett, Curry, Dallas, Darlington, De France, Dodd, Edwards, Guthrie, Hay, Hazzard, Hemphill, Howard, Hunsicker, Lilly, MacConnell, M'Murray, Mantor, Minor, Mott, Palmer, G. W., Parsons, Purman, Purviance, John N., Purviance, Sam'l A., Reynolds, Stanton, Struth-

ers, Turrell, Wetherill, Jno. Price, White, David N., Woodward, Wright and Walker, *President*—45.

So the Convention refused to order the resolution to a second reading.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Black, J. S., Brown, Buckalew, Bullitt, Campbell, Carter, Cassidy, Clark, Cochran, Collins, Craig, Cronmiller, Curtin, Cuyler, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Heverin, Horton, Kaine, Lamberton, Landis, Lawrence, Lear, MacVeagh, McCamant, McClean, McCulloch, Mann, Mitchell, Niles, Palmer, H. W., Patton, Porter, Pughe, Read, John R., Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wherry and White, Harry—65.

NUMBER OF A QUORUM.

Mr. J. N. PURVIANCE. *Mr. President:* I offered a resolution a few days ago that forty-five should constitute a quorum for the transaction of business. I now call up that resolution, and ask that it be read, and I ask for the yeas and nays on its passage.

The PRESIDENT. The delegate from Butler moves to take up the resolution now on the table relative to making forty-five delegates a quorum. The resolution will be read for information.

The CLERK read as follows:

Resolved, That hereafter forty-five delegates present shall constitute a quorum.

Mr. HAY. I rise to a question of order. Is that order of business yet reached, or are reports of committees in order?

Mr. DALLAS. That is unfinished business.

Mr. J. N. PURVIANCE. I ask that the yeas and nays be called on that resolution.

The PRESIDENT. If objection is made the Chair will have to rule that it is not in order now.

Mr. DALLAS. I object.

The PRESIDENT. Reports of committees are in order.

RESIGNATION OF JUDGE BLACK.

Mr. S. A. PURVIANCE. *Mr. President:* On behalf of the committee appointed on Thursday last to wait upon Judge Black and request the reconsideration or withdrawal of his resignation, composed of Messrs. Boyd, Lamberton and myself, I

have this report to make: That on that same evening we met, and we concluded to send Judge Black a telegram to York and to Washington city, and also to address him a letter to both these places. That was done. Up to the present time we have received no answer. The committee therefore make report asking to be discharged from the further consideration of the subject.

The PRESIDENT. Does the delegate make his report in writing?

Mr. S. A. PURVIANCE. I will send it to the Chair.

The PRESIDENT. The chairman of the committee appointed in reference to the resignation of Judge Black makes a report, which will be read.

The CLERK read the report as follows:

"The committee report that on Thursday last they addressed telegrams to York and Washington, and also letters to the same places, and as yet have received no answer. Your committee, therefore, request that they be discharged from the further consideration of the subject."

The resolution was read twice and agreed to, as follows:

Resolved, That the committee be discharged from the further consideration of the subject.

Mr. WOODWARD. Now, Mr. President, I suppose it will be in order for me to renew my motion. I move that the resignation of Judge Black be taken from the table, and be accepted and be referred to the delegates at large to fill the vacancy.

Mr. ALRICKS. *Mr. President:* I regret extremely that my friend from the city was pleased to indulge in such severe strictures this morning upon his colleagues, members of this House. I believe that I faithfully discharged my duty. After I heard of the resignation of Judge Black, I had good reason for believing that he would return to his seat in this Convention.

Mr. DALLAS. I rise to a point of order. Is the gentleman speaking to any motion now before the House.

Mr. ALRICKS. I am. There is a motion before the House.

Mr. DALLAS. My point of order is addressed to the Chair, and I make the point of order, is the gentleman now speaking to any motion before the Convention.

The PRESIDENT. The motion is to proceed to the consideration of the motion to accept the resignation. There is nothing before the House until the House

agrees to proceed to the consideration of the motion. The question is on proceeding to the consideration of the motion.

The motion was agreed to, ayes forty-five, noes not counted.

The PRESIDENT. The motion to accept the resignation and refer the filling of the vacancy to the delegates last named in the Governor's proclamation, is now before the House.

Mr. ALRICKS. I thought the resolution was before the House before. I certainly would not have opened my lips if that had not been my understanding. I only rose for the purpose of saying that I had good reason for believing that Judge Black would return and take his seat in this Convention; but from the course that has been adopted here, I now know that he will not come back, because I have enough in a letter that I have received from him to satisfy me upon that subject. I therefore hope there will be a unanimous vote accepting the resignation.

The PRESIDENT. The question is upon the motion of the gentleman from the city, (Mr. Woodward,) to accept the resignation and refer the question of filling the same to the appropriate committee.

The motion was agreed to.

OFFICERS' ACCOUNTS.

Mr. HAY, from the Committee on Accounts and Expenditures, submitted the following report:

The Committee on Accounts and Expenditures of the Convention respectfully report, in conformity with the resolution adopted by the Convention, Friday, October tenth, that the clerks and other officers of the Convention have already been paid four-fifths of their compensation, and that the one-half of their salaries yet remaining unpaid is according to the following statement, to wit:

D. L. Imbrie, Chief Clerk.....	\$275 00
Lucius Rogers, first Assistant Clerk.....	275 00
A. D. Harlan, second Assistant Clerk.....	275 00
J. L. Linton, Transcribing Clerk,	200 00
A. T. Parker, Transcribing Clerk,	200 00
James Onslow, Sergeant-at-Arms,	200 00
C. M. Brown, Assistant Sergeant-at-Arms.....	180 00
Clement Evans, Doorkeeper.....	180 00
Frank Bentley, Assistant Doorkeeper.....	180 00

Henry B. Price, Postmaster.....	\$180 00
B. Frank Major, Assistant Postmaster.....	180 00

2,325 00

For the payment of which the following resolution is reported:

Resolved, That warrants be drawn upon the State Treasurer, in favor of the clerks and other officers of the Convention above named, for the amounts set opposite their names respectively in the foregoing report.

The resolution was read twice and adopted.

NUMBER OF A QUORUM.

Mr. J. N. PURVIANCE. I now call up the resolution to make forty-five a quorum for the transaction of business in this body.

The PRESIDENT. We have not yet reached that point in the orders of the day.

Mr. J. N. PURVIANCE. There are no more reports, I believe.

The PRESIDENT. If there be no objection, the Chair will receive the motion.

Mr. J. N. PURVIANCE. I hear no objection.

The PRESIDENT. The delegate from Butler moves to take up the resolution, which will be read.

The CLERK read the resolution as follows:

Resolved, That hereafter forty-five delegates present shall constitute a quorum.

Mr. BIGLER. This body cannot do such a thing as that.

On the question of taking up the resolution, the yeas and nays were required by Mr. J. N. Purviance and Mr. Bowman, and were as follow, viz:

YEAS.

Messrs. Baker, Beebe, Biddle, Bowman, Boyd, Broomall, Cassidy, Corson, Darlington, De France, Edwards, Ewing, Hanna, Hazzard, Lear, Long, MacConnell, M'Murray, Metzger, Newlin, Parsons, Purviance, John N., Purviance, Samuel A., Simpson, Stanton, Turrell and White, J. W. F.—27.

NAYS.

Messrs. Alricks, Baily, (Perry,) Bardsley, Bigler, Black, Charles A., Brodhead, Calvin, Carey, Church, Corbett, Dallas, Dodd, Guthrie, Harvey, Hay, Hemphill, Howard, Hunsicker, Knight, Lilly, Littleton, M'Michael, Mantor, Minor, Mott,

Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purman, Reynolds, Ross, Runk, Struthers, Van Reed, Wetherill, John Price, White, David N., Woodward, Worrell, Wright and Walker, *President*—40.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Black, J. S., Brown, Buckalew, Bullitt, Campbell, Carter, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Davis, Dunning, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Heverin, Horton, Kaine, Lamberton, Landis, Lawrence, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Palmer, H. W., Patton, Porter, Pughe, Read, John R., Reed, Andrew, Roöke, Russell, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm H., Stewart, Temple, Wetherill, J. M., Wherry and White, Harry—66.

PUBLIC OFFICERS.

MR. J. N. PURVIANCE. I move that we now proceed to the consideration of the article on the Legislature.

THE PRESIDENT. That is not yet in the possession of the House. It is in committee.

MR. D. W. PATTERSON. I move that we proceed to the consideration of the report of the Committee on Revision and Adjustment on article No. 12.

The motion was agreed to.

The amendments reported by the committee were read.

MR. D. W. PATTERSON. I move that the report of the committee be adopted.

The motion was agreed to.

MR. D. W. PATTERSON. I now move that the article be transcribed for a third reading.

The motion was agreed to.

MR. D. W. PATTERSON. I now move to proceed to the third reading of the article.

The motion was agreed to, and the article was read the third time as follows:

ARTICLE XII.

PUBLIC OFFICERS.

SECTION 1. No person but an elector shall be elected or appointed to any office in this Commonwealth.

SECTION 2. All officers whose election is not provided for in this Constitution shall be elected or appointed, as may be directed by law.

SECTION 3. Except in cases provided for in this Constitution, no person (except a notary public, commissioner of deeds or an officer of the militia not in actual service) shall at the same time hold or exercise more than one office to which a salary, fees or perquisites shall be annexed.

SECTION 4. No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees or perquisites shall be attached.

SECTION 5. Any person who shall fight a duel, or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and may be otherwise punished as shall be prescribed by law.

MR. LILLY. I move that the Convention go into committee of the whole in order to insert the following in place of section five:

"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 election."

I want to say to the Convention only that this section was passed in committee of the whole, and I believe it was passed on second reading.

MR. D. W. PATTERSON. Oh, no; it was voted down.

MR. LILLY. I do not recollect that any vote was taken upon it at all, but it has got out of the report in some way. I have been in the Convention pretty steadily, and was here, I believe, every day during the consideration of that article; but I do not recollect that it was ever stricken out. Of course, as it is not in the report of the Committee on Revision and Adjustment, I must conclude that it has been stricken out, although I have no recollection upon that subject. The gentleman from Monroe (Mr. Davis) is very anxious to have this section inserted, and thinks that it is necessary, and that without this section we do not say who can hold

the office of judge at all. He is not in his seat to-day, being unavoidably absent; but on Friday last I said to him that if he was not here when the report of this committee was considered, I would offer this section and vote for it.

Mr. HAY. It seems to me that if the people of this Commonwealth can be trusted to elect the judges of the Supreme Court and of the courts of common pleas, they can be trusted to elect persons of suitable age to hold those offices. I can see no reason whatever why this proposed section should be inserted, but can see a great many very good reasons, which have been heretofore mentioned to the Convention by other delegates, why it should not be agreed to. Even if it were proper for this Convention to fix the ages at which persons could be elected to the different judicial positions in this Commonwealth, I think the ages mentioned in the section proposed by the delegate from Carbon are not the most judicious that could be fixed. Many illustrious judges have filled the highest positions in the Supreme Courts of various States at a much earlier age than that mentioned in this proposed section. I believe every delegate of the Convention will call to mind the case of the distinguished gentleman who once occupied the exalted position of President of the United States, General Andrew Jackson, who filled the position of judge in Tennessee, I think, before he was twenty-five years of age, and certainly no one will say that he was incompetent to fill either that or any other position, the people having elected him to the very highest office in their gift. I have also in my mind the case of a gentleman in a neighboring State, the late Samuel L. Southard, who filled the position of judge of the Supreme Court with great credit to himself and advantage to the State, at the age of twenty-eight years. Also, the case of Thomas Ewing, Jr., who was, I believe, Chief Justice of Kansas at a very early age, probably before he was thirty. Why should we now fix a limit of this kind in our Constitution? I can see no reason for it whatever, and I hope that this matter will be left to the good judgment and discretion of the people.

The PRESIDENT. The question is upon the motion of the gentleman from Carbon (Mr. Lilly.)

The motion was rejected.

Mr. BROOMALL. I move to go into

committee of the whole in order to strike out the first section.

The PRESIDENT. The Clerk will read the section proposed to be omitted.

The CLERK read as follows:

"No person but an elector shall be elected or appointed to any office in this Commonwealth."

Mr. BROOMALL. The reason why I have moved to strike out this section is because it is in conflict with what we have already done in one of the other articles, the article on suffrage, election and representation. Another reason for striking it out is that I think the people may be safely trusted with the election of any person who may by law be made eligible to any office. No such provision as is contained in this section, is in the present Constitution, and I cannot conceive the necessity of tying up the hands of the Legislature and of the people of the State upon that question. Unless somebody can point out some necessity for it, the very fact that it is not necessary ought to be enough to condemn it; but the additional fact that it is in conflict with what we have already done, super-added to that, ought to condemn it four-fold.

Mr. DARLINGTON. There may be a reason for the retention of this provision with regard to appointed officers. While we may be perfectly willing to trust the people to elect their officers, we may not be willing to trust the appointing power, who may appoint somebody not an elector. I am heartily in favor, however, of the principle suggested by my colleague from Delaware, but I was about to propose a different remedy by adding, at the end of the section, these words:

"Except as otherwise provided in this Constitution."

The CLERK. Those words are already in the section.

Mr. DARLINGTON. They are not in the printed copy.

The CLERK. They were left out by mistake.

Mr. DARLINGTON. Please read the section as it should be.

The CLERK: The section, corrected, reads:

"No person but an elector shall be elected or appointed to any office in this Commonwealth, except as otherwise provided in this Constitution."

The latter clause was inserted upon second reading, on motion of the gentleman from Erie, (Mr. Bowman,) but was

left out by mistake of the printer. The words are now part of the section.

Mr. BROOMALL. I still insist upon my motion being put, and the question being now presented under somewhat different circumstances, I desire to state why an attorney at law is an officer appointed by the court in this State. I want to know why it is that a woman, for instance, who is otherwise competent, should not be appointed by a court to practice law. If the Constitution of the United States had this provision in it, that nobody should be appointed nor elected to any office except as is provided in the Constitution of the United States, we would lose a class of officers, the most useful of their kind in the Union, that is, women postmasters, universally pronounced to be more attentive, more capable and more honest than the men. To their credit also be it said, there has been no instance in which a woman has been a defaulter in a post office. There may be a variety of cases where it would be desirable to elect or appoint a woman to office, and I propose to leave the whole subject to the Legislature and to the people. I therefore insist upon my motion being put.

The PRESIDENT. The question is on the motion of the gentleman from Delaware to go into committee of the whole to strike out the first section.

Mr. BROOMALL. I call for the yeas and nays on that motion.

Mr. CORSON. I second the call.

The yeas and nays were taken and were as follow:

YEAS.

Messrs. Alricks, Bardsley, Beebe, Bowman, Brodhead, Broomall, Carey, Cassidy, Corson, Darlington, De France, Edwards, Ewing, Hanna, Hazzard, Hunsicker, Lilly, Littleton, M'Michael, Minor, Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Runk, Stanton, Struthers, Van Reed, White, David N., White, J. W. F. and Wright—30.

NAYS.

Messrs. Baily, (Perry,) Baker, Biddle, Bigler, Boyd, Calvin, Church, Corbett, Curry, Dallas, Dodd, Dunning, Guthrie, Harvey, Hay, Hemphill, Howard, Lear, Long, MacConnell, M'Murray, Mantor, Metzger, Mott, Newlin, Palmer, G. W., Parsons, Patterson, D. W., Purman, Read, John R., Reynolds, Ross, Simpson, Smith, H. G., Turrell, Wetherill, John Price, Woodward and Walker, *President*—38.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Black, Chas. A., Black, J. S., Brown, Buckalew, Bullitt, Campbell, Carter, Clark, Cochran, Collins, Craig, Cronmiller, Curtin, Cuyler, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Heverin, Horton, Kaine, Knight, Lamberton, Landis, Lawrence, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Palmer, H. W., Patton, Porter, Pughe, Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Whetherill, J. M., Wherry, White, Harry, and Worrell—65.

Mr. MINOR. I move to go into committee of the whole to amend the first section, first line, by striking out the words "or appointed."

I make the motion for this reason: This is a new section, and we have not fully contemplated how far it will have effect. I will mention one or two particulars in which it would work badly. It is not long before we shall have, for instance, a geological survey of this State. This section will cut off the State from receiving the benefit of any scientific man outside of its limits. This might be a serious loss. So in the matter of engineering, and all the great subjects of internal improvement of any kind, the Governor cannot avail himself of the ability or attainment of those who may be the best men in the country, simply because they are not electors of this State. It seems to me that the good sense of the Governor, the good sense of the Legislature, the intelligence of the community, are fully sufficient to protect us against improper appointments, at all events that being an elector is not the true basis of qualification. If we strike this out we are at liberty to receive the benefits from whatever science, whatever intelligence, knowledge or attainment there may be in the wide world. There may be men too, in our own State who are not electors, yet whose services are often desirable. We ought not to adopt the narrow policy of restricting ourselves simply to electors for appointed officers. We should rather invite to us, instead of driving from us, those who may be of benefit to us. There are other considerations, but I will not enlarge.

Mr. DARLINGTON. I beg leave to add my hearty concurrence in the proposition made by the gentleman from Crawford, for the reason that every lawyer knows in

his daily practice there are necessary appointments made of commissioners of deeds in the various States, who are officers appointed by our Governor to take acknowledgments of deeds, and persons appointed to take depositions in this country or in foreign countries; and it is absolutely necessary to resort to others than mere electors. It would embarrass very much the administration of justice, I apprehend. Besides the reasons which have been given by the gentleman from Crawford, I think the requirement would be exceedingly unprofitable and unnecessary. I hope, therefore, the motion will prevail.

Mr. LILLY. I am in favor of striking that out for the reason that I want to leave the door as wide open as we can. I would leave it to the Legislature. Therefore I think the words ought to be stricken out.

Mr. DODD. I hope we shall not place ourselves in the position here of putting restrictions upon the people and taking them away from those who have the appointing power. If we strike anything out of this section, I would prefer to strike out the words "elected or." Let the people elect whom they please; but to say that the people shall elect none but electors, while the Governor may appoint whom he pleases, is not to say the exact thing. I hope we shall not do any such thing.

Mr. BIDDLE. I am not in favor of striking out the words "or appointed." In the first place, the reason given by the gentleman from Chester is unanswerable. We do appoint now every day commissioners to take acknowledgments of deeds in every State, who necessarily cannot be citizens of this State, and of course not electors of this State. Again, it has been stated to me that the courts heretofore have had the power—whether they have exercised it or not I do not know—to appoint female inspectors of female prisoners in prisons. It strikes me that it is not a bad thing, and I should be very sorry to see the Governor or the courts, the appointing power, hampered in this respect. What the gentleman from Venango says about the limitation on the people is an argument when that comes to be discussed. It is no reason why we should consider this fetter upon the appointing power where it is obviously unnecessary.

The PRESIDENT. The question is on the motion of the delegate from Crawford (Mr. Minor.)

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

The CHAIRMAN. The committee of the whole have been instructed to amend the first section by striking out the words, "or appointed" in the first line. The amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Dodd) reported that the committee of the whole had made the amendment directed by the Convention.

Mr. BROOMALL, Mr. President: I move that the Convention go into committee of the whole for the purpose of striking out the word "elector," in the first line of the first section. That amendment of course, is one merely *pro forma* for the purpose of saying that there is a great deal of force in what the gentleman who just occupied the chair has said, that we have fettered the people and left the Governor free. Now, I trust that somebody, seeing how monstrous that is, will move to reconsider the vote by which the section was retained, and let us vote it out, for it has no business in the Constitution.

The PRESIDENT. The question is on the motion of the delegate from Delaware (Mr. Broomall.)

The motion was not agreed to.

Mr. DODD. I move to reconsider the vote taken on the motion to go into committee of the whole for the purpose of striking out the first section.

Mr. DALLAS. I second the motion.

The PRESIDENT. Did the gentlemen vote in the majority?

Mr. DODD. I did.

Mr. DALLAS. I did.

The PRESIDENT. The question is on the reconsideration.

The motion to reconsider was agreed to.

The PRESIDENT. The motion made by the gentleman from Delaware to strike out the first section is now before the Convention.

Mr. CORBETT. I ask for the yeas and nays.

Mr. HAZZARD. I second the call.

Mr. HAY. How does the section read as it now stands?

The PRESIDENT. It will be read.

The CLERK read as follows:

"No person but an elector shall be elected to any office in this Common-

wealth, except as otherwise provided in this Constitution."

The PRESIDENT. The Clerk will call the names of delegates.

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

YEAS.

Messrs. Alricks, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Brodhead, Broomall, Calvin, Carey, Cassidy, Corson, Curry, Dallas, Darlington, De France, Dodd, Dunning, Edwards, Ewing, Guthrie, Hanna, Harvey, Hemphill, Heverin, Howard, Hunsicker, Lamberton, Lilly, Littleton, Long, MacConnell, M'Michael, Metzger, Minor, Mott, Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Ross, Runk, Smith, H. G., Stanton, Struthers, Turrell, Wetherill, John Price, White, David N., White, J. W. F. and Wright—50.

NAYS.

Messrs. Bailly, (Perry,) Baker, Bardsley, Boyd, Church, Corbett, Hay, Hazard, M'Murray, Mantor, Palmer, G. W., Parsons, Patterson, D. W., Read, John R., Reynolds, Simpson, Van Reed, Woodward and Walker, *President*—19.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Black, J. S., Brown, Buckalew, Bullitt Campbell, Carter, Clark, Cochran, Collins, Craig Cronmiller, Curtin, Cuyler, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Horton, Kaine, Knight, Landis, Lawrence, Lear, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Newlin, Niles, Palmer, H. W., Patton, Porter, Pughe, Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wherry, White, Harry and Worrell—64.

The Convention accordingly resolved itself into committee of the whole, Mr. Hay in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on public officers, with instructions to strike out section one. The amendment will be made.

The committee then rose and the President having resumed the chair, the Chairman (Mr. Hay) reported that the committee of the whole had made the amendment referred to them.

Mr. BEEBE. I should like to inquire of the committee whether that portion of section two which is stricken out in the printed article has been stricken out for the purpose of being inserted in any other article.

The PRESIDENT. It is inserted in the article on county officers.

Mr. J. N. PURVIANCE. I move to go into committee of the whole for the purpose of striking out section three. I see no necessity for the section. I can imagine cases where one person might hold two offices at the same time and with perfect propriety. There might be a necessity for it.

Mr. BIDDLE. I agree with the gentleman who has just spoken, and if there is any member of the committee who had charge of the subject present I should like to know the reason for the insertion of the section. We may be acting hastily perhaps. I am inclined to agree with the gentleman from Butler, but I think some member of the committee who reported the section ought to tell us something about it before we vote.

Mr. LITTLETON. It seems to me this motion should be adopted. The section is purely legislative in its character, and is hardly worthy of being placed in the Constitution; and I think the same remark will apply to the next section.

Mr. D. W. PATTERSON. I have only to remark that this matter was debated very considerably on second reading. It was stated on this floor that some four or five persons in the State held two or three offices at the same time, and they thought it inconsistent and incompatible, and the section was carried by a very considerable vote. I am not tenacious about the section myself, but I think at this late day and when the Convention is so thin, we ought not to make very extensive alterations in these articles on third reading, and we ought not to introduce entire new sections. I do hope that the House will be conservative in that regard.

Mr. BIDDLE. I should like to ask the gentleman what offices have been heretofore held together which have acted injuriously to the State.

Mr. D. W. PATTERSON. I do not know how injuriously such appointments or variety of appointments have been to the public weal. I only know that it is a fact that such appointments have been made. It is known that one of our own members holds two offices at the same time. However, that is a question for

the people, in my opinion. If the people elect a gentleman to two positions, I do not think we have any right to object to it.

Mr. BEEBE. As a member of the committee who originally reported the article, I will state that this section was reported not for any other reason than simply the assertion on the part of members of this Convention that in the cities there was an abuse of this power, now limited by virtue of this article in the Constitution. I know of no individual instance myself, but cases of that kind were stated.

Mr. DARLINGTON. If gentlemen will be kind enough to refer to the first section of article fourteen, on the subject of county officers, they will find that certain county officers are provided for, and then it has this declaration: "The Legislature shall declare what offices are incompatible." I apprehend, therefore, that that will enable the same man to hold two or more county offices in counties where there is not business enough for one man to each office. It seems to me that does away with the necessity of this section altogether.

Mr. HAY. Article fourteen is an article which relates only to county officers, and in the first section of that article it is provided that "the Legislature shall declare what offices are incompatible." I think that would mean, what county offices are incompatible, and that this other section would relate to all other offices under the State government. It seems to me that there are good reasons why this section should be retained, and one of the reasons is this: When a person has been elected or appointed to fulfil any duty to the State, he owes his whole time to the performance of that duty, and if he is paid for performing it he should be considered as fully paid, and should not receive two salaries for the same time. A man cannot, in working for the public, occupy more than the number of days there are in the year, and if he is appointed or elected to any position he owes all his time to the public, which pays him for it. I do not think it at all proper that any person should fill two public positions to which salaries are attached at the same time. The instance which has been alluded to, of a person within our knowledge occupying two positions, is an instance which should warn us of the impropriety of any such action, and serves as an argument in favor of the retention of this section.

Mr. LILLY. I am opposed to this sec-

tion for the very reason given by the member who has just taken his seat in favor of it. I think this section would prevent a man in the rural districts from holding the office of justice of the peace and of assessor, if you please, at the same time, or half a dozen other little offices which it is necessary sometimes for one man to hold. The reason urged by a gentleman on my left that it is not in the old Constitution, does not affect me very much; but I think we should not restrict it so that in the rural townships a man cannot hold half a dozen of these small offices if the people want to elect him to them. I think we ought to strike out the section.

The PRESIDENT. The question is on the motion of the delegate from Butler (Mr. J. N. Purviance.)

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

The CHAIRMAN. The committee of the whole have had referred to them the article on public officers, with instructions to strike out the third section. That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Brodhead) reported that the committee of the whole had made the amendment referred to them.

Mr. HUNSICKER. I move that we go into committee of the whole for the purpose of adding to section four the words in the old Constitution, as follows: "And the Legislature may by law declare what offices are incompatible."

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

The CHAIRMAN. The committee of the whole have had referred to them the fourth section of the article on public officers, with instructions to add these words: "And the Legislature may by law declare what offices are incompatible." That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Alricks) reported that the committee of the whole had made the amendment referred to them.

Mr. PARSONS. I suggest that by unanimous consent the word "Legislature," in the amendment just adopted, be stricken out and "General Assembly" substituted.

The PRESIDENT. Will the Convention unanimously agree to that change? ["Aye." "Aye."] It is agreed to. The article is now before the Convention.

Mr. C. A. BLACK. Let us have it read as it now stands.

The CLERK read as follows:

ARTICLE XII.

PUBLIC OFFICERS.

SECTION 1. All officers whose election is not provided for in this Constitution, shall be elected or appointed as may be directed by law.

SECTION 2. No member of Congress from this State, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees or perquisites shall be attached; and the General Assembly may by law declare what offices are incompatible.

SECTION 3. Any person who shall fight a duel or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and may be otherwise punished as shall be prescribed by law.

Mr. MACCONNELL. I rise to inquire whether the words "or appointed," in the second line of the second section, as it was first numbered, now the first section, were not stricken out?

The PRESIDENT. That question has not been before the House at all. Those words were stricken out in the original first section.

Mr. MACCONNELL. The motion of the gentleman from Delaware (Mr. Broomall) was to strike out those words wherever they occurred.

The PRESIDENT. Oh, no; only in the first section. The question is on the article.

The article was passed.

NEW COUNTIES.

Mr. D. W. PATTERSON. I move that we proceed to consider the report of the Committee on Revision and Adjustment on article thirteen, on new counties.

The motion was agreed to.

The report of the committee was read.

Mr. D. W. PATTERSON. I move the adoption of the report.

The motion was agreed to.

Mr. D. W. PATTERSON. I move that the article be transcribed for a third reading.

The motion was agreed to, and the article was read the third time, as follows:

ARTICLE XIII.

NEW COUNTIES.

SECTION 1. No new counties shall be established which shall reduce any county to less than four hundred square miles, nor to less than twenty thousand inhabitants; nor shall any county be formed of less area, or containing a less population, nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

Mr. CHURCH. I move to go into committee of the whole for the purpose of amending the article by adding a new section, to be styled section two, as follows:

"No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same."

Mr. President, it seems that on second reading this section was stricken out by a very small majority, though it had been sustained in committee of the whole; and it occurs to me that it is certainly going a step backwards to take out from the present Constitution the valuable provision already there. It does, so far as my constituents are concerned, affect us much; and I say that the absence of this section from the article does not commend the Constitution to their approval. I have no doubt that many members all over the Commonwealth will be able to say the same thing, that to leave out that section would be going a great step backward, and that the absence of the proposed section will not commend this Constitution to the people of the Commonwealth.

Without taking up the time of the Convention with any other arguments, because there was a great deal said on the subject at the time the article was on second reading, I wish to have the Convention place themselves on record; and therefore I call for the yeas and nays on this motion.

Mr. PARSONS. I second the call.

Mr. BEEBE. The section offered by the gentleman from Crawford is the same that was stricken out once before for the simple reason that it absolutely amounts to an utter prohibition of the formation of new counties, as was shown by the gentleman from Washington (Mr. Haz-

zard) and others. I have no axe to grind in this matter; I am not for or against any particular new county; but I submit that the article on legislation, containing restrictions as to special laws, in connection with this section if it be adopted, will be an utter prohibition. The Convention surely will not insert this section unless they mean to interpose an absolute prohibition against the formation of new counties. Do this, and there will be no possibility, under any circumstances, of ever obtaining a new county.

I do not wish to detain the Convention by discussing this matter. We debated it fully heretofore. We once adopted the section, but it was seen that it amounted to an utter prohibition, and it was therefore left out. I trust the Convention will sustain the article just as it stands.

Mr. LILLY. All I have to say on this subject is that the action of the Convention on the legislative article so thoroughly shut up the door that it is an entire improbability, to say the least, that there will ever be another new county made, and as far as I am concerned it does not make any difference to me how much you put on or lop off this article. I think you may strike it all off now. I believe the wall of the county lines, under this Constitution is built up as strongly and as firmly as the great Chinese wall, and never in the future can we have a new county. The legislative article says that no special law shall be passed to divide a county. Now, if you undertake to make a general law in the Legislature, every man in the Legislature representing a large county, who does not want it divided, will vote against that general law, for fear it may apply to his county. It just as effectually stops that thing as it is possible to do.

Mr. CUYLER. Mr. President: I am very glad the Convention did shut the door. I hope they will lock it and throw the key away, and if it is necessary screw it up afterwards. It involves practically a constitutional change under our system as we have now adopted it, creating new counties; because the moment you create a new county you disturb the whole ratio of representation all over the State.

Philadelphia suffers enough already both in House and Senate. She is already cut down below her fair representation. If new counties are hereafter to be created, it will be still worse for the city. Therefore, coming from the section of the State that I have the honor of represent-

ing on this floor, I hope that the possibility of creating new counties will be made just as remote as it can possibly be.

Let us contemplate the possibility of a combination of counties for the very purpose of cutting down the representation of the city is a possible thing; and already weakened as we are, we should be made still more weak by that course. Therefore, I am in favor of anything that will interpose a fresh obstacle in the way of creating a new county. Hereafter, with the facilities of communication which exist all over our State, the ease of passing from one point to another within the State, no reason can exist for the multiplication of counties, because the seat of justice and the seat of county business under the present organization is already as convenient almost as it could be, and will become increasingly so through all the future.

I am therefore in favor of the amendment as a fresh obstacle.

Mr. MINOR. It is very kind in the delegate from Philadelphia (Mr. Cuyler) to say that the door ought to be locked against new counties and kept so, and the key thrown away. Philadelphia, let it be remembered, has less than four hundred square miles now, and notwithstanding her great population and wealth, she would not at this time be a county if the same rule was applied to her that her delegate proposes to apply to the other parts of the State. His suggestion about throwing away the key is very, very kind, indeed. Now, when Philadelphia has less than half the amount of square miles required for a new county in any other section. Now, having got all she wants in her little territory of one hundred and twenty-eight square miles, she seeks to prevent the other parts of the State from having anything near the rate she has obtained. Kind, kind indeed, this. Sir, let us rise up to broader views and more just and generous impulses. But, sir, his proposition is itself incorrect, for twenty thousand are entitled to a representative, whether in a new county or an old one, so that Philadelphia cannot lose representatives because a new county may be made. Again, sir, I cannot agree with the argument of my colleague from Crawford, (Mr. Church,) who makes this motion. I know that many of our constituents have felt otherwise than those he refers to. Many, many, think that the rule is now made too strict instead of not being strict enough.

But why need I enlarge upon this matter; we discussed it heretofore over and over again. All sorts of propositions were made, and this first section was the result. It is, however, presented and I will therefore show it to be entirely unnecessary. Originally in this State there were but three counties; those counties have been divided and subdivided from time to time until we have sixty-six. Now if this rule which it is proposed to place on all future counties had been in force sixty years ago, of the last sixteen counties which have been formed we should have but four. I think it is evident that there cannot be any abuse in the future if there has been any in the past. There are now a few small counties, but the thing can never be repeated. All the small counties will be increasing, and none hereafter can be formed with less than 20,000 inhabitants and less than four hundred square miles of territory. That rule, I repeat, would have prevented twelve of the last sixteen counties that were formed from being formed. Further, sir, although we have added sixteen new counties in the last sixty years, even at that rate the population, if I have the correct statistics, has increased faster in proportion than the counties. This does seem the furthest extent to which we can possibly go without placing unreasonable restriction about the people of this State when they find it necessary to have new arrangements on account of the increasing demands of population and of business; to go further is in many instances a practical denial of justice and absolute oppression. Let existing counties not deny to others that measure of justice which secured their own existence. Finally, although many in this Convention felt that we ought to have greater liberty than this first section and the article on legislation gives us, yet we are content to stop there, and I say here let us stop and take the article as it is and as the Convention on full deliberation decided.

Mr. MANTOR. Mr. President: On two former occasions when this question was before the House, it was my privilege to speak upon it, and I do not desire now to repeat what I said before. I believe that on almost all these questions we find a great deal of repetition at this stage. We find men making over again their speeches. I have no disposition to detain the house by any performance of that kind.

I concur most heartily in this new section offered by my colleague, (Mr.

Church,) and I endorse emphatically what he said in relation to his belief in regard to the votes that may be affected when we come to pass on the Constitution "*finally*." The people are to be consulted, and are yet to *decide on our work*. I have had occasion to communicate quite largely with very many of my constituency on this subject, and I have talked with many of them within the past week, and some of them have declared that they could not *support or vote in favor of* our work if we did not change this section from the manner in which it passed to *second reading*.

I do not throw out these remarks to attempt to deter any delegate or to change his mind, for if it should prove that we cannot pass this new section, I shall take occasion, at the proper time, to try and have the present article submitted to the people separately, and they can then say whether they favor the article or not, and I shall abide their decision. But, sir, I trust in the good sense of this Convention. *I trust that we shall pass this "new" section*; not that I have any personal interest in it whatever, but for reasons heretofore given which I shall not again repeat.

Mr. BOWMAN. Mr. President: When this question was before this Convention on two or three former occasions it is known very well to every delegate here that I opposed the proposition to the best of my ability for the reason that I believed then and still believe that it would do great injustice to certain portions of this Commonwealth. After the question had been settled, and as we supposed certainly settled, (and though not in accordance with my wishes, not in accordance with my sense of justice, still I was willing to submit to it and am willing to do so now,) the gentleman from Crawford proposes to revive it again. This proposition now is to go back to the old Constitution and provide that no new county shall be formed unless a majority of all the votes of the county proposed to be divided shall be had in favor of it. If the gentleman would go back a little further he would only have to go back a generation or two before he would find himself traveling to Berks county to attend court. Originally you had but three counties in the State. The gentleman from Philadelphia this morning says he wants to lock the door so that no new counties can be formed hereafter. He may think that all right and proper. He is a practicing attorney; he lives here at his county seat, and always

has lived here, for aught I know; but it is a very different thing with men in other parts of the State.

Take this as an original proposition. You had your three counties, but by a change in the Constitution and by provisions of law the people of the State were authorized to form new counties. They have changed the number of the counties from that number originally made until they have made sixty-three more than that number. Who says we have too many?

Let us look at this provision; what does this section provide? I think that the gentleman from Philadelphia has already got the door locked and the key thrown away, and it will be impossible for any man to do anything. Let us see. No new county shall be established which shall reduce the remaining counties from which it is taken to less than four hundred square miles, and still leave the new county with an equal territory. Four hundred square miles is larger than the territory embraced in the city of Philadelphia, and is enough space to make a good county. Another provision is that no county shall have less than twenty thousand inhabitants. Under that you would not get your little Forest. You would not get your little Elk. You would not get your M'Kean, and you would not get your other counties in the State, some nine or ten of them, that contain less than twenty thousand inhabitants. New counties will all have to come up to that number in point of population when they are formed hereafter. Then the section provides that no county line shall run within ten miles of the county seat, and what more than that do gentlemen want! This is a retrograde movement, and we are to go back and say that in this Constitution we will provide that no new county shall be hereafter formed. Does the gentleman from Philadelphia want more?

The gentleman responds, nods his head and says that he does. Suppose that this had been the rule when there were only about ten counties in the Commonwealth. How could men then have transacted their business. How could they have attended to the legal business of the country, the social business of the country and the developments that are now being made everywhere all over the Commonwealth? I hope that gentlemen will consider this wisely, and that the gentlemen present will come to this one conclusion, and that is that this question shall at least

to-day receive its finality and be voted down for the last time, and that we may not have it revived in this Convention again.

Mr. BIGLER. I have no desire to participate in this debate. I have no fear whatever about it. It is true that in my part of the State there have been one or two applications for new counties, but I have been all the while inclined to doubt the wisdom of this article. I doubt this policy of caring so specially for posterity. I think it would be wise to trust them with some of their own affairs. No man can foresee how population may concentrate in this peculiar State. In a few years, five, ten or fifteen from this, you may find an immense population centered where there is none now, and there may be a need of new counties where there is no necessity at present.

I doubt very much the wisdom of an arbitrary rule which would exclude a new county on the ground of territorial limit. I think that an illiberal experiment. Why, sir, we have come up wonderfully from a few counties, and have reached sixty-six. Perhaps there are in that list four or five counties that ought not to have been included without at least very good special public considerations in their favor; but our experience has shown the necessity for dividing communities, and in the future I doubt not that there are those of us alive here now who will see a pressing need for the creation of new counties where none can be discovered now. I do not see why this subject should be so arbitrarily taken from the disposition of the people and the Legislature hereafter. My own inclination is to vote against the entire article.

Mr. DUNNING. I do not propose to take the time of this Convention with any further discussion of this question. I only want to say one word in reference to the principles that are involved. This Convention, a few days ago, did itself the credit of passing upon Luzerne county in such a manner as to single it out of all the other counties of the Commonwealth and say that in that county this question of division should be submitted to a vote of the people.

I will not say anything further now as to the claims of Luzerne county, or of the wants of the citizens of that county, who have been asking for years for its division. I will not repeat what I have so often said on this floor in reference to this subject, nor will I again appeal to this Con-

vention to treat that locality fairly. I met an opposition on that subject that was unexpected to me, and the position assumed by the body was new not only to me, but to the people of the Commonwealth; that the time had come when the door should be locked against any proposition, no odds what merit it might contain, no matter from what section of the Commonwealth it comes, no matter what the future may reveal, or what the future necessities of the State may be, for the division of any county, or the erection of any new county in future.

I propose to treat gentlemen on this floor more magnanimously than they treated me the other day. The gentlemen who are in favor of division have had that question decided, but I am opposed to the principle introduced here by the gentleman from Philadelphia, and shall vote against it, notwithstanding I was slaughtered in the house of my supposed friends. I shall vote against this proposition, believing it to be unjust, and believing it to be one that cannot operate equally upon the different sections of the country and the respective counties of this Commonwealth. It is well understood—it has been very often said on this floor in the consideration of this question—that the interests which centre around county seats render it impossible for even-handed justice to be done when this question is submitted to a vote of the whole people of any county. I did hope that something like fair-handed justice might be expected from this Convention, on account of its character; but the prejudices that have been brought in here, and the large number of delegates that come from the county seats, have rendered it impossible for them to see the necessities and wants of the people living more remote from county seats.

I am surprised at the gentleman from Philadelphia, after what I conceived was a magnanimous act on the part of the Convention with reference to the representation from this city, giving them a greater representation than they ever had before, and after the very fair treatment that was received by the delegates from this city at the hands of the other delegates, to find him saying that there is great danger to be apprehended in the decision of such a question as this. This is a question of magnitude, and yet as it is proposed to be decided, the privilege of division of counties will be curtailed in such manner as to render it fatal to the

interests of this great city. It is just this sort of opposition that we have had from eloquent gentlemen upon this floor, from gentlemen of character and standing, who far remote from interests that require the division of counties, have felt it to be their duty to make it an especial point to prohibit a possibility of any new counties in this Commonwealth in future.

I trust that this section will be voted down. I shall vote against it on the ground that I feel it to be wrong and improper.

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

Mr. PARSONS. I second the call.

Mr. G. W. PALMER. I ask for the reading of the proposed section.

The CLERK read as follows:

"No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same."

Mr. S. A. PURVIANCE. I will inquire whether that is amendable.

The PRESIDENT. A motion to divide a motion to go into committee of the whole cannot be made. The gentleman must wait until this question is disposed of, and then he can move any amendment he desires. The yeas and nays are called for on the motion to go into committee of the whole, and the Clerk will proceed with the call.

The yeas and nays were taken and were as follows:

Y E A S.

Messrs. Alricks, Baker, Biddle, Church, Corbett, Cuyler, Dallas, Darlington, Dodd, Hemphill, Hunsicker, Lear, M'Michael, Mantor, Metzger, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Reynolds, Ross, Struthers, Turrell, White, David N., Woodward and Wright—26.

N A Y S.

Messrs. Baily, (Perry), Beebe, Bigler, Black, Chas. A., Bowman, Brodhead, Broomall, Carey, Corson, DeFrance, Dunning, Edwards, Ewing, Guthrie, Hanna, Hay, Hazzard, Howard, Lamberton, Lilly, Long, MacConnell, M'Murray, Minor, Mott, Palmer, G. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Runk, Smith, H. G. and White, J. W. F.—33.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey,

(Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Boyd, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Cassidy, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Hall, Harvey, Heverin, Horton, Kaine, Knight, Landis, Lawrence, Littleton, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Patton, Porter, Pughe, Read, John R., Reed, Andrew, Rooke, Russell, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, Harry, Worrell and Walker, *President*—74.

The PRESIDENT. There is not a quorum voting.

Mr. HOWARD. I ask for a call of the House and that the Sergeant-at-Arms be ordered to do his duty.

The PRESIDENT. The Sergeant-at-Arms will close the doors and keep members in, and those who are out, out, until they are brought in by the Sergeant-at-Arms under the order of the House, and act with some promptness and efficiency now. If that is not done we may as well adjourn *sine die*.

Mr. S. A. PURVIANCE. Or make forty-five a quorum.

Mr. GUTHRIE. I ask to have Mr. Curry excused. He has gone out sick for some medicine.

Mr. BIGLER. Mr. Curry ought to be excused. He is sick. He was here this morning but has gone away sick.

The PRESIDENT. The roll will be called to ascertain how many delegates are present.

The Clerk called the roll and sixty-two delegates answered to their names, viz:

Messrs. Alricks, Baily, Joseph, Baker, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Brodhead, Broomall, Calvin, Carey, Cassidy, Church, Corbett, Corson, Cuyler, Dallas, Darlington, De France, Dodd, Dunning, Edwards, Ewing, Guthrie, Hanna, Hay, Hazzard, Hemphill, Howard, Hunsicker, Lamberton, Lear, Lilly, Long, MacConnell, M'Michael, M'Murray, Mantor, Metzger, Miner, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Ross, Runk, Smith, H. G., Stanton, Struthers, Turrell, White, David N., White, J. W. F.,

Woodward, Wright and Walker, *President*.

Mr. DALLAS. I move that Mr. Armstrong be excused. Mr. Armstrong had two days leave of absence early last week, which he did not avail himself of. In passing my chair on Friday, he said to me that it was too late to ask leave of absence, but it was necessary for him to go home with his family, and he asked me to state this to the Convention if it became necessary. I move that he be excused.

The PRESIDENT. The Clerk will read the names of gentlemen who have answered to their names, and if there is any gentlemen in the room not recorded, he can state that fact.

The Clerk called the names of delegates who had answered to their names in the previous call.

Mr. DALLAS. I rise to a parliamentary inquiry in reference to the gentleman from Indiana (Mr. Harry White) and the gentleman from Dauphin (Mr. MacVeagh.) Has either one of those gentlemen leave of absence? They have heretofore been very active in matters of this kind, and I should like to know if they have leave of absence.

The PRESIDENT. The Clerk reports that Mr. Harry White has not leave of absence.

Mr. DALLAS. Has Mr. MacVeagh.

The PRESIDENT. He has not.

Mr. HOWARD. I rise to a question of order. I understood the President to order the officers to close the doors and not to permit members to depart or members to come in. Since the roll-call I understand that some one member or more have departed from this House. They have answered to their names and gone away.

Mr. BIGLER. I hope there is no objection to members coming in. They ought to be permitted to come in.

Mr. HOWARD. I know members have come in since the roll was called, and men have gone out after having answered to their names.

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

The PRESIDENT. The delegate from Allegheny has the floor.

Mr. HOWARD. I hope we shall not leave this subject until we do something to protect this body. It is shameful that we have to sit here day after day in this manner, and the whole body subjected to this inconvenience, because of a few members. It is not right, and I hope the Convention will not leave this subject

now until they provide some sufficient penalty that shall bring the absent members to this Convention; or if they will keep away let us say that so much for each absence noted on roll call shall be deducted from their pay.

I move now, Mr. President, that the roll be called again. I want to find out who has gone away since the previous roll call.

The PRESIDENT. Only one gentleman has gone, I understand.

Mr. HOWARD. Let the Sergeant-at-Arms go for him forthwith. My motion is that the Sergeant-at-Arms go immediately for that member who left contrary to the order of the House.

Mr. DALLAS. I move to amend the motion—

Mr. J. N. PURVIANCE. The gentleman referred to will be back in about ten minutes.

Mr. BOWMAN. I rise to a point of order on the question the gentleman from Allegheny has proposed here. It is this: When upon the call of the House it is ascertained—

The PRESIDENT. The delegate from Allegheny moves that the Sergeant-at-Arms be dispatched for the gentleman who answered to his name and has since departed contrary to the order of the House. That motion is before the Convention.

Mr. DALLAS. Is that amendable?

Mr. BOWMAN. My point of order is this: He has more embraced in his motion than that.

Mr. HOWARD. No, sir.

Mr. BOWMAN. We will see. My point of order is that when it is ascertained on a call of the House that there is not a quorum of members present, it is idle to close the doors and preclude men from coming in when you want a quorum.

Mr. HOWARD. That member is not only absent, but he is in direct contempt by departing against the express order of the President.

The PRESIDENT. The Chair directs the names of the absentees to be called, and then the House can order the Sergeant-at-Arms to bring them in if they desire it. The Clerk will call the names of delegates.

Mr. D. W. PATTERSON. I expect the delegates have gone home to vote.

The CLERK proceeded to call the names of absentees as follows:

Mr. Achenbach,
Mr. Addicks,
Mr. Ainey,

Mr. Andrews,

Mr. Armstrong—

Mr. LILLY. Now, I suppose, is the time to offer excuses.

The PRESIDENT. Some of these gentlemen are absent on leave, but that question does not arise until they are brought in here.

The CLERK continued and concluded the call as follows:

Mr. Baer,
Mr. Jno. M. Bailey,
Mr. Bannan,
Mr. Barclay,
Mr. Bardsley,
Mr. Bartholomew,
Mr. Boyd,
Mr. Brown,
Mr. Buckalew,
Mr. Bullitt,
Mr. Campbell,
Mr. Carter,
Mr. Clark,
Mr. Cochran,
Mr. Collins,
Mr. Craig,
Mr. Cronmiller,
Mr. Curry,
Mr. Curtin,
Mr. Davis,
Mr. Elliott,
Mr. Ellis,
Mr. Fell,
Mr. Finney,
Mr. Fulton,
Mr. Funck,
Mr. Gibson,
Mr. Gilpin,
Mr. Green,
Mr. Hall,
Mr. Harvey,
Mr. Hevering,
Mr. Horton,
Mr. Kaine,
Mr. Knight,
Mr. Landis,
Mr. Lawrence,
Mr. Littleton,
Mr. MacVeagh,
Mr. M'Camant,
Mr. M'Clean,
Mr. M'Culloch,
Mr. Mann,
Mr. Mitchell,
Mr. Newlin,
Mr. Niles,
Mr. Patton,
Mr. Porter,
Mr. Pughe,
Mr. John R. Read,
Mr. Andrew Reed,

Mr. Rooke,
Mr. Russell,
Mr. Sharpe,
Mr. Simpson,
Mr. Henry W. Smith,
Mr. Wm. H. Smith,
Mr. Stewart,
Mr. Temple,
Mr. Van Reed,
Mr. J. M. Wetherill,
Mr. John Price Wetherill,
Mr. Wherry,
Mr. Harry White,
Mr. Worrell.

Mr. HOWARD. I move that the Sergeant-at-Arms bring in these absentees.

Mr. BEEBE. Except those on leave.

Mr. HOWARD. Yes.

Mr. BROADHEAD. I move to amend, that the members in the city be brought in at once, and those outside of the city to-morrow morning.

Mr. DALLAS. I hope that amendment will not prevail. I can see no occasion for the distinction. There are two gentlemen absent, one from Dauphin county and the other from Indiana, who have been absent as much as any two gentlemen in this body; but whenever this condition has arisen have denounced the members from the city of Philadelphia for not being here. I hope the Sergeant-at-Arms will bring them here.

Mr. ALRICKS. They have leave of absence.

Mr. DALLAS. No; the Clerk says they have not.

The PRESIDENT. They have not.

Mr. DE FRANCE. It is perfectly useless for the Sergeant-at-Arms to go after these members, unless he has some written authority with him. They pay no attention to him; he has told me so various times.

The PRESIDENT. He can report to the House that the delegates will pay no attention, and it will then be for the Convention to act upon the matter.

Mr. DARLINGTON. There is no necessity for any order of that kind.

Mr. HAY. It seems to me the only authority the Sergeant-at-Arms would need would be a certified copy of the order of this House. That it would be the duty of the members to obey, and if necessary, the Sergeant-at-Arms could compel their attendance.

Mr. D. W. PATTERSON. I merely want to say on this motion that I hope the Sergeant-at-Arms will not be sent for any absent delegates to-day. Those who are

absent, I have no doubt, have gone home to perform their duty as citizens.

Mr. TURRELL. I call the gentlemen to order. He is discussing a question which has been passed upon, and the order has been made which he is arguing against.

Mr. D. W. PATTERSON. There is a question before the House which I have a right to speak to. I think it would be a reflection on this Convention, knowing that to-morrow is the State election, and knowing that citizens are obligated, and the duty of every citizen is to vote, if they should send the Sergeant-at-Arms on that occasion to bring delegates in here, I should say that it would be a direct reflection on this body. I hope we shall try to sustain men in going home to perform their governmental duties and to vote at every election. Whatever their politics are, it is their duty to vote, and I say it is a reflection on this body to be sitting to-morrow or to-day.

The PRESIDENT. The Chair must ask the delegate whether he and every other member has not sworn to discharge his duty here with fidelity?

Mr. D. W. PATTERSON. Yes, sir, I admit that. But if we could vote to excuse delegates and permit them to go home and vote and perform their governmental duty, I think it a part of my duty under the obligation I have taken to permit all to do that.

Mr. PARSONS. The Convention on Friday refused to adjourn over, and I had to travel all night in order to get here this morning.

Mr. DE FRANCE. It seems to me the remarks of the gentleman from Lancaster are a reflection on the Convention. We refused positively to adjourn for that purpose, and now he claims that it is a religious duty for all of us to attend to the election.

Mr. HAY. I wish to remind the gentleman from Mercer that many of us come here three hundred or four hundred miles, because the Convention refused to adjourn over, and now we are to be sent home again.

Mr. LILLY. There was a respectable quorum here this morning, and those members who have left the House, knowing the condition we were in, I think are in contempt of this body. I rode eighty-eight miles this morning to get here, and others have come as far or further than I have, and I consider it my duty when I come into this body not to be absent on roll call, but to stay here until we ad-

journ. I think if the members in the city who have been here this forenoon would remain here and do their duty, we could go on and do our business properly.

The PRESIDENT. The Chair orders that the Sergeant-at-Arms obtain from the Clerk a list of the absentees and bring them in at once.

Mr. BROOMALL. I desire to get some information. I find by the rules that less than a quorum may adjourn from day to day, and may be authorized to compel the attendance of the absentees. What I desire to know is, because that is not found in the printed rules, whether any resolution or additional rule has been adopted empowering less than a quorum to bring in the absentees, and if so, what that is, for I take it our power must be contained in that, and we ought to follow it strictly, because less than a quorum can do nothing except what a quorum has authorized them to do previously.

The PRESIDENT. The Chair states that less than a quorum can adjourn; less than a quorum can bring the absentees in.

Mr. BROOMALL. That is just what I wanted to know. I want to know what the resolution is by which that is authorized to be done.

The PRESIDENT. There is no resolution about it.

Mr. BROOMALL. Then I take it that less than a quorum has no power except to adjourn, unless it has been made a rule of the House.

The PRESIDENT. It is a rule of the House.

Mr. BROOMALL. I want to know what that rule is. I cannot find it.

Mr. D. N. WHITE. Let it be read.

Mr. BIDDLE. Rule forty-one of the standing rules reads as follows: "A majority of the Convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and be authorized to compel the attendance of members."

Mr. BROOMALL. What I want to know is when they were authorized to do that?

The CLERK. The rule that was adopted on the motion of Mr. Harry White on the sixteenth of May is as follows:

"Resolved, That when upon a call of the House it is found that less than a quorum is present, it shall be the duty of the President to order the doors of the Hall to be closed and direct the Clerk to note the absentees, after which the names of the absentees shall be again called,

and those for whose absence no excuse, or an insufficient one, is made may, by order of a majority of the members present, be sent for, taken in custody by the Sergeant-at-Arms or his assistant appointed for the purpose, and brought to the Convention."

Mr. BROOMALL. Now, we must follow that strictly, because we have no other power than is contained in that rule, and I ask that it be enforced.

Mr. BIDDLE. It is evident from the reading of that rule, that the first business in order is to ascertain whether those members who are absent have received the authority of this House for their absence.

Mr. BROOMALL. That is it.

Mr. PARSONS. I suggest that the roll of absentees be called to see if there are any excuses for those absent.

The PRESIDENT. The roll will be called.

The Clerk called the roll of absentees, and the following gentlemen were found to be absent without leave or sufficient excuse: Messrs. Addicks, Ainey, Armstrong, Bannan, Bradsley, Bartholomew, Campbell, Cornmiller, Ellis, Finney, Funck, Gibson, Green, Harvey, Heverin, Kaine, Knight, Littleton, MacVeagh, Mitchell, Pughe, Rooke, W. H. Smith, Stewart, Temple, J. Price Wetherill, Wherry, Harry White and Worrell.

Mr. J. N. PURVIANCE. I ask that the name of Mr. Mitchell be erased from that list as he is absent on account of sickness.

Mr. DALLAS. From the list just read, I find that Mr. Armstrong's name is placed among those who are absent without leave or sufficient excuse. I was informed from the desk that he had leave of absence, and for that reason only withdrew my motion. Now, sir, I beg leave to renew that motion and to state my reason for it.

Mr. CHURCH. I rise to a point of order. Can a minority of the House entertain any motion whatever except what is specifically allowed by the rules?

Mr. DALLAS. It has heretofore entertained similar motions. Now, under the circumstances I have mentioned, I move that Mr. Armstrong be excused, and I state this reason for his excuse: Last week he had leave of absence for two days for purpose of business. He, however, gave up that leave of absence and employed some person else to attend to that business for him. On Friday, as he was passing my chair to go out, he said that it was

too late for him to ask leave of absence, but that it was absolutely necessary that he should take his family out of the city, and desired me to explain that to the Convention. I now make the explanation and ask that he be excused.

The question being put, a division was called for.

Mr. DALLAS. I ask for the yeas and nays.

Mr. CHURCH. I second the call.

The yeas and nays were taken, and the call having been concluded,—

Mr. GIBSON asked permission to vote, and his name was recorded.

Mr. PURMAN. I rise to a question of order. Is it in order for a man who is absent without leave to vote?

The PRESIDENT. The point of order is too late.

Mr. J. W. F. WHITE. I dislike to vote on the motion either way, doubting whether a minority have the power to excuse a member, but if my vote be necessary to make a quorum, I will record it in the affirmative.

The result was announced, yeas fifty-three, nays fourteen, as follows:

Y E A S.

Messrs. Alricks, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Calvin, Carey, Cassidy, Corbett, Corson, Cuyler, Dallas, Dodd, Dunning, Edwards, Ewing, Gibson, Guthrie, Hanna, Hay, Hemphill, Lamberton, Lear, Lilly, Long, M'Michael, Mantor, Metzger, Minor, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Runk, Simpson, Stanton, Struthers, Turrell, White, J. W. F., Woodward and Wright—53.

N A Y S.

Messrs. Bailly, (Perry,) Baker, Barclay, Church, Darlington, Hazzard, Howard, Hunsicker, MacConnell, M'Murray, Reynolds, Smith, H. G., White, David N. and Walker, *President*—14.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brown, Buckalew, Bullitt, Campbell, Carter, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Curtin, Davis, De France, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Green, Hall, Harvey, Heverin, Horton, Kaine, Knight, Landis, Lawrence, Littleton, MacVeagh,

M'Camant, M'Clein, M'Culloch, Mann, Mitchell, Niles, Patton, Porter, Pughe, Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, Harry and Worrell—65.

The PRESIDENT. There is a quorum present, and the gentleman from Lycoming is excused.

Mr. LILLY. I now move to suspend further proceedings under the call and that we proceed to business.

The motion was agreed to.

ADJOURNMENT TO WEDNESDAY.

Mr. DARLINGTON. I ask leave to make a motion at this time.

The PRESIDENT. Will the Convention allow leave to the gentleman from Chester to make a motion at this time?

The question being put, leave was granted.

Mr. DARLINGTON. My motion is that when this Convention adjourn to-day, it adjourn to meet on Wednesday morning next at half-past nine o'clock. It is manifest that we can do no good here.

The PRESIDENT. The question is on the motion of the delegate from Chester.

Mr. D. N. WHITE. I rise to a question of order. I objected to leave being given to make that motion.

SEVERAL DELEGATES. Too late.

Mr. CORSON. Leave was granted by a vote of the House.

The PRESIDENT. The question is on the motion that when the Convention adjourns to-day, it adjourn to meet on Wednesday morning next at half-past nine o'clock.

Mr. HUNSICKER. I rise to a point of order, that that very motion was before us this morning and lost.

The PRESIDENT. The Chair cannot sustain the point of order. The question is on the motion.

Mr. BOYD. On that motion I ask for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

Mr. CORBETT. One word. I have steadily voted against all motions for adjournment, but I shall now vote for this motion because I am fully satisfied that we shall not have a quorum here to-morrow, and we shall have the same scene then that we have to-day.

Mr. HOWARD. I shall vote for the adjournment because I am satisfied that the Convention will not do anything to pro-

tect itself and bring in the absentees, and make them be here and do their duty. I shall vote for the adjournment over. I do not want this farce over again to-morrow.

Mr. HAY. I desire to say that great injustice will be done by any such action as this to delegates who came here this morning from remote parts of the State, in consequence of the refusal of the Convention last Friday to adjourn over until next Wednesday. Those of us who were at home upon leave, noticing that action of the Convention, took the trouble to leave home last night in order to be here this morning to attend to our duties; and now we are required to go home again to-night and return by Wednesday morning.

Mr. BEEBE. Several others will be here to-morrow who had leave of absence for to-day.

The PRESIDENT. The question is on the motion of the gentleman from Chester, upon which the yeas and nays have been ordered.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Baker, Bigler, Brodhead, Broomall, Cassidy, Corbett, Corson, Cuyler, Dallas, Darlington, Dodd, Dunning, Ewing, Hanna, Howard, Lear, Littleton, Long, M'Michael, Metzger, Minor, Mott, Newlin, Patterson, D. W., Patterson, T. H. B., Reynolds, Ross, Runk, Simpson, Smith, H. G., Stanton, White, J. W. F., Worrell, Wright and Walker, *President*—35.

NAYS.

Messrs. Alricks, Baily, (Perry,) Barclay, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Calvin, Carey, Church, De France, Edwards, Gibson, Guthrie, Hay, Hazzard, Hemphill, Hunsicker, Lamberton, Lilly, MacConnell, M'Murray, Mantor, Palmer, G. W., Palmer, H. W., Parsons, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Struthers, Turrell, White, David N. and Woodward—35.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brown, Buckalew, Bullitt, Campbell, Carter, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Green, Hall, Harvey, Heverlin, Horton, Kaine, Knight, Landis,

Lawrence, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Patton, Porter, Pughe, Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Wherry and White, Harry—52.

JUDGE BLACK'S SEAT.

Mr. ALRICKS. I ask leave to make a motion.

Mr. D. N. WHITE. I object to any motion.

Mr. ALRICKS. Then I ask leave to make a statement.

The PRESIDENT. Will the Convention give leave? ["Aye." "Aye."] The gentleman will proceed.

Mr. ALRICKS. I wish to say that Mr. Gibson, has just arrived from York, and he tells me that Judge Black did not receive the letter of the committee. I was therefore about to move to reconsider the vote of this morning. He will be here to-morrow.

Mr. DALLAS. I desire to say that those delegates to whom the matter was referred have already had it under consideration and have gone too far to retract.

NEW COUNTIES.

SEVERAL DELEGATES called for the orders of the day.

The PRESIDENT. Article number thirteen, on new counties, is before the Convention on third reading, the question being on the motion of the delegate from Crawford (Mr. Church) to go into committee of the whole in order to insert as a new section the following:

"No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, or unless a majority of the legal voters of the county voting on the question shall vote for the same."

When the vote was taken on this motion before, there was not a quorum voting. The yeas and nays will now again be taken.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Baker, Barclay, Biddle, Boyd, Calvin, Cassidy, Church, Corbett, Corson, Cuyler, Dallas, Darlington, Dodd, Harvey, Hemphill, Hunsicker, Lear, Littleton, M'Michael, Mantor, Metzger, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Read, John R., Rey-

nolds, Ross, Simpson, Smith, H. G., Stanton, Struthers, Turrell, Van Reed, White, David N., Woodward, Worrell, Wright and Walker, *President*—40.

Y A S .

Messrs. Baily, (Perry,) Beebe, Bigler, Black, Charles A., Bowman, Brodhead, Broomall, Carey, De France, Dunning, Edwards, Ewing, Gibson, Guthrie, Hanna, Hay, Hazzard, Howard, Lamberton, Lilly, Long, MacConnell, M'Murray, Minor, Mott, Palmer, G. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Runk and White, J. W. F.—32.

So the motion was agreed to.

ABSENT—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brown, Buckalew, Bullitt, Campbell, Carter, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Green, Hall, Heverin, Horton, Kaine, Knight, Landis, Lawrence, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Patton, Porter, Pughe, Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wetherill, John Price, Wherry and White, Harry—60.

The Convention accordingly resolved itself into committee of the whole, Mr. Metzger in the chair.

The CHAIRMAN. The committee of the whole has been instructed to amend the article by adding a new section. The section will be inserted.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Metzger) reported that the committee of the whole had made the amendment directed by the Convention.

Mr. LILLY. Now I hope that the whole article will be voted down. We have so tied up the hands of the people and of the Legislature in reference to the formation of new counties, that I trust the article will be defeated.

Mr. BEEBE. I move that the Convention go into committee of the whole to adopt the following substitute for the article:

"SECTION 1. No new county shall hereafter be established within this Commonwealth."

Mr. JOSEPH BAILY. That will do; I will vote for that.

Mr. BEEBE. I offer this for the simple purpose of allowing this Convention an opportunity of saying directly what they now say by circumlocution.

The motion was rejected.

Mr. S. A. PURVIANCE. I move that the Convention go into committee of the whole in order to amend, by striking out the article and inserting the following as a substitute:

"NEW COUNTIES.

"SECTION 1. No new counties shall be established which shall reduce any county to less than four hundred square miles, nor to less than twenty thousand inhabitants; nor shall any county be formed of less area, or containing a less population, nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

"SECTION 2. The Legislature shall make general provision for the erection of new counties in conformity with the foregoing requirements, together with the approval of three-fifths of the voters voting within the limits of any proposed new county and one-fifth of the voters voting within the limits of the balance of the county or counties from which the proposed new county is to be taken."

Mr. HAZZARD. It seems to me that this would be a very wise provision, and that at least it will commend itself to the favor of a very respectable minority. I do not think that the Convention is just ready to say that there shall be no new counties established hereafter. The old Constitution was just the same as the section that was proposed by the gentleman from Crawford (Mr. Church.) That was put into the Constitution about fifteen years ago, and the people have not thought it worth while to make any movement at all in the direction of revising the Constitution in that respect. It seems to me this question addressed itself to the judgment of members of the Convention when the member from Luzerne was on the floor. In that case it was found to be absolutely necessary that some provision be made for the exigencies of the situation; and I now hope that the true counsel and the words of wisdom that fell from the lips of the member from Clearfield (Mr. Bigler) will influence the judgment of this Convention. In the future exigencies may arise stronger than the one in Luzerne, and it may be very proper and right that new counties shall be made, and if the provisions of the Constitution now ex-

isting be not changed, the restrictions they throw around the formation of new counties will be found very stringent. It will be almost impossible to pass any law for the erection of a new county.

Are we ready to say that? Do we mean to provide that under no condition whatever can a new county be created? The fluctuations of population, the changes of residences that always happen in this country, by reason of new interests springing up in new sections, the discovery of oil, the development of mines, and similar matters, should be left free to control this question as necessity arises. It seems to be to me an unwise and unjust provision to say that no new county shall be formed, and if we so provide in this Constitution we shall array against it a great many people who think differently from the lawyers who are all snugly settled in the county towns.

MR. S. A. PURVIANCE. It is very evident to every member of this Convention that if this be the organic law of this Commonwealth, it will operate as a prohibition against the erection of any county in the future. Now, is this body prepared to go that far? Believing that it is not, but that the Convention will vote down the entire article unless some amendment is made to it, I have submitted this proposition?

What is it, Mr. President? I have simply copied the article as it came from the committee of the whole and from the Convention on second reading, that you shall not erect a new county unless you have four hundred square miles, that you shall not erect it unless you have twenty thousand population, and that you shall not erect it if the lines of the proposed new county come within ten miles of the county seat. That is the first section of this proposed substitute which I have just presented. It has a second section, that the Legislature shall by general law provide for the erection of counties in conformity with the provisions of the preceding section, together with the approval of three-fifths of the inhabitants living within the bounds of the proposed new county, and one-fifth of those living within the bounds of the county or counties out of which the new county is to be taken.

I submit now to this Convention whether it is not fair that if three-fifths of the entire population of a certain locality, placed under inconvenience in attendance on their courts and in the transaction of various other matters of business con-

nected with the counties, shall unite in asking for the creation of a new county, and if one-fifth of the entire population outside of that, desirous of being made into a new county within the limits of the old county, are prepared to let them go, in the name of heavens, I ask, on what principle are you to hold them except it be by the arbitrary *ipse dixit* of those who simply act upon interest and desire to hold them for that reason? I think that this proposition ought to carry, or otherwise that the whole article should be voted down.

MR. CHURCH. Without desiring to detain the Convention a minute, I have this to say: It is very singular that in the matter of the formation of new counties, you would permit a small minority of one-fifth to determine a question so important as dividing a county and dismembering a municipality. Upon every other question that can be submitted to the people a majority vote is necessary to determine it; and yet in a matter of this vast importance it is proposed to allow one-fifth to say that a county shall be dismembered. We all know that a question that can carry nearly one-fifth of the people of any county can receive a larger vote. They can always go into different districts of that county and buy up, and cajole and influence men by various means to vote as is desired; and I think it is very singular that we should allow a matter of so vital importance as this is to be decided by simply one-fifth of the people, when we require a majority of voters to determine the solution of every other question that comes before the people.

MR. CORBETT. I hope the Convention will vote down this amendment. We are certainly not laboring under any great difficulty in the State of Pennsylvania for the want of new counties. The truth is that the State would be in a great deal better position than she is if she were only divided into forty-five or fifty counties instead of into sixty-six. Small counties have little or no influence in the State; but their taxes and their expenses in all these small counties are very high; and why, now, is there any necessity for a law that enables the State to be cut up and districted into small divisions?

This question of county divisions has always been a bone of contention in the Legislature, and it has been one of the sources from which fraud and corruption are produced in that body. Men in favor of new counties go to the

Legislature and agitate questions for their erection, and use money for that purpose; and on the other hand the opponents oppose the bills in the same manner and with the same means. I hope that this Convention will adhere to the two sections now adopted, and out of them will form the article on this subject. It has been well objected to the proposed section that it only requires the vote of one-fifth of the voters of the county which is not to be included in the proposed formation of the new one. It is provided in this substitute that whenever one-fifth of the voters of the old county and three-fifths of the voters of the proposed new county vote in the affirmative upon such question, the new county shall be created. We all know that this would be an easy matter to obtain under all circumstances. I hope we shall adhere to the sections as we have adopted them.

There is no great necessity now in Pennsylvania for any new counties, and the people will rest easy under the operation of these two sections without the aid of any further amendment. It has been said that these sections are objectionable to the people. I tell you that in western Pennsylvania there is no more popular article in this Constitution than this very article as we have it now before us, because our citizens throughout the different counties are continually agitating, from one session of the Legislature to another, propositions to create new counties, and the people have become tired of the subject. I hope that the Convention will adhere to the article as they have amended it, and as thus amended adopt it.

Mr. DUNNING. The gentleman from Clarion seems to be very much astonished at the proposition that has been submitted with reference to voting on this question, being so unequal in its operations. Now, sir, that gentleman misunderstands the question, in my judgment, and so does the gentleman from Crawford, (Mr. Church,) when they say that but one-fifth of the people of the county have the entire controlling power upon this subject. It requires three-fifths of the people in one part of the county, and one-fifth in the other to decide this matter. It requires three-fifths of the entire vote in the proposed new territory to say whether or not such territory shall be created into a new county, and it requires the assent of one-fifth of the people of the old territory in order to let them go.

This is a question that has not been

heretofore submitted to the people. It has not been the manner of making counties; counties have been framed by legislative enactment, and now when all the safeguards proposed by the gentleman from Allegheny are thrown around the question as embraced in this proposition, I do not see how any fair-minded man who is willing to deal out the same even-handed justice to other counties that they themselves have asked and received, can vote against the substitute offered by the gentleman from Allegheny. This Convention seems to be very fond of voting. Why not give us a chance to vote in such a manner as will allow us to have a fair show if we want a new county?

I do not think it worth while to re-hash all the arguments that have been made on this question, and therefore only say that I hope the Convention will give us a chance to have a fair vote of the people on this question whenever it may be desired, in such a manner as will deal even-handed justice all around. I hope the substitute will prevail.

Mr. DE FRANCE. I want to say a word before this vote is taken. I have no possible interest in this measure, no axe to grind upon this question, as the saying is; but I do think that if we leave this thing as it is now, there can never be a new county formed. That is the meaning of this article as it now stands, although it seems to me that we have not manhood enough to say so. The gentleman from Venango (Mr. Beebe) moved to insert that provision in unmistakable language; and if this is what we mean why did we not vote for that proposition?

A great many members talk about the little counties. There cannot be any very little counties with four hundred square miles and 20,000 inhabitants; that is nonsense in my judgment. There can be no more Fulton counties, no more Montour counties, and no more Forest counties hereafter in the State, if the article had been adopted as reported. The question is just this: Shall we leave it so that under certain circumstances and under certain limitations there may be new counties formed in this State, or shall we positively prohibit any new counties from being formed?

It looks very fair to talk about the people having a vote on this question. The people, it seems to me, have no right to vote on this question, because you cannot get the people of an old county to agree to a division. It would be suicide for me to vote that an acre of Mercer county

should be taken away. I live at the county seat. So it would be in your case, Mr. President; and it is all folly, it seems to me, to talk about the whole people of the county having a vote upon this question. They may do great injustice to the people wanting a new county. You may as well expect that a man living at the county seat should vote away part of his property as to vote away some of the land of the county. But may the question not arise? May it not be, at some time, better for the people of the State at large to have new counties that have twenty thousand inhabitants and not less than four hundred square miles than some of the very large counties, as they are at present, especially when you cannot make the old county less than four hundred square miles, and having less than twenty thousand inhabitants.

There are five limitations in this article as reported, and we voted it down. Now, the question is, shall we adopt the amendment of the gentleman from Allegheny. That has still more limitations in it. It limits it so that you have to have three-fifths of the inhabitants living on the land to be taken and one-fifth of the old county. That is more than ever was required before. There is more limitation in that than there ever was proposed before, not to be absolutely prohibitory. I hope that we shall either say that there shall be no new counties made in this State hereafter, or that we shall put in something for the future, like reasonable men, sensible men, that will be adopted by the people, not absolutely prohibitory.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. S. A. Purviance.)

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

Mr. S. A. PURVIANCE. I second the call.

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

Y E A S .

Messrs. Baily, (Perry,) Beebe, Bowman, Brodhead, Corson, De France, Dunning, Edwards, Ewing, Howard, Lamber-ton, Lilly, Minor, Mott, Palmer, G. W., Patterson, T. H. B., Purviance, John N., Purviance, Samuel A. Read, John R., Runk, Struthers and White, J. W. F.—22.

N A Y S .

Messrs. Alricks, Baker, Barclay, Bid-dle, Bigler, Black, Charles A., Boyd,

Broomall, Calvin, Carey, Cassidy, Church, Corbett, Cuyler, Dallas, Darlington, Dodd, Gibson, Guthrie, Hanna, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Lear, Littleton, Long, MacConnell, MacVeagh, M'Michael, Mantor, Metzger, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Reynolds, Ross, Simpson, Smith, H. G., Stanton, Turrell, Van Reed, Wetherill, John Price, White, David N., Woodward, Worrell, Wright and Walker, *President*—50.

So the motion was not agreed to.

ABSENT.—Messrs. Abhenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brown, Buckalew, Bullitt, Campbell, Carter, Clark, Cochran, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Green, Hall, Heverin, Horton, Kaine, Knight, Landis, Lawrence, M'Camant, M'Clean, M'Culloch, M'Murray, Mann, Mitchell, Niles, Patton, Porter, Pughe, Purman, Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wherry and White, Harry—60.

The PRESIDENT. The question is on the passage of the article.

Mr. BRODHEAD. I offer a substitute for the whole article. It condenses the same thing in a great deal less space, and I think we may as well adopt it at once; I call for the yeas and nays on it.

My motion is to strike out the article, and insert as a single section in lieu of it the following:

"No new county shall ever be formed without the consent of a majority of the attorneys in the counties proposed to be divided."

["No!" "No!"]

Mr. DE FRANCE. I second the call for the yeas and nays.

Mr. DARLINGTON. It is not in order.

Mr. BRODHEAD. I withdraw the proposition.

Mr. DARLINGTON. I ask the unanimous consent of the Convention to change the word "counties" to "county," in the first line, just as it was originally.

The PRESIDENT. Will the Convention unanimously agree to make the change? ["Aye!"] It is made.

The question now is on the passage of the article.

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

Mr. MINOR. I second the call.

Mr. STRUTHERS. I should be glad to have the section read as it now stands.

The PRESIDENT. The article will be read.

The CLERK read as follows:

"SECTION 1. No new county shall be established which shall reduce any county to less than four hundred square miles nor to less than twenty thousand inhabitants; nor shall any county be formed of less area or containing a less population; nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.

"SECTION 2. No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of the legal voters of the county voting on the question shall vote for the same."

The PRESIDENT. The Clerk will call the names of delegates.

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

YEAS.

Messrs. Alricks, Baily, (Perry,) Baker, Barclay, Biddle, Black, Charles A., Boyd, Broomall, Calvin, Carey, Cassidy, Church, Corbett, Corson, Cuyler, Dallas, Darlington, Dodd, Finney, Hanna, Harvey, Hemphill, Hunsicker, Lear, Littleton, Long, MacConnell, MacVeagh, M'Michael, Manter, Metzger, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Purman, Purviance, Samuel A., Read, John R., Reynolds, Ross, Simpson, Smith, H. G., Stanton, Struthers, Turrell, Van Reed, Wetherill, John Price, White, David N., Woodward, Worrell, Wright and Walker, *President*—52.

NAYS.

Messrs. Beebe, Bigler, Bowman, Brodhead, Cochran, De France, Dunning, Edwards, Ewing, Gibson, Guthrie, Hay, Hazzard, Howard, Lamberton, Lilly, Minor, Mott, Palmer, G. W., Patterson, T. H. B., Purviance, John N., Runk and White, J. W. F.—23.

So the article was passed.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brown, Buckalew, Bullitt, Campbell, Carter, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Elliott, Ellis, Fell, Fulton, Funck, Gilpin, Green, Hall, Heverin, Horton, Kaine, Knight,

Landis, Lawrence, M'Camant, M'Clean, M'Culloch, M'Murray, Mann, Mitchell, Niles, Patton, Porter, Pughe, Reed, Andrew, Rooke, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wherry and White, Harry—57.

COUNTY OFFICERS.

Mr. LILLY. I move that we proceed to the consideration of the report of the Committee on Revision and Adjustment on article fourteen, on county officers.

The motion was agreed to.

The report of the committee was read.

Mr. LILLY. I move the adoption of the report.

The motion was agreed to.

Mr. BIGLER. I now move that the article be transcribed for a third reading.

The motion was agreed to.

Mr. BIGLER. I move that we proceed to the third reading of the article.

The motion was agreed to, and the article was read the third time as follows:

ARTICLE XIV.

COUNTY OFFICERS.

SECTION 1. County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of the courts, district attorneys and such others as may from time to time be established by law. The Legislature shall declare what offices are incompatible, and no sheriff or treasurer shall be re-eligible for the term next succeeding the one for which he may be elected.

SECTION 2. County officers shall be elected at the general election, 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 not otherwise provided for shall be filled in such manner as the Legislature may direct.

SECTION 3. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long created, but if it shall not have been so long created, then within the limits of the county or counties out of which it shall have been taken.

SECTION 4. Prothonotaries, clerks of the courts, recorder of deeds, registers of wills, county surveyors and sheriffs

shall keep their offices in the county town of the county in which they respectively shall be officers.

SECTION 5. 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.

SECTION 6. 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.

SECTION 7. Three county commissioners and three county auditors shall be elected in each county where such officers are chosen, in the year one thousand eight hundred and seventy-five, and every third year thereafter; and in the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected; 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 shall occur by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled.

SECTION 8. The terms of office of all county officers shall begin on the first Monday of January next after their election.

Mr. BROOMALL. In the fourth and fifth lines of the first section there is a sentence that is identical with a provision that has already passed this morning in another article. It is, "the Legislature shall declare what offices are incompatible and." I move to go into committee of the whole for the purpose of striking out those words, or in the first place I ask unanimous consent.

The PRESIDENT. The unanimous consent of the Convention is asked to strike out the words: "The Legislature shall declare what offices are incompatible and," in the fourth and fifth lines of the first section.

Mr. BRODHEAD. Before that is acted upon I wish to ask whether the amendment adopted this morning was not in relation to State officers.

Mr. BROOMALL. No; the word "State" was stricken out.

Mr. BRODHEAD. It was so proposed by the mover.

Mr. HUNSICKER. But I changed it on the suggestion of others.

The PRESIDENT. Will the Convention unanimously agree to the change suggested by the delegate from Delaware? ["Aye." "Aye."] It is agreed to.

Mr. S. A. PURVIANCE. I wish to make a correction in the third section in the third and fourth lines. It is to change the word "created" into "erected." I presume that to be a misprint and that it can be done by unanimous consent.

The PRESIDENT. Will the Convention unanimously agree to that change? ["Aye." "Aye."] The change will be made.

Mr. CHURCH. In the fifth line of the first section, I suggest that by unanimous consent the word "re-eligible" be changed to "eligible." Of course "eligible" means "elected."

The PRESIDENT. Will the Convention unanimously agree to that change? ["Aye." "Aye."] It is agreed to.

Mr. DARLINGTON. There is one other amendment of the same kind in the eighth section which should be made. I suggest to strike out the word "begin," and insert the word "commence," so as to read: "that the terms of county officers shall commence on the first Monday of January." "Commence" is a better word.

Mr. BIDDLE. That is simply substituting a Latin word for a Saxon one. "Begin" is a great deal better.

Mr. DARLINGTON. I ask unanimous consent to make that change.

Mr. PARSONS. I object.

Mr. DARLINGTON. Then I move to go into committee of the whole for that purpose.

Mr. BIDDLE. I hope that motion will not prevail. "Begin" is a genuine old English word, and a great deal better than the Latin substitute offered for it. It is the word used in the scriptures: "In the beginning" and not "In the commencement." It is a much better word, and let us retain it.

The PRESIDENT. The question is on the motion of the delegate from Chester (Mr. Darlington.)

The motion was not agreed to.

Mr. ROSS. I move to go into committee of the whole for the purpose of inserting in the first section, after the words "re-

corder of deeds," the words, "county superintendents of public schools."

Mr. President, the purpose of this amendment is to make the county school superintendent a county officer, to be elected as sheriffs, registers of wills, recorders, and the other county officers are elected at the general election in the fall. It is well known, I presume, to every gentleman here that the county school superintendents are elected by the school directors, or by as many of them as see proper to attend, upon the first Tuesday in May, at the end of every three years. The consequence is that upon many occasions and in many counties gentlemen are selected for the position of county school superintendent who are not fitted for the position to which they are elected. I propose to put the county school superintendent upon the same basis that our other county officers are placed upon.

It is unnecessary for me to call the attention of this Convention to the important duties which are entrusted to the county school superintendent. He selects the teachers; he fixes the grade which those teachers must arrive at before they can receive a certificate which enables them to teach in the different counties. Now, sir, I do think that an officer whose duties are so important, an officer who to a certain extent has the development of the children of the county placed in his hands, ought to be passed upon by the voters of the county. It ought not to be possible for a few men, meeting together once in three years, many of them incompetent to determine who is and who is not a proper county school superintendent, to have the power to say for a county who shall be the county school superintendent. I do not propose to discuss the question, because the effect of the amendment is apparent upon the face of it. I think it is an amendment that should be inserted in the Constitution, and I trust it will be adopted.

The PRESIDENT. The question is on the motion of the delegate from Backs (Mr. Ross.)

The motion was not agreed to.

Mr. BRODHEAD. I move to go into committee of the whole for the purpose of striking out sections three and four.

Mr. EWING. Take one at a time.

Mr. BRODHEAD. Very well. I move then to go into committee of the whole for the purpose of striking out section three.

The PRESIDENT. That motion is before the Convention.

Mr. C. A. BLACK. What is the reason for that?

Mr. BRODHEAD. I cannot see any reason for the existence of the section myself. One half of it, that in relation to the formation of new counties, is certainly out of place, and I do not believe in the policy of the first part of it, which declares that no person shall be appointed to any office within a county who has not been an inhabitant of the county for one year. I do not believe in regulating merit or talent by time. Persons may move into counties whom the authorities may see proper to appoint to office, and I do not see why they should be limited to one year's residence in the county. As to the second part of the section, relative to the formation of new counties, of course it is useless here.

The PRESIDENT. The question is on the motion of the delegate from Northampton (Mr. Brodhead.)

The motion was not agreed to, ayes sixteen, noes not counted.

Mr. STRUTHERS. I move to go into committee of the whole for the purpose of striking out all after the word "chosen," in the second line of the seventh section, down to and including the word "elected," in the fifth line, and inserting in lieu thereof: "County commissioners and county auditors shall continue in office until their respective terms expire, and shall be elected hereafter as heretofore."

The PRESIDENT. That motion is before the Convention.

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

Mr. D. W. PATTERSON. I second the call.

Mr. COCHRAN. I hope this amendment will not be acted on incautiously. I wish to prevent that. It will be observed that this is a section which was very generally agreed upon by this Convention on second reading. It is perfectly plain that the position which the gentleman from Warren has assumed on the particular matter involved here would lead to the defeat of this section, and I hope the majority of the Convention will not consent to such an act. I think the amendment which he proposes, if it be inserted, would make the section appear very awkward, and it might possibly be insensible; but at all events, if the motion of the gentleman from Warren is to avail, you had better strike out the whole section entirely, than to strike out a part of it and insert

what he proposes, and thus let the matter stand on its present foundation.

I think that this section, which was adopted after mature deliberation and which seemed to meet the approbation of the Convention generally, ought not now to be struck out on third reading. It will be remembered that the section was warmly advocated by the gentleman from Columbia, (Mr. Buckalew,) who is not in his seat to-day, and on the occasion when it was adopted there seemed to be a general consent amongst the members of this body that the principle contained in it should be embodied in the Constitution.

Mr. STRUTHERS. I wish to say a word in explanation. It will be remembered by the members of the Convention that our county commissioners and auditors are elected now, one each year, to serve for three years. That I have thought it proper to retain in our amended Constitution, to allow the present commissioners to remain in office until their term has expired by limitation of time. I think it will give strength to the Constitution when submitted before the people, to have that clause in it. In the counties, the people of course have elected their commissioners; they are gentlemen of influence in their respective districts, and the manner in which we finally dispose of this subject will have very much to do with their favoring or disfavoring the Constitution when it comes to be voted upon by the people. They will not be very much pleased with the idea that they are to be summarily legislated out of office by it. They will be very likely to give it a more cordial support if we allow them to remain as they are at present. That is one reason, which I think important, why this amendment which I have offered should prevail.

Mr. COCHRAN. I rise to an explanation. I desire to state to the gentleman from Warren that this section does not work a summary removal from office of the commissioners. The article will not go into operation until the year 1875.

Mr. STRUTHERS. This section provides in a general way that at a future day they shall be elected out. The existing commissioners and auditors in office will all be summarily put out, and a new set will be put in. You provide for three inexperienced men to come into office instead of, as under the present system, having in office two men of experience, in their respective positions who can school up

and educate the third raw man who comes in. The system, of itself, is very important in its bearings upon the interests and well being of the county, and I have been, as I have heretofore said, opposed to this feature. I see no reason for any change being made in this way. The only reason that I suppose can be assigned for it is that it is a means of introducing the limited plan of voting or some other novel system of that kind.

I hope, for these reasons, that the section I have suggested will be substituted for the section before us in the article.

Mr. DARLINGTON. I do hope that this question will be satisfactorily settled at this time in the Convention. I cannot, however, expect, by what I may have to say, to change any person's mind upon it; but I still intend to tell the gentleman from York that he is hardly correct in imputing to the large majority of this Convention so strong a support of this measure as to say that this clause was put in by pretty general consent. I do not think it was.

Mr. LILLY. It was voted in by a large majority.

Mr. DARLINGTON. Not by any means.

Mr. LILLY. By fifty-seven to thirty-three.

Mr. D. W. PATTERSON. No; it was not.

Mr. DARLINGTON. On the contrary, I think there has been no decisive majority for this new invention of minority representation as applied to the office of county commissioners and county auditors. It is, I apprehend, a mistake which this Convention will very probably commit, as they have committed it before; but notwithstanding that, I desire to record my vote and raise my voice against it. We have now a system of electing county commissioners and county auditors, one each year, securing thus the services of every man for three years, the entire three not going out at one time. It has worked well. There has been no complaint of any moment against it in any part of the Commonwealth. We have had it in force for the last seventy or eighty years. It has been in force in fifty or sixty counties, and in that mass of testimony which it has thus given us, there is no word of complaint and no desire for change. Nobody has ever thought of complaining about it as applied to the county commissioners and county auditors, and this proposition, which it is now sought to retain in the Constitution, is only a notion of men who are bent upon

change to get minority representation inserted in the Constitution in this place. I contend that it is at war with the principles of republican government, and from the very moment you make it a part of your organic law, it denies to the citizen the right of choice between one candidate and another. You say to the voter: "You shall not vote for all the officers. You shall only vote for a part of them." I cannot vote for those for whom I wish to vote, but I can only vote for a part of them. I say this is at war with the fundamental principles upon which our government is founded, and I want to still give the people the right of choice in the selection of their representatives. I shall say no more, but I shall record my vote against it.

Mr. BIGLER. I have been unwilling to adopt this principle with reference to many of the issues in which it has been introduced in this Convention. At least I have looked at it with a good deal of jealousy; but I had believed that the Convention had come to a distinct conclusion as to its application to the election of county commissioners and county auditors, officers who are simply entrusted with the performance of mere ministerial duties; and I have no fear that the practical effect of the application of this principle to those officers will meet with any general complaint throughout the State. I know that the election of all these officers from the same political party in large majority counties has been a subject of complaint amongst the people.

Take my county for illustration. We do not see the face of a Republican county commissioner or Republican auditor from one year's end to the other. The men selected to fill those positions in Clearfield county are all of my party; and yet there are men in the Democratic ranks who think the presence of a man from the other side would be wholesome. I am quite certain that would be the case in Republican counties. This is really the whole practical question, whether there shall be a minority representation in the performance of those ministerial duties; and, to say the least of it, it will introduce an officer who will have an eye on the accuracy of accounts and on the expenses that are entailed on the treasury of the county, if one of these officers is selected from the party of the minority.

I shall vote to retain the clause as it

stands, and I think it will have a wholesome effect.

Mr. SIMPSON. In answer to the gentleman from Warren, I would suggest that if there be only one election for county auditors and commissioners every three years, there may be a great reason why it should be so. True it is that there will not be two officers holding over to instruct their newly elected colleague; but on the other hand, where the officers are corrupt and the county finances are mismanaged, if all are elected at once, there will be less likelihood of those already in instructing the new comer corruptly as under the present system. That is one reason why I shall vote to retain this section, and I trust that the Convention will keep it just where it is.

The PRESIDENT. The question is on the motion of the gentleman from Warren. The yeas and nays have been called for, and the Clerk will proceed with the call.

Mr. NEWLIN. I am paired on this question with Mr. John R. Read, of this city. He would vote "nay," while I should vote "yea."

The yeas and nays were taken with the following result:

YEAS.

Messrs. Baily, (Perry,) Beebe, Bowman, Broomall, Calvin, Darlington, Edwards, Ewing, Hanna, Howard, Lear, Littleton, MacConnell, MacVeagh, Mantor, Minor, Patterson, D. W., Purviance, John N., Purviance, Samuel A., Reynolds, Ross, Stanton, Struthers, Turrell, White, David N., White, J. W. F. and Walker; *President*—27.

NAYS.

Messrs. Alricks, Baker, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Carey, Cassidy, Cochran, Corbett, Corson, Curry, Cuyler, Dallas, De France, Dunning, Finney, Gibson, Guthrie, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Lamberton, Lilly, Long, M'Michael, M'Murray, Metzger, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Simpson, Smith, H. G., Van Reed, Wetherill, John Price, Woodward, Worrell and Wright—44.

So the motion was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Brown, Bucka-

lew, Bullitt, Campbell, Carter, Church, Clark, Collins, Craig, Cronmiller, Curtin, Davis, Dodd, Elliott, Ellis, Fell, Fulton, Funck, Gilpin, Green, Hall, Heverin, Horton, Kaine, Knight, Landis, Lawrence, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Newlin, Niles, Patton, Porter, Pughe, Read, John R., Reed, Andrew, Rooke, Runk, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wherry and White, Harry—61.

Mr. T. H. B. PATTERSON. I move that the Convention go into committee of the whole for the purpose of amending section two in the second and third lines by striking out the words "if they shall so long behave themselves well," and inserting in the place thereof, the words contained in the last section, "beginning on the first Monday of January next after their election."

If I can have the attention of the Convention a moment, I would suggest that this change might be made possibly by unanimous consent, for there ought to be no objection to it. The words "if they shall so long behave themselves well," are supplied in the article on removal from office, which provides that "all officers shall hold their offices only on condition that they behave themselves well."

Therefore these words here are unnecessary, being a repetition, and I desire to see them taken out and to have substituted for them the other words out of the eighth section.

The PRESIDENT. The gentleman from Allegheny asks unanimous consent to make the amendment he has indicated.

Mr. S. A. PURVIANCE. I hope that will be done.

Unanimous consent was given and the amendment was made.

Mr. DARLINGTON. I now ask unanimous consent of the Convention to change the wording in the fourth line of the second section. Instead of having it read "shall be filled in such manner as the Legislature may direct," I would suggest that it read "in such manner as may be directed by law."

Unanimous consent was given and the amendment was made.

Mr. D. W. PATTERSON. I would ask unanimous consent to strike out "Legislature," in the first line of the sixth section, and insert "General Assembly," so as to make the article uniform.

The PRESIDENT. Will the Convention

agree to that amendment. ["Aye!" "Aye!"] Unanimous consent is given.

Mr. HOWARD. I move to go into committee of the whole for the purpose of special amendment by striking out the whole of section seven and inserting the following in lieu thereof:

"Three county commissioners and three county auditors shall be elected in each county where such officers are now chosen, at such times and in such manner as shall be directed by law. Vacancies in such offices shall be filled by appointment of the court of common pleas of the county where such vacancy occurs."

I know it is claimed, Mr. President, that this limited voting or minority representation will be calculated to do away with corruption or secure integrity in the administration of offices. I cannot see that it will in the manner in which this is provided. It amounts, in substance, to a provision that there shall be no election by the people at all, because in all probability there will always be two great parties in this country; there will be a dominant party having the majority and a next party the largest minority, and these two parties of course will nominate and will elect. There will be minority parties still below the largest minority, but they never will get any representation.

Mr. CUYLER. I wish to ask the gentleman whether that is not always the case where there is a dominant political party; whether the nomination is not always substantially an election.

Mr. HOWARD. Not always, because the minority are permitted to put up a full ticket and invite the people to come forward in opposition, and then it becomes a square battle; but by this plan there is no fight at all.

Mr. LILLY. I should like to ask the gentleman a question—how many times the Convention has heard this very argument?

Mr. HOWARD. Supposed you have.

Mr. LILLY. We do not want to hear it again.

Mr. HOWARD. You shall hear it again, as far as I am concerned. If you do not like it, stop your ears.

Mr. President, we have tried this, I recollect, in two or three notable instances in our county. The last time we tried it we had in two Republicans and one Democrat. That, I suppose, is what is intended practically to accomplish by this section. At that time we had to take one Democrat and one Republican; we

had to indict them, and we wound up by sending them to the county work-house.

Mr. HAY. I should like to remind my colleague of one matter—that the Democrats of Allegheny county have been very unfortunate in their selection of commissioners; one went to the work-house and the other turned Republican.

Mr. HOWARD. They were unfortunate, but I want to tell the Convention how it works. Suppose you elect three commissioners in a county; practically we understand perfectly well that two of them generally put their heads together and those two commissioners, to use a slang phrase, "run the machine." The third person is consulted very little in regard to the appointments after the two get to have a fair understanding. You may take a county where, for instance, you elect two Democrats. If it is a Democratic county there will be two Democrats and one Republican elected under this plan. The two Democrats, of course, would control the board if they chose to do so; but the manœuvre will be made to get the one Republican, and each Democrat, perhaps, will say to the Republican: "Now, you cannot get anything; you have no power to do anything in this board; you cannot transact any business; we are the majority;" and each one, perhaps, will try to get his ear and each one will say: "If you will go with me now in the management of county affairs, giving out contracts, making such appointments as are to be made, &c., you shall have such and such an arrangement"—each one trying to get the party in the minority upon terms that will be more suitable to their plans than if they had united together and carried on the business by the majority and then let that majority have been held responsible by the people of the county.

I am satisfied that this scheme will lead to the greatest corruption that ever was introduced into the Commonwealth; I am perfectly satisfied of it. There will be no controversy; these men will be first nominated, and the people will be invited up to the mere form of endorsing the candidates of the two larger parties put into the field. It seems to me that it will lead to corruption, and for that reason I am opposed to it, and I am opposed to it because it is a direct blow against republican institutions, against the right of a majority to vote for or elect their officers, and the right of every voter to vote for all the officers that are to be chosen. I never

will vote for such a principle, and as long as it is before this body in any shape that I can oppose it, I will do so.

I call for the yeas and nays on my motion.

Mr. BEEBE. I second the call.

The PRESIDENT. The Clerk will call the roll.

Mr. REYNOLDS. I am paired on this question with the gentleman from Northampton (Mr. Brodhead.) If he were here he would vote "nay" and I would vote "yea."

The yeas and nays were taken with the following result:

YEAS.

Messrs. Bailly, (Perry,) Beebe, Bowman, Broomall, Darlington, Edwards, Ewing, Hanna, Howard, Lear, Littleton, MacConnell, MacVeagh, Mantor, Minor, Newlin, Patterson, D. W., Purviance, John N., Purviance, Sam'l A., Ross, Stanton, Struthers, Turrell, White, David N., White, J. W. F. and Walker, *President*—26.

NAYS.

Messrs. Alricks, Baker, Barclay, Bidle, Bigler, Black, Chas. A., Boyd, Carey, Cassidy, Cochran, Corbett, Corson, Curry, Cuyler, De France, Dodd, Finney, Gibson, Guthrie, Harvey, Hay, Hemphill, Hunsicker, Lambertson, Lilly, Long, M'Michael, M'Murray, Metzger, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Read, John R., Simpson, Smith, H. G., Van Reed, Wetherill, John Price, Woodward and Worrell—42.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Clark, Collins, Craig, Cronmiller, Curtin, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Funck, Gilpin, Green, Hall, Hazzard, Heverin, Horton, Kaine, Knight, Landis, Lawrence, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Patton, Porter, Pughe, Reed, Andrew, Reynolds, Rooke, Runk, Russell, Sharpe, Smith, Henry W., Smith, Wm H., Stewart, Temple, Wetherill, J. M., Wherry, White, Harry and Wright—64.

Mr. NEWLIN. I call the previous question on the article.

Mr. HOWARD. Before the question is put I desire to make a verbal correction.

The PRESIDENT. Delegates seconding the call for the previous question will rise.

Messrs. Barclay, MacConnell, M'Murray, H. W. Palmer, Mott, Lilly, J. N. Purviance, Corbett, Metzger, H. G. Smith, Parsons, Corson, Finney, Worrell, Hunsicker, Van Reed, Boyd, Edwards, T. H. B. Patterson and G. W. Palmer rose to second the call.

The PRESIDENT. The question is, shall the main question be now put?

Mr. DARLINGTON and Mr. CUYLER called for the yeas and nays, and they were taken with the following result:

Y E A S .

Messrs. Baily, (Perry,) Baker, Barclay, Beebe, Bigler, Black, Charles A., Bowman, Boyd, Corbett, Corson, Curry, De France, Dodd, Edwards, Finney, Guthrie, Hazzard, Hunsicker, Lear, Lilly, Long, MacConnell, MacVeagh, M'Michael, M'Murray, Mantor, Metzger, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Purviance, Sam'l A., Simpson, Smith, H. G., Stanton, Turrell, Van Reed, Wetherill, Jno. Price, White, David N., Worrell and Walker, *President*—44.

N A Y S .

Messrs. Alricks, Biddle, Broomall, Cassidy, Cochran, Cuyler, Darlington, Ewing, Gibson, Hanna, Harvey, Hay, Hemphill, Howard, Lamberton, Littleton, Minor, Patterson, D. W., Purviance, John N., Read, John R., Reynolds, Ross, Struthers and White, J. W. F.—24.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Church, Clark, Collins, Craig, Cronmiller, Curtin, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Funck, Gilpin, Green, Hall, Heverin, Horton, Kaine, Knight, Landis, Lawrence, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Patton, Porter, Pughe, Reed, Andrew, Rooke, Runk, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wherry, White, Harry, Woodward and Wright—64.

So the main question was ordered to be now put.

Mr. D. W. PATTERSON. I call for the yeas and nays on the passage of the article.

Mr. MACVEAGH. I second the call.

The question was taken by yeas and nays.

The call having been concluded—

Mr. MACVEAGH. Is there a quorum voting?

The PRESIDENT. One is yet lacking of a quorum.

Mr. MACVEAGH. I think the gentleman who was so pained at my absence this morning might come in. I hope Mr. Dallas will be sent for. Why did he not stay long enough to make a quorum.

A quorum having been obtained, the result of the roll-call was announced, as follows:

Y E A S .

Messrs. Alricks, Baily, (Perry,) Baker, Barclay, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Cassidy, Church, Cochran, Corbett, Corson, Cuyler, De France, Dodd, Edwards, Ewing, Finney, Gibson, Guthrie, Hay, Hazzard, Hemphill, Hunsicker, Lamberton, Lilly, Littleton, Long, MacConnell, MacVeagh, M'Michael, M'Murray, Mantor, Metzger, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Purviance, Sam'l A., Read, John R., Simpson, Smith, H. G., Stanton, Turrell, Wetherill, Jno. Price, White, David N., and Worrell—52.

N A Y S .

Messrs. Bowman, Broomall, Darlington, Hanna, Howard, Lear, Minor, Newlin, Patterson, D. W., Purviance, John N., Reynolds, Ross, Struthers, White, J. W. F., and Walker, *President*—15.

So the article was passed.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Funck, Gilpin, Green, Hall, Harvey, Heverin, Horton, Kaine, Knight, Landis, Lawrence, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Niles, Patton, Porter, Pughe, Reed, Andrew, Rooke, Runk, Russell, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, White, Harry, Woodward and Wright—65.

SEVERAL DELEGATES. Orders of the day.

The PRESIDENT. The hour of three having arrived, the Convention stands adjourned till to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND SIXTY-FOURTH DAY.

TUESDAY, October 14, 1873.

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by the Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. BROOMALL asked and obtained leave of absence for himself after twelve o'clock to-day on account of business with his family.

Mr. G. W. PALMER asked and obtained leave of absence for Mr. D. W. Patterson for to-day.

Mr. LILLY. I was requested by Governor Curtin, in a telegraphic dispatch received from him yesterday, to ask leave of absence for him for to-day.

Leave was granted.

Mr. J. W. F. WHITE. I hold in my hand a telegraphic dispatch from Pittsburgh to Mr. Onslow, our Sergeant-at-Arms, which he placed in my hands last evening. The dispatch reads: "Mrs. Onslow unwell. Come home." He left for home last evening in pursuance of this dispatch and requested me to ask leave of absence for him for to-day.

Leave was granted.

ATTENDANCE OF ABSENT MEMBERS.

Mr. DARLINGTON. I offer the following resolution, and ask that it lie on the table:

Resolved, That the business of the Convention is in such a state of forwardness that it will be able to adjourn on or before the twenty-eighth instant, and the absent members are earnestly requested to give their constant attendance until the end of the session.

The PRESIDENT. The resolution will lie on the table.

SIGNING OF CONSTITUTION.

Mr. HAY offered the following resolution, which was read twice and considered:

Resolved, That when the articles have passed third reading and have been re-

ported by the Committee on Revision and Adjustment, they be printed in Philadelphia upon parchment, and that each sheet after being reported as correctly printed by said committee be publicly attested by the President and Chief Clerk of the Convention, and that the proposed Constitution be then signed in Convention by the delegates in alphabetical order.

The resolution was read the second time and considered.

Mr. HAY. It seems to be necessary that some such order as this should be taken or that some order at any rate should be taken as to the manner in which this Constitution shall be engrossed and signed. I do not propose at this time to ask that this resolution be passed, unless that is the desire of the Convention, but I ask that it lie over until to-morrow, when it can be called up, and in the meanwhile we can have an opportunity of thinking on the subject.

Mr. J. N. PURVIANCE. If it be the intention of the gentleman to substitute a printed copy to be signed by the members of the Convention instead of a manuscript copy transcribed by our own transcribing clerks, then I should certainly object to this resolution.

The PRESIDENT. A motion is made that the resolution lie over for the present.

The motion was agreed to.

CITIES AND CITY CHARTERS.

The PRESIDENT. The next business in order is the consideration of article number fifteen.

Mr. D. N. WHITE. I move to proceed to the consideration of the report of the Committee on Revision and Adjustment on article number fifteen, on cities and city charters.

The motion was agreed to.

The report of the committee was read.

Mr. CORSON. I move that the report of the committee be adopted.

The motion was agreed to.

Mr. CORSON. I now move that the article be transcribed for a third reading.

The motion was agreed to, and the article was read the third time, as follows:

ARTICLE XV.

CITIES AND CITY CHARTERS.

SECTION 1. The Legislature shall pass general laws, whereby a city may be established, whenever a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general election in favor of the same being established.

SECTION 2. No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government.

SECTION 3. Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its funded debt.

MR. GUTHRIE. Mr. President: I move to go into committee of the whole for the purpose of amending this article by striking out in the first line of the first section the words, "The Legislature shall pass general laws whereby a city," and inserting in lieu thereof the word "cities," and in the second line, striking out the word "established," and inserting "chartered under general laws," so as to make the section read: "Cities may be chartered under general laws, whenever a majority of the electors," &c; and then I propose to add some new sections.

THE PRESIDENT. The first question will be on the motion to go into committee of the whole for the purpose of amending the first section as proposed. The other matter will be a subsequent motion.

MR. GUTHRIE. I have moved to strike out the clause as to the Legislature, in the first section, because in the other sections I have provided for the Legislature enacting general laws. The amendment offered by me has been only partially read. I desire the rest of it read for information.

THE PRESIDENT. The entire amendment will be read.

THE CLERK read the proposed additional sections as follows:

SECTION.— There shall be chosen by the electors of every city a mayor, who shall be the chief executive officer thereof, and who shall see that the duties of the several city officers are faithfully performed. He shall have power to investigate their acts, have access to all books and documents in their offices, and may examine them and their subordinates on

oath. The evidence given by persons so examined shall not be used against them in any criminal proceedings. He shall have power to suspend, or with the concurrence of councils, remove such officers (whether they be elected or appointed) for misconduct in office, or neglect of duty, to be specified in the order of suspension or removal; but no such removal shall be made without reasonable notice to the officer complained of, and an opportunity afforded him to be heard in his defence.

SECTION.— All city officers whose election or appointment is not provided for in this Constitution shall be chosen by the electors of such cities. Police officers shall be appointed by the respective mayors thereof. Members of councils shall be chosen by the electors of each ward or district on a basis of population; they shall hold at the same time no other office under the city, county, State or United States.

SECTION.— The Legislature shall pass such laws as may be necessary to give effect to the provisions of this article.

MR. HOWARD. As this is a long amendment I think it would be better perhaps to have it printed.

MR. HUNSICKER. That would postpone the whole article.

MR. HOWARD. Suppose it does postpone the article. It is better to postpone the article when so important a matter as this is proposed, and have the amendment printed. I think it would be far better for us not to have action on this subject now; and for that purpose I move that the article be postponed for the present and that this amendment be printed.

MR. HAY. I hope that this motion may be adopted. This amendment is not only lengthy but it is very important. The article on cities and city charters has received very slight consideration heretofore. It is a very important one to the cities of this Commonwealth. The amendment proposed by my colleague has many features which would commend themselves to the support of the delegates present, and I hope they will have an opportunity of examining them in their printed shape. There are several other articles which we can take up, and it will not delay the business of the Convention.

On the question of agreeing to the motion to postpone the article and print the amendment, a division was called for, which resulted twenty-one in the affirma-

tive. This being less than a majority of a quorum, the motion was not agreed to.

Mr. GUTHRIE. Mr. President: I rather regret that the Convention did not agree to postpone this matter in order to have the amendment printed. I am confident that it is a very important amendment. In preparing it I have, as it will be observed, given the mayor very large responsibility because he is immediately the representative of the people, and the people should hold him responsible for the government of the city; and in order that he should have an opportunity to acquit himself properly, he should have the power to examine all officers, to supervise all the official business, and he should have the power to suspend, and with the consent of the city councils he should have the power to remove delinquent public officials. You have no power now in city charters, as I understand, by which you can examine the accounts of city officers. You have no power by which you can control them.

When this question was up before, there was a provision in the article on city charters as reported by the committee on that subject, to give the councils the supervision of these public officers; and yet the Convention struck that out. Now, I think some person ought to have that power, and I do not know of any one who is better qualified to do it than the mayor of the city, whom the people elect. I do not propose that he shall have the power altogether, as the amendment will show, but with the consent of the councils he shall have the power. I think this is a very important matter, and I wish that the delegates would give it some consideration. If they conclude that the principles are wrong let them vote it down; but I do not want it to be voted down merely because it does not seem to strike every gentleman that it is proper who has not had an opportunity of examining it.

Mr. D. N. WHITE. What is before us?

The PRESIDENT. The motion of the delegate from Allegheny (Mr. Guthrie.)

Mr. D. N. WHITE. To the first section or to all the sections?

The PRESIDENT. The amendment to the first section.

Mr. J. W. F. WHITE. Mr. President: I cannot agree to put into the Constitution—

Mr. GUTHRIE. I understand that the amendment to the first section is the first one to be voted upon.

The PRESIDENT. The gentleman proposed to offer the entire proposition.

Mr. GUTHRIE. The additional sections were only read for information.

The PRESIDENT. The first vote will be on the amendment to the first section, which will be read.

The CLERK. The motion now pending is to go into committee of the whole to amend the first section by striking out the words "the Legislature shall pass general laws whereby a city," and the word "established" at the beginning of the second line, and inserting words to make the section read:

"Cities may be chartered under general laws, whenever a majority of the electors," &c.

Mr. J. W. F. WHITE. I rose to make some remarks on some features of this amendment, but I have nothing specially to say upon this. I see nothing in particular to be gained by this change of language.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Guthrie.)

The motion was agreed to; and the Convention resolved itself into committee of the whole, Mr. Black in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on cities and city charters with instructions to make an amendment to the first section. The amendment is made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Black) reported that the amendment directed by the Convention had been made.

Mr. GUTHRIE. I now move to go into committee of the whole for the purpose of amending the article by striking out sections two and three, and inserting what has already been read.

The PRESIDENT. The amendment will be read.

The CLERK. The words proposed to be inserted are as follows:

SECTION 2. There shall be chosen by the electors of every city a mayor, who shall be the chief executive officer thereof, and who shall see that the duties of the several city offices are faithfully performed. He shall have power to investigate their acts, have access to all books and documents in their offices, and may examine them and their subordinates on

oath. The evidence given by persons so examined shall not be used against them in any criminal proceeding. He shall have power to suspend, and, with the concurrence of the councils, remove such officers, (whether they be elected or appointed,) for misconduct in office or neglect of duty, to be specified in the order of suspension or removal; but no such removal shall be made without reasonable notice to the officer complained of, and an opportunity afforded him to be heard in his defence.

SECTION 3. All city officers whose election or appointment is not provided for in this Constitution, shall be chosen by the electors of such city. Police officers shall be appointed by the respective mayors thereof. Members of councils shall be chosen by the electors of each ward or district on a basis of population. They shall not hold at the same time any other office under the city, county, State or United States.

SECTION 4. The General Assembly shall pass such laws as may be necessary to give effect to the provisions of this article.

Mr. J. W. F. WHITE. I would inquire of my colleague whether he means to strike out sections two and three of the printed article.

Mr. GUTHRIE. Yes, sir.

Mr. J. W. F. WHITE. And this is a substitute for those sections.

Mr. DALLAS. I would vote for the amendment if section two were not to be stricken out.

Mr. GUTHRIE. Section two is sufficiently covered by the article on taxation.

Mr. J. W. F. WHITE. I cannot see the propriety of striking out sections two and three in the article now before us. The sections proposed by my colleague are on entirely different subjects from those two sections, and I thought he intended to offer them simply as additional sections. I certainly shall oppose striking out the two sections we have here.

But further than that, while I do not wish to discuss the merits of the sections proposed by my colleague, I have this remark to make: They are simply four sections of a statute and not of a Constitution; and for that reason, if for no other, I must vote against them. They embrace very important subjects, and subjects that cannot be condensed into four brief sections. We had far better remit this whole subject to the represen-

tatives of the people in place of fixing merely part of a statute and declaring certain provisions in the Constitution as to which we cannot tell now, without sufficient time and reflection, where they may strike or what restrictions and limitations they actually may impose upon the Legislature.

The subject of these sections was before us on a former occasion, and after elaborate discussion they were voted down because they were improper in the Constitution; and at this late day, without having time to examine those sections carefully, without proper time for discussion upon them, I think it would be very unwise in us to incorporate them in the Constitution.

Mr. HANNA. I agree entirely with the remarks of the gentleman from Allegheny (Mr. J. W. F. White.) I beg leave to call attention to the article on legislation. We provide in section ten that the Legislature shall regulate the affairs of cities and counties by general law. It says: "The Legislature shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts;" and further on, that "the Legislature shall not pass any local or special law incorporating cities, towns or villages, or changing their charters." Now, sir, I submit that the whole question of the police government, so to speak, or regulation of the cities of the Commonwealth can be provided under general law. As the gentleman from Allegheny well remarked, if we descend into details of local government in the cities, we may involve the people of the different cities in a great deal of confusion in regard to their internal affairs. I think the people, through the Legislature, can determine by general law how they shall be governed in their respective localities, and I think it would be very unsafe for us to so legislate in the Constitution as to prevent the people having such a form of government as they think best suited to their wants. I therefore hope that we shall not adopt this proposed section.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. Guthrie.)

The motion was not agreed to.

Mr. HAY. I desire to suggest that the words "under general law," which were inserted in this section by the motion of my colleague, are unnecessary, for the reason that the article on legislation pro-

vides that there shall be no special or local law passed incorporating cities or changing their charters. Those three words, therefore, clearly are not necessary, because no other law but a general law can be passed incorporating a city. I ask unanimous consent to strike out those three words, "under general law."

The PRESIDENT. Will the Convention unanimously agree to that change? ["Aye." "Aye."] It is agreed to.

Mr. COCHRAN. I move to go into committee of the whole for the purpose of amending the article by adding the following section:

"Three auditors shall be elected in every third year in each city and borough at the time of holding municipal elections therein; and in the election of said auditors each qualified elector shall vote for no more than two persons, and the three persons highest in vote shall be elected. Said auditors shall annually examine and settle the accounts of all officers who receive or disburse the moneys of the municipality in which they shall be elected, in the same manner and with the same effect as the settlements made by county auditors of county affairs. Vacancies in the office of such municipal auditors shall be filled in the same manner as vacancies in the office of county auditors."

Mr. HAY. I suggest to the gentleman from York that he change his amendment somewhat to suit the case of those cities where no auditors are chosen, but where they have controllers. His amendment is so general that it would compel delegates from those cities to vote against it because it would deprive the cities of the benefit of their having one controller to perform the duties which he provides shall be done by auditors. He had better say "in cities where there are no controllers."

Mr. J. N. PURVIANCE. It seems to me that this is a matter entirely in the power of the Legislature. There is not a borough or city perhaps in the Commonwealth that is not already provided with auditors or a controller. It seems to me there is no sort of necessity for this proposition. It is legislation, and nothing but legislation; and the more we put off that thing in our Constitution, the more we weaken it among the people.

Mr. COCHRAN. The gentleman from Butler is mistaken in one particular. There are boroughs in this State, to my personal knowledge, that have no such

officer as an auditor whose duty it is to revise the accounts of municipal officers, and the whole expenditure of the funds of the borough is left in the hands of the borough council alone. That is the condition precisely of the borough in which I myself reside, and from my personal knowledge of the existence of that state of affairs, I have been induced to ask for the insertion of this section in this article. There ought to be a restriction of this kind imposed upon municipal corporations, as well as others. We allow no payments to be made by our county officers unless they pass under the supervision of the board of county auditors, and it is just as important in these municipal corporations, where taxes are assessed and levied and expenses incurred, that there should be this revising power over those expenditures, as it is that that power should exist in the counties.

Now, sir, we have provided in this Constitution expressly for the election of county auditors in the several counties in the State where county auditors now exist, and providing for the manner of their election. Why shall we not provide that in all the municipal corporations of the State, those ancient boroughs some of which were established shortly after the Revolution, and where there are no provisions made for the auditing of the accounts of borough officers, that there should be an efficient board of officers to supervise those expenditures? My recollection is that under the general borough law of 1851 there may be a board of auditors appointed. It is probably provided for in that statute; but that statute does not affect those old boroughs previously existing, and many of which have existed for half a century, and the one to which I particularly refer for more than eighty years, and no provision in all that time has been made for the settlement of the accounts of the municipal authorities by a board of revising auditors. Now, I propose to constitute that board exactly on the same foundation upon which the board of auditors has been constituted in regard to counties. With respect to the amendment suggested by the gentleman from Allegheny, I will modify my amendment so as to make it read: "In each city where no controller is elected."

Mr. MINOR. The suggestions of the gentleman from York are in themselves highly proper; but it seems to me they are addressed to the wrong body. They should be presented to the Legislature.

Now, it is a fact that under this Constitution, if adopted, the Legislature must make general laws providing for all city officers and their duties, except so far as they see fit to leave it to the cities themselves. I say that they *must* do this. Now, then, is it wise for us to undertake to put in a part of a system, to provide for a part of the officers and a part of their duties, when that part which we provide might not fit into the plan which the Legislature would find it best to adopt or be in harmony with the rest of their system? Let that body which must do the main part do all and not be hampered by us.

Again, how can we at this late day of the Convention adequately consider the full bearings of this proposition, or how it will work in detail? For instance:

In the proposed section three auditors are spoken of. In the city where I reside we have only one auditor, which we find very much better. His duties are very different from those which are mentioned in the section proposed, and we find them very useful. I say, let all this matter be provided for by the Legislature in one harmonious system, officers, duties and all.

Mr. MACVEAGH. I submit that one difficulty in the way of adopting suggestions made now on third reading is the natural, inevitable impatience of the Convention to listen to a thorough and searching debate of any proposition, and therefore, for one, I feel compelled to vote against propositions now introduced for the first time, introducing grave questions of whether they had better be left to the Legislature, or had better be incorporated into the fundamental law, although I might approve of the propositions and might have voted for them at an earlier stage of our deliberations. I was one of the gentlemen who believed that a superior court could have been organized in this State, but when the gentleman from Philadelphia (Mr. Cuyler) introduced an entirely new proposition on third reading, I voted against it simply because I believed this Convention was not disposed to listen to a prolonged and searching debate on the proposition.

So I think now. The gentleman from York, doubtless, knows something with reference to the condition of affairs in the borough of York; but we have here a section limited to cities and their charters, and because the borough of York has need of a general law to regulate its affairs, he proposes to introduce into this

article on cities, limited exclusively to city government, a law with reference to boroughs. I do not believe it is wise to add this entirely new proposition to articles which have received such thorough examination at the hands of the Convention.

The PRESIDENT. The question is on the motion of the delegate from York (Mr. Cochran.)

The motion was not agreed to.

Mr. HOWARD. I move to go into committee of the whole for the purpose of amending section one by striking out the two last words of the section, which are not necessary, the words being "being established."

Mr. BROOMALL. Let us do that by unanimous consent.

MANY DELEGATES. Yes; unanimous consent.

The PRESIDENT. Shall unanimous consent be given to make the amendment indicated by the gentleman from Allegheny?

Unanimous consent was given, and the amendment was made.

Mr. BROOMALL. I think that any delegate who will read the article as we have it now will come to the conclusion that it might as well be let go by the board. The first section as it now stands—

The PRESIDENT. The delegate is speaking to the article?

Mr. BROOMALL. I am speaking to the article, for I understand that to be the question. As the first section stands now it reads that "cities may be established whenever," &c.

Well, there is very little use in our saying that, for if there is anybody in the Commonwealth who does not know that without its being put in the Constitution, he ought to go to school. Cities may be established anyhow. The Legislature may do anything that we do not forbid them to do.

The PRESIDENT. Ten thousand population is mentioned in the article.

Mr. BROOMALL. No matter. Cities may be established whenever there are ten thousand asking for it, and they may be established whenever there is one asking for it, if we do not say no. There is no necessity, therefore, for the first section. As it stood originally, there was some virtue in it, because it then required the Legislature to pass a general law; but I do not see myself—I did not vote against the change nor in favor of it—that there was any necessity for the section as it orig-

inally stood. Certainly there is no necessity whatever for it now. It would only cumber the Constitution.

The second section is not necessary, because in the article on legislation we have covered the whole ground and a little more. I allude to the twenty-second section of that article, which prohibits these commissions altogether, and which, therefore, goes further than this article now proposes to go. This is somewhat in conflict with that as far as authority for it is concerned. It therefore is not necessary, for that ground is not only covered, but more too.

The third section is, to my mind, more objectionable. It says:

"Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its funded debt."

There is no better use that can be made of the money of a city than to pay its debt. Sinking funds in States are very often objects of felonious intent; they always are such in the cities, and it will afford a place for bad men to get their hands into the public moneys. I would let cities establish sinking funds whenever they had proper men to manage them, men sufficiently honest; that is, I would let the matter be with the Legislature. I would not require that every city should have a place where bad men can always steal.

I therefore shall vote against the whole article.

Mr. CORSON. I rise to inquire whether we can vote upon this article, one section at a time. Whilst it seems to me that the first section is a very good one, we may properly leave out sections two and three, and I would like in some way or other to have that done.

The PRESIDENT. The only way in which that can be done is to strike them out.

Mr. CORSON. Then I move to go into committee of the whole for the purpose of striking out sections two and three.

Mr. WOODWARD. Before this subject is disposed of, I want to say a word with reference to it. I have had my attention called to this matter by a gentleman of this Commonwealth who is alarmed at what this Convention is doing. In the article on legislation we declared that the Legislature shall not pass any local or special law for various purposes, and amongst others, incorporating cities, towns or villages or changing their charters. The Legislature shall pass no spe-

cial law for the changing of charters in cities. Well, they may pass a general law. Now, what will probably be the general law which this article contemplates under which the Legislature will do the many things that they are prohibited from doing under special laws? Why, sir, most likely, in most instances, a general law will devolve the power upon the local courts. Then, sir, take the case of a city in which the judge of the local court is the governor of the city, appoints part of the council, appoints the officers who keep the treasury—is, in other words, the city.

Now, we have just such a city as that in this Commonwealth, in which the president judge of the court of common pleas has, under the charter of the city, the power to appoint many of the municipal officers. How will a general law that gives that power of changing charters operate? The general law will probably devolve the power upon the courts, and I know nobody else better fitted to be trusted. But this election of judges comes in here: Politicians get city charters in their fists, and then what becomes of your general law? It is just a nuisance. The Legislature had better have the power to pass any special law than that.

Now, I know citizens who are as respectable as any of us who are alarmed at this state of things. They do not want to be subjected to this petty tyranny, half judicial, half political, half special, half general. They want the city charters changed by which the power shall be put in the hands of the people, and they never can be changed, if I understand this constitutional provision, unless we put something into this present article.

That is the very point of my remarks. I want something put into this article that shall take cities and charters out of the hands of the politicians and leave them in the power of the people who are governed by them. And as this article seems to be barren on this subject, I am disposed to vote for the proposition of the gentleman from Delaware to strike it out. But I wish some gentleman would bring forward a proposition in regard to city charters that shall meet the evil I have pointed out in place of this article. This article does not seem to me to meet it. I want an article that will meet it. We have passed the article on legislation, but I suppose we might put something into this article that shall control the construction of what we have inserted

the ninth section of the article on legislation. I point out the evil, and I hope gentleman understand it.

Mr. CORSON. I agree with the gentleman in his remarks as to the first section of this article.

Mr. MACVEAGH. There is no use in it.

Mr. CORSON. There is no mischief in it.

Mr. LITTLETON. I should like to ask the gentleman from Philadelphia if he does not make some suggestion.

Mr. BEEBE. Mr. President: I see no reason for the passage of any article on cities and city charters after listening to all the discussion that has been had, except the single reason that it is alleged that the people of small towns have been burdened through their politicians with city charters when they had not a sufficient population to make it a necessity, but an injury. So far as my observation goes, I think the article might be voted down, and if there is to be a guard on a single point a short article like the following should be inserted in place of this whole article:

"No city shall be established by law having a less population than ten thousand."

Beyond that, it is alleged by the gentleman from Delaware that this article conflicts with the rule laid down in the article on legislation, and I am sure that the amendment proposed by the gentleman from Pittsburg is merely statutory and belongs to legislation only, and it would hardly be sufficiently complete of itself, so that we could determine that we were voting consistently as to the result when we were voting for it.

Mr. EWING. Mr. President: I do not know who made this motion, but I should be very much obliged to him if he will divide it. The third section is to my mind not only useless, but a very great absurdity. One of the exploded absurdities of State craft in humbugging the people is keeping up a sinking fund. It is with a State or city just as it is with an individual. The best possible sinking fund he can have is to pay his debts. Possibly there may be an occasional case where a city cannot appropriate funds that it has on hand to the payment of the debt, and then it may be well enough to create a sinking fund; but a sinking fund from time immemorial has been a useless thing in the State. It has usually made a place for quartering some officers to make salaries, fees, and to steal the

public funds and seldom has done any good.

Now, we provide in this section that the great city which my friend from Washington (Mr. Hazzard) represents, which I think has two thousand inhabitants, and I presume has no debt, shall create a sinking fund. That ought to be left to the Legislature, and I should like to see that section stricken out. Let those cities in which it is proper to have a sinking fund provide it, but do not provide by constitutional enactment that you shall have a sinking fund when you may have no debt and when it is an expense to the city and useless, and a temptation to thieving.

Now, in regard to the second section, I think it important that that should remain in the article. Our section in the legislative article does not abolish existing commissions, and they have the power to appropriate money independent of the city authorities. This was intended to avoid that evil by requiring that they should not spend money before an appropriation had been made by the municipal government. I think it is a very wise provision. I hope to see it retained, and I shall be obliged to vote against this motion because it joins the two sections. I should like to vote to strike out the last section and retain the second section.

Mr. LITTLETON. Mr. President: I also think that this motion to strike out the second and third sections should not be agreed to. I have special reference to the second section. I think there is great value in it as a limitation on legislative power because the corporate authorities are vested with the power to raise, by taxation and otherwise, that money which is necessary to carry on the municipal purposes; and it does seem to me that commissions created outside of them should be subject to those bodies as to the expenditure which they are obliged to make.

And, therefore, this section has great merit in it, because it brings every expenditure within the control of the proper municipal authorities. Certainly as representing the people and the property holders and elected by them, they should have a final voice upon every expenditure before any debt should be created by a commission created by the Legislature, for it would be possible to absorb the entire revenue of the municipality by the creation of some outside commission, over

which the public would have no control at all. I think it is wise to keep that section, not simply as regards this city, but as respects other cities also.

As to the sinking fund, I beg leave to differ with the gentleman from Allegheny (Mr. Ewing.) I think there is great advantage in a sinking fund.

Mr. EWING. I should like to hear the advantage of it explained.

Mr. LITTLETON. I think the experience of the late panic has shown the immense advantage of a sinking fund. Loans of the city of Philadelphia outstanding to the extent of \$55,000,000 have only fallen two or three per centum at furthest, when other well known securities have gone down twenty and twenty-five per cent. Why? Because the sinking fund was at hand to absorb every bond that was brought on the market, and today they are not only one percent less than they were at the time of the failure of the leading bankers in this city, and that by reason of the sinking fund. Without that they would have gone down like other securities.

Mr. CORSON. I desire, in order that we may not get into any difficulty on this question, to modify my motion. My motion was to strike out sections two and three. I think we had better take one section at a time. I therefore desire now to modify the motion so as to strike out section three.

The PRESIDENT. The motion will be so modified.

Mr. CORSON. Now I call for the question on that motion.

Mr. CUYLER. Mr. President: I have not the slightest sympathy with the view expressed by the gentleman from Allegheny (Mr. Ewing.) If there is any one provision in this article, so far as cities are concerned, that is simply invaluable, it is that third section. The whole credit of the city of Philadelphia to-day rests on just such a provision as that. It is not true in point of fact that sinking funds have proved unreliable and unavailable. No loan has been created in the city of Philadelphia since 1854, when consolidation took place, except under the provisions of a clause in the consolidation act that required the councils of the city to create with each loan a sinking fund that would extinguish that loan in thirty years, and that has been most sacredly observed; and if it be true, as it is, that in all the trying times of financial difficulty that have occurred since 1854, the

loans of the city of Philadelphia never went down below par, but have commanded five and six and seven per cent. premium, it has been due to the very fact that there was a sacred sinking fund pledged specifically for the redemption of the specific loan, that was sacredly cared for by commissioners appointed by law for that purpose. I cannot comprehend the reasoning of the gentleman from Allegheny at all. I suppose it was an elementary truth in municipal finance, that no man could be found to doubt on the question at this age of the world, that the creation of a sinking fund to accompany a loan was the highest possible security the creditor of the municipality could get; and I have only to say that so far as this city is concerned, these sinking funds have been administered by men of the highest character and with singular purity and integrity all the way through. No more fatal blow to the credit of this city could be struck than to strike out a section of that character.

The PRESIDENT. The question is on the motion of the delegate from Montgomery, (Mr. Corson,) to go into committee of the whole for the purpose of striking out section three.

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

Mr. BOYD. I second the call.

The question being taken by yeas and nays, resulted as follow :

YEAS.

Messrs. Baer, Broomall, Corson, Darlington, Dodd, Ewing, Guthrie and Hay —8.

NAYS.

Messrs. Alricks, Baily, (Perry,) Baker, Bannan, Bardsley, Beebe, Biddle, Black, Bowman, Boyd, Brodhead, Brown, Buckalew, Calvin, Campbell, Carey, Carter, Church, Corbett, Curry, Cuyler, Dallas, De France, Edwards, Finney, Funck, Gibson, Hanna, Hazard, Hemphill, Horton, Howard, Hunsicker, Knight, Lambertson, Landis, Lear, Lilly, Littleton, MacConnell, MacVeagh, M'Michael, M'Murray, Mantor, Metzger, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Ross, Stanton, Struthers, Turrell, Wetherill, John Price, White, David N., White, J. W. F., Woodward, Worrell, Wright and Walker, *President*—66.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Bartholomew, Bigler, Bullitt, Cassidy, Clark, Cochran, Collins, Craig Cronmiller, Curtin, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Green, Hall, Harvey, Heverin, Kaine, Lawrence, Long, M'Camant, M'Clean, M'Culloch, Mann, Minor, Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Reed, Andrew, Reynolds, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and White, Harry—58.

Mr. WOODWARD. I move to go into committee of the whole for the purpose of adding the following proviso to section one:

"*Provided*, That the power to alter and amend existing city charters by special legislation shall not be impaired by anything in this Constitution."

I desire to explain to the Convention the scope and character of this amendment. You are aware that in the article on the subject of legislation we have passed what I called the attention of the Convention to just now, a provision limiting the power of the Legislature to pass only general laws on various subjects, amongst others, "*incorporating cities, towns, or villages, or changing their charters.*"

Now, I submit that the construction of that provision is that the Legislature shall not have power to change by special law any charter of any city, town, or village, which is incorporated *under this Constitution*.

Mr. EWING. Allow me to make a suggestion to the gentleman. I think he will find—I cannot turn to the section now, but I know it has passed in the article on legislation—that we have provided expressly that the Legislature shall have power to repeal any special act.

Mr. WOODWARD. I do not want to lose sight of the point I am now making. I say that this provision in our Constitution which we have passed will be limited necessarily to the charters granted under this Constitution. Now, my proviso relates only to the charters of existing cities, not to such as shall hereafter be granted under this Constitution. I do not ask to alter them by special legislation; I only ask that charters which are now existing may be altered by special legislation, and the reason for that is what

I indicated awhile since. I will not name instances, but gentlemen can imagine a large flourishing town incorporated into a city, whose charter gives to the president judge of the court of common pleas of that county the power to appoint the city treasurer, one branch, perhaps a majority, of the city councils, and most of the efficient officers of that municipal corporation. Then let that judge be selected by the politicians, and you see what a political engine this city comes to be in the hands of this judge.

This Convention says: "Let him be elected; the way to have a pure and upright judiciary is to get them from the tender mercies, the changes and the chances of political nominations." Very well, here is an element of mischief and corruption that can scarcely be measured; and taxpayers and honest citizens are alarmed at this state of things. They want to have power to go to the Legislature to alter that charter; and when they go to the Legislature to get their charter altered and take their city out of the hands of a judge, they do not want to be met by a constitutional provision which prevents the Legislature from relieving them, and therefore my proviso is that as to existing charters of existing cities the Legislature shall have this power. That is the whole scope of it. I sincerely hope that a majority will insert the proviso. It will not interfere or conflict at all with what we have done in regard to the future policy of the Commonwealth; but it will leave within the power of the Legislature the existing charters of the present cities of the Commonwealth. It does not affect the city of Philadelphia, but it does affect some cities in the interior most vitally. Such is the scope of my proviso.

Mr. MACVEAGH. That, I submit, is exactly what we do not want to let anybody do—go to the Legislature and get out of them what he may desire. If the work done here means anything, it means a negative of this proposition. If we have heard anything from the beginning to the end, it has been that the special legislation for cities absolutely in the hands of city delegations and city politicians in all cities was detrimental to the public interest to the last degree, and that it left the citizen absolutely at the mercy of the accidental occupants of seats in the legislative body.

Mr. EWING. On the forty-first page of the pamphlet edition of the Constitution, as passed second reading, we have in the

article on legislation this provision: "But laws repealing local or special acts may be passed." I know that the intention of the committee that drafted that provision was to provide for just such cases as the delegate from Philadelphia (Mr. Woodward) speaks of now. It seems to me that that covers the case fully.

Mr. WOODWARD. Not repeal, but alteration, is what is wanted; and that is exactly what the previous clause forbids.

Mr. HANNA. Would not this authorize the repeal of so much of the act?

Mr. MACVEAGH. It is a new special act that he wants, and that does not allow it.

Mr. Ewing. I think all the gentleman wants that is of any value is covered by the section we have in the article on legislation.

Mr. CUYLER. Mr. President: I did not expect from the chairman of the Committee on the Legislature the frank confession that he made just now—not that I had doubted that the manner in which we had framed the article on the Legislature did work out the result that nobody could get from the Legislature anything that he ought to have; but I did not expect the chairman frankly to say that that was its purpose.

Now, as to the particular amendment proposed, if I understand it at all, it seems to me to be simply useless, and therefore objectionable. It is useless because the charter of a municipality is not a contract, like other charters, between the State and municipality. It is but the delegation of a part of the power of legislation, which resides in the Legislature, to a local organization; but it is entirely and purely within the power of the Legislature all the while on general principles of law. The Legislature may repeal the charter of the city of Philadelphia whenever they choose to do so, or of Pittsburgh. They may abolish all charters of municipalities. They have the absolute power over them. They may recall the delegation of authority they have made to these municipal legislatures, whenever they shall see proper to do so. Why then put in the Constitution a clause that shall provide for a power that is inherent, that they have already? They may pass a general law defining what shall be the powers of cities, and repealing all existing charters and declaring that hereafter cities shall have only the powers that are provided for in the general

law. They may discriminate in this general law between cities of different sizes, having one species of charter for a city of 500,000, 600,000, 700,000 inhabitants, and another for a smaller city or one that has but 10,000 or 12,000 inhabitants. All that power they have already. Why repeat it again in the instrument, cumbering it with useless verblage? I am opposed to the amendment simply because I think it utterly unnecessary.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia, (Mr. Woodward.)

The motion was not agreed to.

Mr. HANNA. I move to go into committee of the whole for the purpose of amending section two, in the second line, by inserting after the word "commission" the words "or city," so as to read: "No debt shall be contracted or liability incurred by any municipal commission or city, except in pursuance of an appropriation previously made therefor by the municipal government."

I wish to protect cities from debts incurred by heads of departments or city officers without the same having been previously authorized by the municipal government or the means of payment provided by the municipal government. While I admit the object in view in this section to be within the province of the Legislature, yet if the Convention deems it proper to retain this section, I wish to re-enact, so to speak, the principle which the Legislature established in the act of consolidation of the city of Philadelphia. By the act of 1854 it is provided

"That no debt or contract hereafter incurred or made shall be binding upon the city of Philadelphia, unless authorized by law or ordinance, and an appropriation sufficient to pay the same be previously made by councils: *Provided*, That persons claiming unauthorized debts or contracts may recover against the person or persons illegally making the same."

I want in this section to provide that the city shall not incur any liability by reason of the act of an officer of the city.

Mr. ALRICKS. Allow me to call the gentleman's attention to the fact that we have taken from the Legislature the power to create a commission, and therefore we are better without this section, because with the consent of the officers of the municipality the commission may, under this section, create debts. We have taken the power to establish commissions from the Legislature.

Mr. HANNA. The gentleman from Dauphin forgets that the section to which he refers only applies to commissions hereafter to be created. "The Legislature shall not delegate to any special commissions any power to make any municipal improvement or to levy taxes" is the language. It does not interfere with the commissions already created by the Legislature. My object here is to protect the citizens of our city against unauthorized expenditures on contracts or debts incurred by a city through its officers, unless the municipal authorities of that city authorize the same and provide the means for paying the cost of the same. For that reason I move this amendment, and hope it will be adopted.

Mr. BIDDLE. I should like to know now what this means. As I understand it, this amendment would prohibit the creation of any loan unless an appropriation was previously made. Just observe the generality of the language and see if it is not so. "No debt shall be contracted." A loan is a debt, and a debt which has upon it the highest evidences of the indebtedness of the corporation or body which contracts it. That, I am sure, cannot be the meaning of the mover of this amendment. If he is willing to put in "except funded debts" or "except public loans or loans of the city," I do not object to it; but I do object to any such clause as this, which in its terms will certainly cover the funded debt of the city. I want to know of the gentleman whether he intended that, or whether he meant the mere current expenses of the city government?

Mr. HANNA. Will my colleague allow me to answer him now?

Mr. BIDDLE. I should like to be answered.

Mr. HANNA. I did not have the public loan or funded debt in contemplation.

Mr. BIDDLE. This language, "no debt shall be contracted," undoubtedly includes it, because a funded debt, although evidenced by the seal of the city, and in a more formal way than other debts, is just as much a debt, and there ought to be language limiting the section to what the idea really is.

Mr. CUYLER. Perhaps the amendment is exposed justly to the criticism made by the gentleman who has last spoken, although I take it for granted that a common sense construction put upon it by the Supreme Court would relieve it of that difficulty.

Mr. BIDDLE. Common sense constructions are not always made.

Mr. CUYLER. I do not agree with the gentleman; but I want to say a word with regard to the section itself. I am afraid it will not be sufficient for the purposes which I had in view, however I may wish it would. The building commission in the city of Philadelphia has power to compel by a *mandamus* the raising of the money it requires by the city authorities. The councils of the city are subordinate to the building commission in this respect, by the existing act of Assembly under which that commission exists. If the city councils fail to make an appropriation they demand, if the act under which they exist is in operation, they can go into court and by *mandamus* compel such legislation on the part of councils as will provide the funds, no matter how large, which they think proper to demand. I see nothing in this section which shelters the city of Philadelphia from that species of liability.

The PRESIDENT. Is the Convention ready for the question?

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

Mr. WORRELL. I second the call.

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

Y E A S.

Messrs. Alricks, Bardsley, Beebe, Brodhead, Cuyler, Darlington, Edwards, Ewing, Guthrie, Hanna, Hunsicker and Worrell—12.

N A Y S.

Messrs. Baer, Baily, (Perry,) Baker, Bannan, Barclay, Biddle, Bigler, Black, Bowman, Boyd, Broemall, Brown, Buckalew, Calvin, Campbell, Carey, Cassidy, Church, Corson, Curry, Dallas, De France, Finney, Funck, Gibson, Hay, Hazzard, Horton, Knight, Lamberton, Landis, Lear, Lilly, Littleton, MacConnell, MacVeagh, M'Michael, M'Murray, Mantor, Metzger, Minor, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Stanton, Struthers, Turrell, Wetherill, John Price, White, David N., White, J. W. F., Wright and Walker, President—59.

The motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong

Bailey, (Huntingdon,) Bartholomew, Bullitt, Carter, Clark, Cochran, Collins, Corbett, Craig, Cronmiller, Curtin, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Green, Hall, Harvey, Hemphill, Heverin, Howard, Kaine, Lawrence, Long, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Reed, Andrew, Reynolds, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, White, Harry and Woodward—61.

Mr. J. N. PURVIANCE. I offer a new section, and move that the Convention go into committee of the whole for the purpose of adopting it, as section number four, viz:

"In every city and ward representation shall be in proportion to population, the ratio to be fixed by law."

The motion was rejected.

Mr. LILLY. I offer the following as a new section, and move to go into committee of the whole in order to insert it:

"No street passenger railway shall be constructed within the limits of any city or borough without the consent of its local authorities."

That section is in the railroad article. I am in favor of the section, and desire it to become part of the Constitution; but if the article on railroads and canals is not altered and a separate vote had on it, I expect to vote against it. I still am in favor of having this section in the Constitution, and believing that the railroad article, if left as it is, will be defeated, I move to take this section from that article and insert it in this place. It properly belongs here at any rate, because the section relates to the consent of the municipal authorities being obtained before any street railroad can be constructed within the limits of a city, and this is the article which is to provide regulations for cities. I do not know whether my motion will prevail or not, but I hope it will, and I offer it in order to put myself upon the record. If the feeling in my county be any index of the feeling throughout the State upon the article on railroads and canals, that article will never be adopted.

Mr. MACVEAGH. I hope the motion will not prevail.

The motion was rejected.

Mr. CUYLER. I move now to go into committee of the whole for the purpose of adding a new section as follows:

"SECTION 4. The General Assembly may authorize cities and boroughs to make local improvements, with the assent of a majority in interest of the property holders affected thereby, by special assessment on the property benefited."

I do not want to again inflict upon the Convention the speech I made the other day on this subject. This proposition then came within a tie vote of passing, and it should be passed now. Not to make such a proposition as this in view of the existing provisions of the Constitution will be to deprive us practically of the power of making any municipal improvements in the way of paving or sewer building, or anything of that kind, in all our large cities. Between this and the Centennial the city of Philadelphia has practically to be re-paved. That is almost absolutely and literally true. It cannot be done by general taxation or by general loans. It is fair that it should be done by those who are locally benefited by the work when done. It is exactly in harmony with all our previous practice. Nobody ever doubted the propriety of the usefulness of such a power as that until that most extraordinary and remarkable decision of our Supreme Court, which has no foundation of law so far as my judgment as a lawyer goes, in the Nicholson pavement case. This is intended to bring us back to the law of the State as it stood for generations and from which we should never have been removed.

Mr. PURMAN. When the gentleman from Philadelphia offered this proposition the other day, I voted for it, and I shall vote for it now, believing that it is right. In the course of the discussion which then ensued, I remarked that I believed unless something was done on this subject to relieve all possible doubt upon it, we should be likely to have difficulty in its construction. I have not changed that opinion, and I believe that in plain words we should here so express ourselves as to leave nothing to construction on this subject.

Mr. BIDDLE. I am opposed to this section. This proposition was discussed very fully on second reading and was voted down. Now, I want to call the attention of members to what the effect of this section will be, if it is carried in the shape in which it is now proposed.

I take Broad street, in the city of Philadelphia, as an illustration. Broad street was paved once in the ordinary way, and an assessment was charged, under the

then existing law, which operated alike upon the whole community, upon the property owners whose property was on the line of the street. So far, well; but about six or seven years ago, a number of persons interested in a patent for the laying down of wooden pavements met together and influenced councils so far as to get them to re-pave a large portion of that street and charge the expense, which was three times the expense of an ordinary pavement, upon the property owners along the line of that street who had therefore once been assessed as other citizens.

Broad street, be it known, is one of the great arteries of the city, and is traveled over quite as much by men living two miles from it as by men whose property bounds on it. The property owners, feeling this a grievance, resisted and were fortunate enough to secure the judgment of the Supreme Court in their favor, although by a divided court, by a majority of one. Any man who goes over that pavement, either on foot or in a vehicle, cannot fail to notice the shameful condition in which it now is, although it is not seven years old; and the taxpayers escaped very narrowly being charged an enormous assessment for a pavement that has not lasted a decade of years. Broad street is now being paved again with the Belgian pavement; and if this section passes, the unfortunate owners of property on that street may be assessed a third time for the expense of that which should properly come out of the city treasury.

Now, I do hope gentlemen will not, under the plea of making preparation for the Centennial exhibition, or any fallacy of that kind, inflict this onerous charge upon property holders. Such things have heretofore occurred, and if a section like this passes will occur again, as improving men out of their property. If it be advisable, as very probably it is, that the great highways of this city should be put in order for the celebration which is to take place in July, 1876, let the city treasury do it; it is no more properly chargeable as a burden on men who live on the line of any particular street, than is any other preparation for that great celebration. It is unjust in the last degree, and this body has again and again, in the different shapes in which it has come up, voted it down. It is a little more spaciously put up now because it requires the assent of a majority; but I want to put it to the sense of justice of every man here, what

right has a majority of property owners to say whether my property shall be taxed or not? I do not believe in such a doctrine as that. The humblest man, the man owning a single lot on that street, has as much right to plant himself on the constitutional sanction which says that his property shall not be taken from him without an equivalent, as the majority; and I do trust members will let this article remain substantially as it was when it came from the Committee on Revision.

Mr. EWING. Mr. President: At the risk of being considered as taking up the time of this Convention unnecessarily, I wish to call attention to this section, which, to my mind, is one of the most important that has been before the Convention. A large number of those who have given special attention to the subject believe that the first section of the article on taxation takes away all power and authority to make local improvements in cities and boroughs in the manner that they have heretofore been made. Whether that opinion be well founded or not, there certainly should be no doubt left in the provisions that we adopt here as to the power. It either should exist clearly and distinctly, or it should be prohibited.

I do not exaggerate when I say that every year, for the past five years, the sums paid in this State for local improvements amount to five million dollars or six million dollars in the different cities. I am within bounds when I say that in the city of Pittsburgh, and the city of Allegheny, and some dozen boroughs in the county, it has amounted to over a million of dollars each year for that time. For one, I believe it to be eminently just and proper. I believe it to be a system which is approved by nineteen-twentieths of our people after a fair, full trial of it. I do not think there are any considerable number of our people who are opposed to it. Let me say, further, that now, after the system has been adopted fully, it would be exceedingly unfair and unjust that the power of the Legislature to authorize this method of making improvements, should be taken away by the Constitution.

In the early history of our cities the streets were made by a general tax on the whole city. In the four wards that constituted the old part of the city of Pittsburgh the streets were made in that way. When additions were made, when outlying districts came in, the people

there wanted streets made through the new parts of the city, and the expense was enormous; it was of no particular advantage to the old part of the city, and it was deemed proper when it was going to increase the value of the property through which the streets were made to have a law passed which authorized the cost of making those streets to be assessed on the adjoining property. In the year 1856, I think it was, a general act was passed providing for the making of improvements in that way, opening streets, grading and paving streets, making sewers, &c. In addition to that a commission was provided for which assessed the cost of the grading and paving of every street in the old city on the property abutting on it. Property that had paid general tax to make those streets was again assessed with the value of those streets, and that was put in the city treasury and it went to decrease the debt.

That system has been kept up ever since. There is not a street or alley in the city of Pittsburg or in the city of Allegheny that has not been paid for by the property that adjoins it, or the property specially benefited by it, by special taxation. The sewers also have been made in the same way. All our improvements are made in that way except that the city pays for the grading and paving at crossings that is not charged on any property.

As I said before, it is a system which our people very generally are satisfied with. There may have been some abuses of it, at times, as of any other system of taxation; but it is eminently just. I do not exaggerate when I say that to-day the cost of making those streets assessed on the property specifically benefited amounts to three fold of the debt that now exists in Pittsburg or Allegheny.

I think it would be very unfair to take away the authority to make those improvements, and I do trust that those gentlemen who think that, under the first section of the article on taxation, the power would still exist, will join with us and put the power beyond all question. Very many think that it does not exist, and I have not heard any two men, who say that the power will exist, put it on the same grounds. I think the only possible way in which it can be maintained is by holding that these are not taxes but assessments.

Now, in regard to the amendment offered by the delegate from Philadelphia, (Mr. Cuyler,) it does not mean what the

gentleman who is so bitterly opposed to that class of assessments says it means; it is carefully worded to exclude that. It does not say "to renew or repair," it is simply to "make" these improvements. That is a limitation of the power which has heretofore existed: and if some of those gentlemen be right who say it exists under the first section of the article on taxation, this section would be a limitation of the power to make such assessments.

It is again limited by requiring the previous assent of a majority of the property holders interested in the subject, and I think it is the least power that ought to be given to the Legislature to pass on the matter. It is again guarded under the article on legislation by the requirement that all these laws will have to be general all over the State, so that you cannot get a special act of Assembly for making a particular street or for a particular city or borough. I think with the limitations we have on it, it is a power that will be very safely exercised and is a very necessary power to exist.

Mr. DALLAS. Mr. President: I am opposed to this proposed section, and I am opposed to it for the reason that I am opposed to confiscation under the name of taxation. It is a sacred, fundamental principle in the laws of this State, and one which we should never be asked to violate, that no man's property shall be taken without just compensation. The power of taxation, which is unlimited in the Legislature, except as limited by the Constitution, is of course an exception to that rule, and a necessary exception; but so soon as we forget that the proper scope of taxation is the levying on every man's property an equality of dues to meet the necessities of the State or the municipality, we step beyond taxation and we become unjustly tyrannous to the citizens that we discriminate against.

It is said here that there is some reason for this violation of principle because, first, it is intended to limit this special tax to those specially benefited, and second, that of those specially benefited a majority shall consent. Now, examine both of those propositions. First, who is to determine that the parties to be taxed are the parties to be specially benefited? Not themselves; not their representatives; but the representatives of the entire municipality are to determine that the constituency of one small portion of those representatives are to bear the entire tax

of the proposed improvement. It is not left to those persons who are to be affected, nor to their representatives, exclusively to say that the special tax proposed to be imposed is one which will accrue entirely to their benefit. On the contrary, the entire municipal body is first to say that the work is to be done, that it is the best kind of work, and that the benefit is to accrue to this one class of people; and then the tax is to be put upon them, whether they like it or not.

Now, sir, you will observe that so long as you permit one body of men to say what the improvement is to be and require another body to pay for it, you may always rely upon it that the body which is to dictate the improvement will dictate the most expensive kind of improvement, an improvement that will be entirely fanciful and beyond the desires of the people who are to pay for it, because the people dictating it and who really in nine cases out of ten have as much use of it as the other class have nothing to do with the payment for it. That is human nature and that will always be the result. It has been the result heretofore in this city, as my colleague (Mr. Biddle) has shown. Mere fanciful improvements have time and again been put upon different sections, upon one notable section, Broad street, three times, I believe, in succession, for improvements which they never would have sanctioned, for which they were compelled to pay and which time has proved to be utterly useless and improper.

Mr. LITTLETON. Can the gentleman name any others?

Mr. DALLAS. One is sufficient and illustrates my point. Green street is another.

Mr. LITTLETON. The people paid for the improvement of Green street themselves and originated it.

Mr. DALLAS. Now, as to submitting it to the people of the district to be affected, what can be the justice where three men are living door by door and two of them are satisfied to change their pavement, of compelling their neighbor to do the same? There can be no reason and no justice in this proposition. Taxes should be equal, and the pretence that it is intended ever to make a special tax for the special benefit of those to be taxed is answered by the very grounds on which it is put.

When I said I was opposed to this amendment, I was told I was opposed to progress, that it was done for general pur-

poses, that we never could get general improvements such as were wanted without special taxes, and this was done to advance the project for the Centennial. Why, sir, that is the very answer to the arguments that are openly made, that the proposition is intended to further general improvements and for the progress of municipalities. Sir, I am not opposed to proper improvements, and I am not opposed to progress, but I am opposed to both when they are opposed to simple justice.

Mr. LITTLETON. I desire to say but a few words in reply to the argument of the gentlemen from Philadelphia, (Mr. Dallas and Mr. Biddle,) and to refer specially to the instance of injustice that they have cited. The only case they have been able to cite that has occurred in the city of Philadelphia is that of the Nicholson pavement. I desire to state to the Convention a fact in the history of the city as to the value of ground in connection with that improvement. Ground on Broad street which before that pavement was laid you could have bought for \$5 a foot, cannot now be bought for less than \$30. The property holders there could afford to pay for that pavement five times over, and still make money by the operation. Their land is worth ten times, certainly five times, as much as it was eight or ten years ago, and just by reason of that improvement which specially benefited them; and therefore they should pay for it, and not the general taxpayers.

It is not an injustice to a man to make him pay for a special benefit. Certainly no one can contend that that is wrong. I, for one, would not advocate this section except upon the argument, and the sound argument, that the improvement benefited the property, and therefore it was just and proper that those thus specially benefited should pay for it. I do not think it would be right if there was not a compensation in return. The only case that has been named in the city of Philadelphia, and upon which my friend (Mr. Biddle) expended all his eloquence and cited as an act of injustice, in a case where the property holders were benefited ten times over by the improvement, and they did not pay a cent for it, and they should have paid for it because they got the advantage of it.

In the case of Green street, which has been referred to, the property holders themselves, of their own accord, laid down this same kind of pavement, and Green

street to-day, narrow as it is, is the principal thoroughfare to the park. Nearly every one who enters the park on this side goes to Green street, because the property owners on that street had the public spirit to lay at their own expense a pavement which is not only a great convenience to the public, but of immense advantage to them, because it has increased the value of their property.

I think, therefore, in view of the action of this Convention on various questions connected with municipalities, as you have placed it out of their power to contract debts except to a limited extent, that this section should be adopted. Where in the name of Heaven are we to get the money to go on with municipal improvements if we are denied the right to tax property specially where it is specially benefited? I trust, therefore, after the full discussion of this question, inasmuch as it requires a majority of all the property owners of any particular locality to assent to it before even the municipality is authorized to contract a debt, that this section will be adopted.

Mr. BRADSLEY. I trust, sir, that before this Convention refuse to accept this proposition, they will stop for a moment and reflect upon it. I more particularly desire to call the attention of the gentlemen from Philadelphia (Mr. Biddle and Mr. Dallas) to the fact that nothing has so added to the growth of the city of Philadelphia, agreeably to the will and wishes of the people, as this very provision. The people have always accepted it, and under its direction miles and miles of streets have been paved. It simply directs that whenever a majority of the property owners agree, the improvements shall be made. It is a plain, sensible proposition, and one that has added more to the benefit of the owners of property than any other in our city. Persons owning acres of ground have dedicated so much of it as was required for streets to the city government, and then petitioned the councils to order or to permit them to have those streets paved. They come begging for the privilege of doing what this amendment suggests and proposes. The moment the streets are paved, their ground enhances in value many fold. They can immediately let or sell the ground for improvements. It is from this source and only by this method that the city of Philadelphia erects from six thousand to eight thousand houses every year. It would cost, upon a careful calculation,

at least from two to four millions of dollars annually if the city government were obliged to do this work. It is therefore of importance, especially to the owners of real estate, that they should have this privilege, because if they had it not and if it devolved upon the city government to do this work, it could not and would not be done, because the enormous expense and the great outlay of money would not be submitted to by the people as a whole. To take it out of taxation would add at least one dollar upon the hundred dollars of assessment. It is to this source more than any other that we attribute the great enchantment of the values of our city property. Acres and acres of land which five or ten years back were devoted to the cultivation of grain are to-day crowded with houses. I trust that the Convention will permit an amendment such as this to be incorporated in the Constitution.

Mr. J. W. F. WHITE. I shall vote for the proposition now before us, not, however, because it is necessary to enable Philadelphia to prepare her streets for the Centennial. I shall vote for it on much broader grounds, and because it contains principles which ought to be incorporated in our Constitution. Experience in our State has shown that the system of making local improvements and charging the expense upon the property benefited by them, is a wise one. It has been adopted, I believe, in all the city charters in the State. Not only that; it is a principle of the general borough law of the State, and nearly every municipality in the State from Philadelphia on down to the smallest borough in the State, possesses this power. I say the experience of the past has shown the wisdom of such a provision. It never was called in question—not only that the city or borough could make an original improvement, such as a pavement, and charge it upon the property afterwards, but that they might renew an old, worn-out pavement and charge it upon the property—until the Broad street case in Philadelphia a few years ago. The section before us simply restores what has been the long established practice of our State, and what was believed to be the Constitutional law of our State until very recently.

Now, Mr. President, I find that the delegate from Philadelphia to my right (Mr. Dallas) opposes this section on the broad ground that no assessment for a local im-

provement should be charged upon the properties that may be benefited by it; and that I understand to be the argument of the delegate from Philadelphia to my rear (Mr. Biddle.) There are other members in this Convention who believe that the first section that we have adopted in the article on taxation and finance will not prohibit local assessments for local improvements; but the delegates to whom I have referred object to the section now before us for that very reason, and therefore indicate that they regard the section we have adopted as prohibiting local assessments for local improvements. I call the attention of members of the Convention to this fact, because there is no doubt on that point, whether under that section any city or borough will have the power to charge the expense of a local improvement upon the properties that may be benefited. That shows the difference of opinion in our Convention. We do not know what may be the construction of our courts when it comes before them; but if they should hold to that view, you strike down all the laws in reference to local improvements in cities and boroughs in this State.

Mr. President, I have feared that we were limiting and restricting the powers of the Legislature too much. It is no argument against the possession of power that in one instance in a century that power has been abused. Only one instance has been brought up here where this power has been abused in the city of Philadelphia, and because of the abuse in that one instance we are to strike down the power and take it entirely from the Legislature. Why, sir, if it be true that in that case there was an abuse of the power, is that an argument why we should take it from the Legislature entirely? We must trust the Legislature for certain purposes; we must trust the city councils for certain purposes, and as experience has demonstrated the wisdom of this provision, why not retain it and put it in our Constitution beyond doubt?

One further remark. The objection is in part, because this is only part of the objection, that the city should not possess the power to renew a pavement and charge the expenses of the re-pavement upon the properties abutting on the street or benefited by it. If the original provision be right, that the cost of the original improvement may be charged upon the properties, if it has lasted fifteen or twenty years and requires renewing or

the laying down of a new one, on what solid constitutional principal can you prohibit the Legislature or the city councils from imposing the cost of that renewal upon the property benefited? In many cases it may be, and undoubtedly would be, a wise provision. Admit that in one case it might be injurious and might work hard, is that a reason why the power should not be possessed? I venture to say that in nine cases out of ten, perhaps in ninety-nine out of a hundred, that provision would be a wise and salutary one. Why, then, shall we take it out of our Constitution or leave our Constitution uncertain on this subject and deprive the Legislature and our local authorities of the power they have always heretofore possessed, and under which all the cities and boroughs in this State have been improved immensely and thousands and tens of thousands of dollars added to the value of the property thus taxed? I hope that we shall not go any further than we have done in restricting and limiting the powers of the Legislature.

Mr. HOWARD. It is very true, as has been remarked here, that the Legislature have conferred authority upon cities and boroughs to make special assessment for building sewers and for the grading and paving of streets; but they never have conferred an authority so broad as is proposed to be conferred by this proposed section of the Constitution; and then that authority has been construed by the courts to limit that right of local construction to the general improvement.

Mr. J. W. F. WHITE. Under the law with reference to the city of Pittsburg, passed in 1863, and under which the city has been operating ever since, there is power to charge the cost of renewing pavements on the property.

Mr. HOWARD. If there is any such law, I say it is in direct conflict with a decision of the Supreme Court; but I do not know that there is any such law.

Mr. J. W. F. WHITE. I am merely speaking of that law.

Mr. HOWARD. I believe that if persons want such a law they ought to get it from the councils or get the Legislature to pass an act violative of that decision of the Supreme Court, but they ought not to get it here.

Enough has been stated by the delegates from Philadelphia (Mr. Biddle and Mr. Dallas) as reasons why this section should not be incorporated into the Constitution. I repeat that the Legislature

never has undertaken to confer upon city councils the authority that is contained in this section. Then I desire to call the attention of this body specially to the language of this section, because it is most broad, and I think very obnoxiously broad. It is drawn in a manner that will be a perfect trap upon the property holders. How does it read? "The General Assembly may authorize cities and boroughs to make local improvements with the assent of the majority in interest of the property holders affected thereby."

This language is broad enough to allow all outside of these improvements to go in and sign a petition to assess those that are benefited. You see the word "affected" is used in connection with the words "in interest." If they are "affected in interest" is the way it reads. Well, if a man has a cross street entering into that avenue anywhere, he is affected in interest by the improvement. There is no question about that. There will be very liberal men, perhaps, to sign a petition to councils for the making of improvements that affect their property by giving them additional avenues to open upon when they know that they will not have to pay a cent for the improvement.

I might vote for this proposition if its phraseology was so changed as to read:

"The General Assembly may authorize cities and boroughs to make local improvements with the assent of the majority in interest of the property holders directly benefited."

Then there would be less objection to it. Strike out that word "affected," and put in its place the words "property in interest directly benefited." That is what the argument was. Why not put it in the Constitution just as the gentlemen have talked it to this Convention? That is the way they talked; it is in their speeches, but it is not in their propositions here before this body. I object to it; I say it is not a fair proposition to even carry out the idea that it has been heretofore carried out by the Legislature so far as they have invested the authority in councils to authorize this kind of improvement and make this kind of assessment.

Just one word more. We are forever hearing this talk about benefits. I have got tired of this plan of benefiting a man against his will. I do not believe the principle is just in government that because a thing may benefit eight men you have no right to impoverish two. You have no right to assess a tax upon the

principle that because it will benefit nine men, it should send three men to the poor-house or take their property from them and rob them outright. We know perfectly well in our city that property holders frequently have abandoned their property to the tax gatherer under this very system of assessing taxes. We have had it under the old plan, where the councils were limited to the simple grading and making of the streets originally; but under this other power there would be nothing to hold them and they could lay down a street every other year and reassess the property from time to time to pay for it.

Now, Mr. President, I say it is not right to ask us to adopt such a proposition as this, although if gentlemen will offer a proposition authorizing the original grading and paving of streets and the making of sewers and charge the cost upon the property benefited thereby, I will vote for such a proposition. That would be defining what power may be exercised in this way. If we are to make special exceptions in the mode of assessing taxes, I say it is due to the people that the power should be defined. It is not to be left as an original power at the discretion of councils, to be altered from time to time and to be submitted to a board of viewers to say who is benefited or who is not.

Who is it that really use the streets? I venture to say that in the city of Philadelphia the men who own personal property, the men of money, the large manufacturers, the men whose means are invested in personal property, really damage the streets ten dollars where the real estate owners damage them one, by driving over them and transporting the products of their large business; and yet that large business escapes taxation. Shall we now pass a section that makes it obligatory upon the property holders to do this perpetually for the benefit of these men?

I am opposed to it. Let the friends of this section draw up a proposition that will tax property for the original grading of a street, upon the petition of the majority in interest that is to be directly—use the word "directly"—affected by it, and let it express exactly what the advocates of this amendment themselves express upon this subject, and what I say this section does not, and then I am willing to vote for it. I am willing that property should pay for making the original grading and paving of a street, and I

am willing that it should keep the pavement in repair forever afterward ; but to keep up the road bed for the benefit of all the rest of the people, all the owners of personal property, is wrong and ought not to be sanctioned by this Convention. If such a fraud is to be perpetrated, do it by the Legislature, not by this Convention.

Mr. LITTLETON. I call for the reading of the amendment.

The CLERK read as follows :

The General Assembly may authorize cities and boroughs to make local improvements with the assent of a majority in interest of the property holders affected thereby, by special assessment on the property benefited."

Mr. LITTLETON. That is only on the property benefited.

Mr. BUCKALEW. I hope the Convention will not vote upon this article so as to load it down with this amendment. I express this hope in view of the well understood fact that there is no necessity for a constitutional provision in order to authorize the enactment of laws upon this subject. The general powers of the Legislature are ample to cover this whole subject. The particular provision in the article which has been referred to certainly does not limit it in this respect, and therefore there is no necessity for a provision here unless we are to adopt it upon the point made by the gentleman from Philadelphia, (Mr. Cuyler,) that is to reverse and overturn some decision which has been made by the Supreme Court. Now, if I am called upon to reverse that decision, I should like to know exactly what it is. I should claim, if I am to pass upon that question, that the decision be produced and that I shall understand whether it was based under a particular wording of some law relating to Philadelphia or upon the general question of legislative power to authorize such assessments as those which were involved in the case.

Mr. EWING. Will the gentleman pardon an interruption ?

Mr. BUCKALEW. Yes, sir.

Mr. EWING. I wish to state that this section is not intended to reverse that decision.

Mr. BUCKALEW. I am speaking to the argument made by the author of this amendment, and I think I have made a satisfactory and sufficient reply to it.

Mr. MACVEAGH. The gentleman from Philadelphia (Mr. Cuyler) stated distinctly that it was to reverse that decision

he introduced his amendment. I was going to propose that he should reverse it in the schedule.

Mr. BUCKALEW. I repeat that I hope this Convention will not load this article of our amended Constitution with this much disputed question, one in which the pecuniary interests of so large a number of people are involved on either side, in every city and borough of this Commonwealth. In fact, there is no necessity for us to give an official grant of power to the Legislature over it. I would leave this whole question of arbitrary assessments to be regulated as it has been heretofore, by law, to be extended or contracted according to the desires of our people, and to be moulded by the courts of justice from time to time as it has been heretofore, upon full consideration and deliberate argument before them when they can become possessed of the whole merits of the subject, which it is impossible for us to possess here in this hurried manner and at this time.

This amendment says any "improvement." Why, sir, that is much broader than anything we have had in our legislation. It is not confined to roads or streets ; it is not confined to the establishment of public parks ; it is not confined to projects along the borders of cities or on the shores of rivers ; but it embraces anything which the municipal councils may choose to characterize as an improvement. There is no limit to it, no rule prescribed by which this discretion shall be confined within its proper boundaries, and if you put this power here it will be beyond the authority of the Legislature to contract it or of the courts to restrain it. It is, therefore, a provision full of danger, and it ought to be left where we leave the great mass of all the disputed questions of this kind, to the law-making power of the Commonwealth from time to time to change their enactments on the subject.

A further remark and I am done. I object here and now to the discussion of this subject upon its merits, to discussions of this question as to whether these improvements shall be made or not by arbitrary assessment under power of law. I object to a discussion of that question on its merits, because it does not belong here. It is for the Legislature and for the courts of justice under our law. What we are to consider here is whether it is necessary and expedient to put a provision on this subject into the Constitution ;

not whether it is right or wrong to make these assessments; not whether it is expedient or not to make them, but whether we shall insert a provision here into the Constitution on this subject. I am for leaving it where it has been reposed before, and I believe that in that sentiment I express the opinions of a large portion of the people of the State.

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

Mr. **BARDSLEY**. On that I call for the yeas and nays.

Mr. **EWING**. I second the call.

Mr. **MACVEAGH**. I would vote "nay" on this question, but I am paired with Mr. Cuyler, the author of the section.

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

Y E A S .

Messrs. Barclay, Bardsley, Beebe, Carey, Carter, Corson, Curry, Edwards, Ewing, Guthrie, Hanna, Knight, Littleton, M'Michael, Metzger, Minor, Parsons, Patterson, T. H. B., Purman, White, David N. and White, J. W. F.—21.

N A Y S .

Messrs. Alney, Alricks, Baer, Baily, (Perry,) Baker, Bannan, Biddle, Black, Bowman, Boyd, Brodhead, Brown, Buckalew, Cochran, Corbett, Curtin, Dallas, Darlington, De France, Dodd, Finney, Funck, Gibson, Green, Hay, Hazzard, Hemphill, Heverin, Horton, Howard, Hunsicker, Lamberton, Landis, Lear, Lilly, MacConnell, M'Murray, Mantor, Mott, Palmer, G. W., Palmer, H. W., Purviance, John N., Purviance, Samuel A., Rooke, Stanton, Struthers, Turrell, Wetherill, Jno. Price, Woodward, Worrell, Wright and Walker, *President*—52.

So the motion was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Bartholomew, Bigler, Broomall, Bullitt, Calvin, Campbell, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Cuyler, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Hall, Harvey, Kaine, Lawrence, Long, MacVeagh, M'Camant, M'Clean, M'Culloch, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Read, John R., Reed, Andrew, Reynolds, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G. Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, and White, Harry—59.

Mr. **HAY**. I move to go into committee of the whole for the purpose of amending the article by adding the following to section four:

"No city or other territory shall be consolidated with any city unless a majority of the electors of the city or territory proposed to be annexed vote in favor of such consolidation."

This is substantially a proposition which was offered before by one of my colleagues, who is now absent. I offer it somewhat for that reason, but further to prevent great wrongs such as have been inflicted on a portion of the residents of Allegheny county. It is to prevent the incorporation of outlying districts with a city, against their will, whether those outlying districts are other municipal corporations or portions of townships. There is nothing in the Constitution now to prevent such action, and great wrong has heretofore been accomplished because of that defect.

The **PRESIDENT**. The question is on the motion of the delegate from Allegheny.

The motion was not agreed to.

The **PRESIDENT**. The question is on the passage of the article.

The article was passed.

Mr. **HAY**. I do not know whether it is my duty to call for the yeas and nays. I am paired with the gentleman from Delaware, (Mr. Broomall,) who would have voted against the article and I for it.

The **PRESIDENT**. The article is passed.

CORPORATIONS.

Mr. **MACVEAGH**. The sixteenth article is next.

The **PRESIDENT**. It is moved to proceed to the consideration of the report of the Committee on Revision and Adjustment on article number sixteen, on private corporations.

The motion was agreed to.

The **CLERK** read the amendments reported by the Committee on Revision and Adjustment.

The amendments were agreed to.

Mr. **BEEBE**. I move that the article be transcribed for a third reading.

The motion was agreed to.

The article was read the third time as follows:

ARTICLE XVI.

PRIVATE CORPORATIONS.

SECTION 1. All existing charters, or grants of special or exclusive privileges,

under which a *bona fide* organization shall not have taken place and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

SECTION 2. The Legislature shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same for the benefit of such corporation, except upon condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

SECTION 3. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the Legislature from taking 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 manner as to infringe the equal right of individuals or the general well-being of the State.

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

SECTION 5. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.

SECTION 6. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate, except such as may be necessary and proper for its legitimate business. 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; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury.

SECTION 7. No corporation shall issue stocks 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.

SECTION 8. Municipal and other corporations, and individuals invested with the privilege of taking 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.

SECTION 9. Any general banking law shall provide for the registry and countersigning, by an officer of the State, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the State Treasurer for the redemption of such notes or bills.

SECTION 10. 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 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 invested or subscribed.

SECTION 11. The Legislature shall have the power to alter, revoke or annul any charter of incorporation now existing and revokable at the adoption of this Constitution, or any that may hereafter be created, 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 corporations. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

SECTION 12. No corporate body, to possess banking and discounting privileges, shall be created or organized in pursuance of any law without three months' previous public notice, at the place of the intended location, of the intention to apply for such privileges, in such manner as shall be prescribed by law, nor shall a charter for such privilege be granted for a longer period than twenty years.

SECTION 13. 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.

Mr. WRIGHT. I move to go into committee of the whole for the purpose of striking out the fifth section and inserting—

Mr. MACVEAGH. I trust the gentleman will give way for a moment. I was going to make a motion in reference to the heading of this article, to strike out the word "private." We give a definition to the word "corporations" in the closing section and define it distinctly, and the article includes municipal corporations, as several of the sections do.

The PRESIDENT. The question is on the motion of the delegate from Luzerne (Mr. Wright.)

Mr. WRIGHT. My motion is to go into committee of the whole for the purpose of striking out the fifth section and inserting in lieu thereof the following;

"No foreign corporation shall do business in this State without having an authorized agent or agents residing within each county where their business is transacted, upon whom process may be served."

It will be noticed by the chairman of the committee that what I propose is that every company shall have an authorized agent residing within each county where its business is done, upon whom service of process may be had. I do this at the instance of the officers of the Delaware and Hudson canal company. They were the great pioneers of Luzerne, the first to develop the coal regions. Their office is in New York; all their reports are made to the office in New York. They have no necessity for a place of business in Pennsylvania. But my amendment provides that every foreign corporation shall have a resident agent living in each county of the State where their business is done, upon whom service of process may be had. I cannot see the necessity for their having a place of business where they have no business, as the section requires, because all the business of the office is transacted at one place.

I presume the chairman of the committee will have no objection to the striking out of the section the words "one or more known places of business," and that is the substance of my amendment.

The PRESIDENT. The question is on the motion of the delegate from Luzerne.

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

Mr. J. PRICE WETHERILL. I second the call.

Mr. MACVEAGH. I think there can be no objection to this change, certainly.

The PRESIDENT. The Clerk will call the names of delegates on the motion of the delegate from Luzerne.

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

YEAS.

Messrs. Baer, Brown, Cochran, Corson, Darlington, Finney, Funck, Guthrie, Hanna, Lear, MacConnell, M'Murray, Mott, Palmer, G. W., Palmer, H. W., Purviance, Sam'l A., Wetherill, John Price and Wright—18.

NAYS.

Messrs. Alricks, Baily, (Perry,) Baker, Bannan, Barclay, Beebe, Biddle, Black, Bowman, Boyd, Brodhead, Buckalew, Calvin, Campbell, Carey, Cassidy, Corbett, Curry, Curtin, De France, Dodd, Edwards, Ewing, Gibson, Green, Hay, Hazzard, Hemphill, Heverin, Horton, Howard, Hunsicker, Lamberton, Lilly, MacVeagh, Mantor, Metzger, Minor, Parsons, Patterson, T. H. B., Purman, Purviance, John N., Rooke, Struthers, Turrell, White, David N., White, J. W. F., Woodward, Worrell and Walker, *President*—50.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Bailey, (Huntingdon,) Bardsley, Bartholomew, Bigler, Broomall, Bullitt, Carter, Church, Clark, Collins, Craig, Cronmiller, Cuyler, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Hall, Harvey, Kaine, Knight, Landis, Lawrence, Littleton, Long, M'Camant, M'Clean, M'Culloch, M'Michael, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Read, John R., Reed, Andrew, Reynolds, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm H., Stanton, Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and White, Harry—64.

Mr. MACVEAGH. I move to amend the same section by striking out the words after "or," in the second line, to the word "authorized," in the same line, so that it will leave the section read:

"No foreign corporation shall do business in this State without having one or more authorized agent or agents in the same, on whom process may be served."

The PRESIDENT. The delegate from Dauphin moves to go into committee of

the whole for the purpose of striking out the words indicated.

Mr. MACVEAGH. That amendment, it seems to me, will answer every purpose that we ought to have in view and will not interfere with corporations coming here to do business. For instance, the Baltimore and Ohio railroad company wishes to come to Seventh and Chestnut streets to do business; that is, to enter into competition with the Pennsylvania Central or any other road for the transportation of freight and passengers. Why should we not encourage it? I grant you that if it comes it ought to have an authorized agent upon whom process may be served, but why put in language like "a place of business?" What does that mean? If an authorized agent is there, certainly that is enough. The Royal insurance company of London chooses to come here and offer perfectly reliable insurance. It has an authorized agent in the State, why should not I or any other citizen have my property insured there? Why, even, should it not send its agent to Harrisburg and make a policy of insurance on my property?

Mr. DODD. Will the gentleman permit me a question? How are we to know who is the authorized agent of the company or to find him unless there is a known place of business?

Mr. MACVEAGH. That is a matter to be provided by the Legislature, and that is a great deal better than attempting to fix it in the lines of the Constitution. When we fix the authorized agent, I suppose the Legislature will require him to have his address recorded in the Auditor General's office. That is a matter for legislative direction; but the expression, "a place of business in the State," seems to me to be undesirable. If they have authorized agents the Legislature certainly can arrange these details. At least it so seems to me.

The PRESIDENT. The question is on the motion of the delegate from Dauphin.

The motion was not agreed to, the ayes being twenty-three, less than a majority of a quorum.

Mr. WOODWARD. I move to go into committee of the whole for the purpose of adding the following to the ninth section:

"And no bank shall be empowered to issue paper money except such as shall be redeemable in the specie currency of the country."

Mr. President, when I had the great honor of submitting this amendment to the Convention on second reading it obtained just eighteen votes in this body.

I have no right to expect that it will obtain any more to-day; but there was nothing said in behalf of it at that time, and nothing said against it except by the yeas and nays. I believe the large vote against this proposition on a former occasion was caused by a misunderstanding that it was a proposition to resume specie payments. It was no such thing at all, then or now. If people are afraid of a resumption of specie payments, I am not the man to propose it, and have not proposed it.

I can readily understand that there are reasons growing out of the circumstances of the country which would make it inexpedient to resume specie payments now, directly, immediately, suddenly. I think, with General Grant, that it is to be brought about gradually and by the logic of events. I read not long since, as you all did, General Grant's views on the finances of the country, and I think the most part of them were very sound. Specie payments at an early day seems to be one of the expectations of that distinguished statesman.

But, sir, what I desire to say is, that whilst we are providing in our fundamental law for the incorporation of banks, we ought to do ourselves the great credit of forbidding the Legislature to make any future banks of issue that shall not be specie-paying banks; we ought to do ourselves the great justice of forbidding any paper money to be made and circulated in Pennsylvania that is not redeemable in gold and silver. We have no banks of issue now; perhaps we never shall have any again. In that case, my amendment will be harmless. But as the Constitution stands, we may have banks of issue; banks that exist may be authorized to issue paper money if they are not now authorized to issue it; future banks may be created with that power. I want it put in the Constitution that no banks existing or hereafter incorporated shall be permitted to issue paper money that is not redeemable in gold and silver. That is not the resumption of specie payments, which seemed to alarm several gentlemen. Is not that a fair, manly proposition? We place ourselves thereby simply on the basis upon which all the civilized world besides stands. All over the world, except in this country, gold and silver in some form or

other, are the standard of values, and it ought to be so in Pennsylvania. At any rate we ought not to further corrupt our currency by allowing any of these corporations to issue paper money that is not redeemable in gold and silver. That is the whole scope of my amendment. I want to impress that feature upon our fundamental law. I want to do it for the benefit of my native Commonwealth. I want to do it for the protection of my fellow-citizens. Therefore I have offered the amendment.

Mr. MACVEAGH. If it were an open question gentlemen might vote in favor of the amendment who will not be able to do so now. The difficulty that will present itself to every mind is that the question of the currency has become by the inevitable logic of past events a national question and not a State question, and if the National government chooses to allow banking without the necessity of a redemption of notes in coin, it is quite useless for this State to endeavor to compel her banks to redeem in coin. It simply would either bankrupt all the banking institutions of this State if they issued notes, or it would make the creation of State institutions utterly impossible. It is quite out of the question for a State bank, side by side with a National bank, to redeem its notes in coin while the National bank is not required to do so.

Mr. WOODWARD. Allow me to say (because I find that questions are sometimes decided upon a delusive statement) that the gentleman has missed the philosophy of this amendment utterly and totally. It has no reference to National banks, either present or future.

But again, the gentleman is wrong in saying that this whole subject of currency has been taken from the States, and belongs to the Federal government.

Mr. MACVEAGH. I say in practice it is so now.

Mr. WOODWARD. The gentleman will not say that the practice of the country is in violation of the Constitution of the country, I trust. The Constitution of the country makes banking a State matter, one of the reserved rights of the people, and surely they cannot be robbed of it by any practice. The gentleman stands upon the constitutional position, or else he does not stand upon anything, that the Federal government has taken this subject of currency entirely from the States. Against that I enter my most solemn protest; and if that be not true, as surely it

is not, then the gentleman's argument is baseless.

Mr. MACVEAGH. I say there are no State bank notes in circulation now. The logic of events has transferred the notes, and if the national banks are not required to redeem in specie, we cannot require the State banks to do so.

Mr. HAZZARD. I am very much in favor of this proposition, because it will bring all the specie of the country into Pennsylvania, and I am inclined to vote for that. [Laughter.] I am opposed to our people losing any of it. We need it all in Pennsylvania. We require every dollar of it that there is in the United States, and I like that kind of currency!

The PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Woodward.)

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

Mr. Hemphill, Mr. Church and Mr. Worrell seconded the call.

The question being taken by yeas and nays resulted as follow :

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bannan, Black, Boyd, Brodhead, Buckalew, Carter, Cassidy, Church, Corbett, Corson, Curry, Dallas, De France, Ewing, Gibson, Guthrie, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Mott, Purman, Read, John R., Wetherill, John Price, Woodward and Worrell—30.

NAYS.

Messrs. Ainey, Beebe, Biddle, Bowman, Brown, Calvin, Campbell, Carey, Cochran, Curtin, Darlington, Dodd, Edwards, Finney, Funck, Green, Hanna, Horton, Howard, Lamberton, Lilly, Littleton, MacConnell, MacVeagh, Mantor, Minor, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Purviance, Sam'l A., Rooke, Stanton, Struthers, Turrell, White, David N., White, J. W. F. and Walker, President—39.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Bartholomew, Bigler, Broomall, Bullitt, Clark, Collins, Craig, Cronmiller, Cuyler, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Hall, Harvey, Kaine, Knight, Landis, Lawrence, Lear, Long, M'Camant, M'Clean, M'Culloch, M'Michael, M'Mur-

ray, Mann, Metzger, Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Reed, Andrew, Reynolds, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, William H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, White, Harry and Wright—63.

Mr. DALLAS. I move to go into committee of the whole for the purpose of amending the second section by inserting after the word "same," in the second line, these words: "Or pass any other general or special law."

Mr. President, we have in the article upon railroads and canals, which we have not yet considered upon third reading, a section which is intended to meet the identical purpose intended by section two of the article on private corporations. Section twelve of the article on railroads and canals reads as follows:

"No railroad or canal or other transportation company in existence at the time of the adoption of this article shall have the benefit of any legislation, by general or special laws, except on condition of complete acceptance of all the provisions of this article."

The second section of the pending article provides that

"The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same for the benefit of such corporation, except upon condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution."

As the section appears in the article on railroads and canals, it provides that the corporation asking for beneficial legislation shall accept the provisions of that article. The section now in my hand in the article on private corporations provides that the corporation shall accept all the provisions of the Constitution. It is therefore broader, and with the insertion of the words that I propose, thus one section will incorporate within itself all that is intended by the two sections, and will therefore be a saving of space in the Constitution.

The PRESIDENT. The question is on the motion of the delegate from the city (Mr. Dallas.)

Mr. COCHRAN. If this is intended as a substitute for the twelfth section of the railroad article, I hope it will not be adopted. That section is specific.

Mr. EDWARDS. I ask to have the section read as proposed to be amended.

The PRESIDENT. It will be read.

The CLERK. The section, if amended as proposed, will read as follows:

"The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution."

Mr. BUCKALEW. That merely perfects the section.

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

Mr. EDWARDS. I second the call.

Mr. CAREY. Mr. President: The gentlemen who advocates this provision in both these sections certainly have not looked into the question as thoroughly as they ought to do. The sole object of the provision in the railroad article was to compel the existing companies that have coal lands to surrender them, nothing else. I have no interest in any of those companies, never have had any, never expect to have any; but I want gentlemen to look for a very few minutes at what has been the progress of things in the State which has brought about what you see, and then they will determine whether it is expedient to make this change.

The phenomena of mineral development at various times and places are almost identical. In California the miner began with his tin pan and his lease of twenty to thirty feet, and from that you trace upwards through water flows, steam engines, and waste of every description, until at length you reach the point where the owners of thousands and tens of thousands of acres are working together to accomplish that great Sutro tunnel upon which there will be expended eight, ten, or twelve millions of dollars, and which will give the most perfect system of drainage that the world has ever known, and give probably the production of the precious metals on better terms than the world has ever known.

Now, look into our coal regions, and you will find exactly the same course of things. The first miner in Schuylkill county began with his pick and his wheelbarrow for his sole capital. Step by step he had his lease extended from sixty

or ninety feet to a few hundred feet. Then they got to work below the level. Then there were hundreds of acres leased, and slopes worked, and steam engines introduced, and so they have gone on until at length they have reached the point where there is a pair of shafts going on in Schuylkill county a distance of one thousand four hundred feet, where an expenditure of \$600,000 will be required before a single ton of coal can go to market.

To authorize such an expenditure it was indispensable that a large quantity of land should be brought together. There have been brought together for that purpose some half dozen tracts, and the whole quantity to be drained in that way is a couple of thousand acres. The waste throughout the whole of that coal region has been owing to the want of combination, the want of capital, the want of bringing land together. The waste has been greater than has been found in any part of the world, I believe. There is nothing like it anywhere. The consequence is that the day is not far distant, I believe it will come within a dozen years, when the production of anthracite coal will have reached its utmost limit. The day is certainly at hand when all that richest portion of the coal region, the southern portion of Schuylkill county, will have to be occupied with works of the kind I speak of. As you pass south from the point I speak of, the coal still goes down until you have to go 1,500 or 2,000 feet to reach it. In order to put works there to enable them to bring the coal out, you must have large quantities of land brought together. Here we are asked to require all existing arrangements looking in that direction to be broken up and to go back to the old system of individual mining.

Why, sir, you might as well require the people of the Pacific States to go back to the tin pan and surface washing. It cannot be accomplished. But what can be done? You can impose all sorts of difficulties in the way of these people; but the course of things in California without law, without the creation of any monopoly, has been exactly the same as it is now in Schuylkill county. Although law has brought it about, it is what would have come naturally. In undertaking to cause all that property to be broken down again, you are making as great a mistake as could well be conceived. If this were carried into effect, it

would break up the whole of the anthracite region.

When such great interests are at stake, gentlemen should take a little time to consider and not allow their hostility to railroads and other corporations to induce them to vote for things that are really impracticable, that cannot be accomplished, and that if they could be accomplished would be movements in the wrong direction. For all purposes of work below the level you need combination, and every step must be inevitably towards bringing land more and more together.

I do hope that this matter will be left in the present article exactly where it has been placed; that is, applicable to future corporations; and when the railroad article comes up I shall move to strike out all that portion of the fifth section which is in this same direction, believing it to be to the interest of the community, and certain that it is in the direction of civilization.

Mr. MACVEAGH. Mr. President: I trust there will be no objection to passing this article as it is, and to letting this question remain until the railroad article is reached. I read this article over, and I did not see any objection to it as it now is. I think we had better accept it. While this amendment would undoubtedly harmonize things better, still I think in order to avoid the discussions that would undoubtedly arise on the subsequent article, it would advance our business to pass this as it is.

Mr. DALLAS. I am at a loss to see how business will be advanced by two sections instead of one.

The PRESIDENT. The yeas and nays will be taken on the motion of the delegate from Philadelphia (Mr. Dallas.)

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

YEAS.

Messrs. Ainey, Baer, Baily, (Perry,) Baker, Bannan, Beebe, Biddle, Bigler, Black, Bowman, Brodhead, Brown, Buckalew, Calvin, Campbell, Cassidy, Church, Dallas, Darlington, Dodd, Ewing, Finney, Guthrie, Hay, Hazzard, Hemphill, Heverin, Landis, MacConnell, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Read, John R., Struthers, Turrell, Wetherill, John Price, White, David N., Woodward, Worrell and Wright—43.

N A Y S.

Messrs. Alricks, Barclay, Boyd, Carey, Cochran, Corbett, Corson, Curry, Curtin, Edwards, Funck, Gibson, Green, Horton, Howard, Hunsicker, Lamberton, Lilly, Littleton, MacVeagh, Manter, Minor, Mott, Purman, Purviance, Samuel A., Reynolds, Stanton, White, J. W. F. and Walker, *President*—29.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Bardsley, Bartholomew, Broomall, Bullitt, Carter, Clark, Collins, Craig, Cronmiller, Cuyler, Davis, De France, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Hall, Hanna, Harvey, Kaine, Knight, Lawrence, Lear, Long, M'Camant, M'Clean, M'Culloch, M'Michael, M'Murray, Maun, Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter Pughe, Reed, Andrew, Rooké, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and White, Harry—60.

So the motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Corbett in the chair.

The CHAIRMAN. The committee of the whole have had referred to them an amendment to the second section, which will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Corbett) reported that the committee of the whole had made the amendment to the second section directed by the Convention.

Mr. CORSON. I move to go into committee of the whole for the purpose of amending section eight by adding these words:

"Dwelling houses shall not be destroyed by the opening of streets or roads until compensation therefor shall first have been ascertained."

My idea at first was to insert the two words "ascertained and" immediately after the words "shall be" in the fourth line of section eight, so that it would read: "Which compensation shall be ascertained and paid or secured before such taking, injury or destruction;" but in the minds of many of the delegates, that would seem to be an obstruction in the way of the location of roads, especially railroads; and as the only object I seek to accomplish is to ascertain the damages that will be done by the destruction of dwelling houses before they

are actually destroyed, I prefer to have it in an independent paragraph.

Now, if I can get the ear of the Convention for a moment, I think I shall enable delegates to see, if they follow me, that there is absolute necessity for just this paragraph in this section. For instance, a street is opened through a city or borough and it destroys the dwelling house, it may be, of a widow who has no man to look after her rights or her interests. As the law now is, that house may be utterly demolished and destroyed, no vestige of it left, not one brick upon another. Then comes a jury to assess damages done to that woman's property. How do they know what has been the extent of the injury to her? She must rely on the uncertain evidence of human witnesses who may be interested, who may have an object in depreciating her property, many of whom, perhaps, will have an object in depreciating her property. Justice never can be done to her.

This proposition of mine does not prevent the progress of improvements, because the work goes on. Immediately when a road or street is ordered to be opened through a borough, the jury must ascertain the damages that will be done to that property, and they having been ascertained they can be secured and paid. The reason why I confine it to dwelling houses is just this: If the road runs through a vacant lot there is no occasion for any delay; the damages need not be ascertained beforehand; if it runs through any other building it does not make so much difference, because it drives no man, woman or child, away from house and home. It is only when it takes a dwelling house that the damage is to be ascertained before the destruction takes place.

The PRESIDENT. The question is on the motion of the delegate from Montgomery.

The motion was not agreed to.

Mr. ALRICKS. I move that the Convention resolve itself into committee of the whole for the purpose of striking out part of the third line and the two last lines of section eight, from the word "destroyed" to the end of the section.

The Convention will see that this section is very verbose and that the meaning of the Convention will be much better expressed in the portion of the section that remains than it is expressed now. And then the latter part of the section is supplied by the tenth section of the Bill

of Rights. The Bill of Rights says in the tenth section :

"Nor shall private property be taken or applied to public use without authority of law and without just compensation being first made or secured.

Members of the Convention will observe that as this section is now framed, if the injury was occasioned by the operation of the works, the party would recover no damages. Therefore the words that I wish to strike out are words of limitation. I will now read the section as it would stand after these words are stricken out :

"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."

That expresses very clearly the intention of the Convention ; that is, that if property is injured by the operation of the works, the party is to recover damages ; but we do not say so if you continue the words that are found in the section afterwards, because they are words of limitation, and say that damages shall be recovered for property taken, injured or destroyed by the construction or enlargement of the works. The injury might arise from some other cause. I therefore ask that the House go into committee of the whole for the purpose of making this amendment.

On the question of agreeing to the motion of Mr. Alricks, a division was called for, which resulted twelve in the affirmative. This being less than a majority of a quorum, the motion was rejected.

Mr. BRODHEAD. I move that the Convention go into committee of the whole in order to amend the first section, by striking out the words "existing" and "or exclusive" in the first line ; also the words "*bona fide*," in the second line, and inserting the word "an" in the second line, so as to make the section read :

"All charters or grants of special privilege, under which an organization shall not have taken place and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity."

The word "existing" is entirely unnecessary there because it only applies to charters under which an organization shall be made before the Constitution goes into effect, and as no new charters can be passed between this and then, the word is useless. The words "or exclusive," are embraced in the word "special," and the

words "*bona fide*" are only a duplication of the words "in good faith," which are put into the section after the phrase "business been commenced." "Good faith" evidently applies to the organization also, and the full object of the Convention will be accomplished by changing the wording of the section as I have proposed.

The PRESIDENT. The question is on the motion of the gentleman from Northampton.

On the question of agreeing to the motion, a division was called for, which resulted sixteen in the affirmative. This being less than a majority of a quorum, the motion was rejected.

Mr. BRODHEAD. I now move to go into committee of the whole for the purpose of amending the seventh section, so as to make it read as follows :

"No corporation shall issue stocks or bonds except for labor done or to be done, money, 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 thirty days' notice, given in pursuance of law."

The objection to this section is this : As it is now framed no corporation could issue bonds or stock "except for money, labor, or property actually received." You cannot receive labor, and to that extent the sentence is not grammatical. Hence it is proper to make the amendment which I have suggested.

But there is another objection to the section. Stocks or bonds cannot be issued under its operation except for labor, money or property. Many corporations frequently make contracts for the issue of their stock for labor to be done. Scarcely a corporation goes into operation without entering into such a contract ; and with the section in its present form placed in the organic law, this would be impossible hereafter. I hope that the amendment will prevail.

Mr. AINEX. It is also well known that many corporations issue stock or bonds for actual improvements made in their works. I think this section, if not amended, would prevent the issuing of stocks for improvement.

Mr. BRODHEAD. The suggestion of the gentleman from Lehigh is of value in this connection. I may also add that I have

changed "sixty" into "thirty," because we have uniformly regarded thirty days as sufficient notice of any proposed increase of stock.

The PRESIDENT. The question is on the motion of the gentleman from Northampton.

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

Mr. EDWARDS. I second the call.

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

Y E A S .

Messrs. Ainey, Baer, Bigler, Black, Boyd, Brodhead, Brown, Buckalew, Cassidy, Corbett, Corson, Dallas, Darlington, Dodd, Ewing, Gibson, Green, Guthrie, Hemphill, Heverin, Horton, Howard, Hunsicker, Knight, Lamberton, Lilly, Littleton, Minor, Mott, Purviance, John N., Purviance, Sam'l A., Read, John R., Rooke, Stanton, Struthers, White, David N., White, J. W. F., Worrell and Walker, *President*—39.

N A Y S .

Messrs. Alricks, Baily, (Perry,) Baker, Bannan, Barclay, Beebe, Biddle, Bowman, Calvin, Campbell, Carey, Cochran, Curry, De France, Edwards, Finney, Funck, Hay, Hazzard, Landis, MacConnell, MacVeagh, Mantor, Metzger, Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Reynolds, Turrell, Wetherill, John Price, Woodward and Wright—33.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Bardsley, Bartholomew, Broomall, Bullitt, Carter, Church, Clark, Collins, Craig, Cronmiller, Curtin, Cuyler, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Hall, Hanna, Harvey, Kaine, Lawrence, Lear, Long, M'Camant, M'Clean, M'Culloch, M'Michael, M'Murray, Mann, Mitchell, Newlin, Niles, Palmer, G. W., Patterson, D. W., Patton, Porter, Paghe, Reed, Andrew, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and White, Harry—60.

So the motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Landis in the chair.

The CHAIRMAN. The Convention has gone into committee of the whole in order to insert the amendment of the gentleman from Northampton. It is inserted.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Landis) reported that the committee of the whole had amended the first section as directed by the Convention.

Mr. WORRELL. I move that we adjourn.

Mr. MACVEAGH. I want the yeas and nays on that.

Mr. HUNSICKER. We will defeat it.

Mr. MACVEAGH. Very well.

The motion was rejected.

Mr. DARLINGTON. I move that the Convention go into committee of the whole for the purpose of striking out the fourth section.

The PRESIDENT. The Clerk will read the section proposed to be stricken out.

The CLERK read the section, 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."

Mr. DARLINGTON. I do not suppose there is anybody here likely to change his vote or his mind on account of what I have to say, and therefore I shall not say much. This, however, is the only place in the Constitution where cumulative voting is introduced. I do not see why, when a church is to be incorporated, or a burial ground, it is necessary to limit the stockholders in the Constitution, so that they must vote under this cumulative plan. I ask for the yeas and nays on my motion.

Mr. DALLAS. I second the call.

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

Y E A S .

Messrs. Beebe, Bowman, Darlington, Edwards, Ewing, Horton, Knight, Littleton, MacConnell, MacVeagh, Mantor, Minor, Purviance, John N., Purviance, Samuel A., Rooke, Stanton, Struthers, Turrell, White, David N., White, J. W. F. and Walker, *President*—21.

N A Y S .

Messrs. Ainey, Alricks, Baer, Baily, (Perry,) Baker, Bannan, Biddle, Bigler, Black, Boyd, Brodhead, Brown, Buckalew, Calvin, Campbell, Carey, Carter, Cassidy, Cochran, Corbett, Corson, Curry, Curtin, Dallas, De France, Dodd, Finney, Funck, Gibson, Green, Guthrie, Hay, Hazzard, Hemphill, Heverin, Howard,

Hunsicker, Lamberton, Landis, Lilly, M'Michael, Metzger, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Read, John R., Wetherill, John Price, Woodward, Worrell and Wright—53.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Adicks, Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Bardsley, Bartholomew, Broomall, Bullitt, Church, Clark, Collins, Craig, Cronmiller, Cuyler, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Hall, Hanna, Harvey, Kaine, Lawrence, Lear, Long, M'Camant, M'Clean, M'Culloch, M'Murray, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Reed, Andrew, Reynolds, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H. Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and White, Harry—58.

Mr. STRUTHERS. I move to go into committee of the whole for the purpose of striking out in the third line of the third section the words "and franchises."

Mr. President, I doubt whether the right of eminent domain has any application at all to franchises. It has relation to property. The property being taken away from a company, and of course their franchise falls, and it would be a vain thing to undertake to give the franchise of one company over to another; it would be of no use to them. I think, therefore, that the words had better be stricken out. The property of a company may be taken and given over to another company under the right of eminent domain, but to attempt to give the franchise over would be a vain thing; it would be of no use whatever to the grantee of it.

Mr. BRODHEAD. This amendment is eminently proper, and I hope it will prevail. The object of this section is to place incorporated companies on the same level with individuals. You do that by simply taking their property. If you take away the franchises, you take that from the corporation which you do not take from the individual. That is not right. To take the property is a matter that can be very easily done; but to take the franchises would be, in my opinion, entirely improper and in contravention of a good many principles that we have established in this Constitution.

Mr. MACVEAGH. I trust this amendment will not be agreed to. It may be of

vital importance to be able to take the franchises, and the franchises may be the very life of a corporation; it may not have any property.

Mr. WOODWARD. My opinion is that the Legislature will have many provisions to make under this new Constitution, and will provide, no doubt, by general law for those cases in which the franchise passes from the debtor corporation to a purchaser, whereby he becomes a corporation with the power to exercise that franchise. It will be practically, I think, a substitution of responsible parties for an irresponsible corporation. I hope the amendment will not be made.

The PRESIDENT. The question is on the motion of the delegate from Warren (Mr. Struthers.)

The motion was not agreed to.

Mr. COCHRAN. I move to go into committee of the whole—if the amendment will not be agreed to unanimously—for the purpose of striking out the words, "State Treasurer," in the fourth line of the ninth section, and inserting "Auditor General." ["That is right."]

The PRESIDENT. Will the Convention give unanimous consent to strike out in the ninth section the words, "State Treasurer" and insert "Auditor General?"

SEVERAL DELEGATES. No.

Mr. COCHRAN. When the State of Pennsylvania, about 1859, passed a free banking law, they required the notes to be countersigned by the Auditor General, and all the securities to secure the redemption of those notes to be deposited in the Auditor General's office. That was the practice then, and I see no reason for departing from it now.

The PRESIDENT. The question is on the motion of the delegate from York.

The motion was agreed to.

The PRESIDENT. Will the Convention now unanimously consent to make the amendment? ["Yes."] The amendment is made.

Mr. WOODWARD. I move to substitute in the first line of the thirteenth section the word "Constitution" for the word "article." I make this motion at the instance of others.

Mr. JOSEPH BAILY. Let it be done unanimously.

Mr. T. H. B. PATTERSON. Let unanimous consent be given.

The PRESIDENT. Will the Convention unanimously consent? ["Aye." "No."]

Mr. MACVEAGH. I think that cannot safely be done, because we do not know

in what collocation we have used the term in other articles. We do know here that we have used it in a connection for which this is a proper definition; but without having the other articles before us we may have used it for political corporations, such as the State or the county. When we are not through with our work yet, now to spread this word clear over the entire Constitution and give a binding constitutional definition of it, I think is dangerous.

Mr. WOODWARD. I said I made the motion at the instance of others, and as it is likely to encounter formidable opposition, I withdraw it.

The PRESIDENT. The motion is withdrawn.

Mr. BAER. I propose to go into committee of the whole for the purpose of amending section eight, by adding at the end thereof the following:

"But in ascertaining the amount of compensation to be paid the benefits resulting to the owner of the property from the improvements made shall be considered."

Mr. BIDDLE. That is the law now.

Mr. PARSONS. It is the act of Assembly now.

The motion was not agreed to.

Mr. JOSEPH BAILY. I have examined this article very carefully, and I see that the Committee on Revision have made no essential alterations in the article as it passed on second reading. Their amendments are principally improvements of the language. I do not think this Convention can amend it any more; this is election day, and it is very necessary that this article should be disposed of to-day. I therefore call for the previous question upon the article.

Mr. BUCKALEW. I hope the gentleman will allow me to make a verbal correction.

Mr. JOSEPH BAILY. I withdraw the call for that purpose.

Mr. BUCKALEW. In the first line of the fourth section, I desire to strike out the words "the managing officers," and insert "directors or managers," which is the meaning and follows the language in other Constitutions.

The PRESIDENT. Will the Convention agree to that change? ["Aye." "Aye."] It is agreed to.

Mr. JOSEPH BAILY. I now call the previous question.

Mr. HOWARD. I hope the call will not be sustained. It is too soon to call the

previous question on an article of this magnitude.

Mr. MACVEAGH. I trust even if the call for the previous question is sustained, that it will not interfere with the asking of unanimous consent to make verbal alterations, though it will interfere with debate.

The call for the previous question was seconded by Messrs. Bannan, Carey, Carter, Barclay, MacConnell, MacVeagh, Calvin, Knight Guthrie, Bowman, Stanton, Baker, Mantor, Heverin, Funck, Horton, Baer, T. H. B. Patterson, Hazzard and D. N. White.

The PRESIDENT. Shall the main question be now put?

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

Mr. CALVIN. I second the call.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Baer, Baily, (Perry,) Baker, Bannan, Barclay, Bowman, Boyd, Calvin, Carey, Carter, Cassidy, Curry, De France, Funck, Guthrie, Hazzard, Heverin, Hunsicker, Knight, Landis, MacConnell, MacVeagh, Mantor, Patterson, T. H. B., Rooke, Stanton, Wetherill, John Price, White, David N., Wright and Walker, *President*—30.

NAYS.

Messrs. Ainey, Alricks, Beebe, Biddle, Bigler, Black, Brodhead, Brown, Buckalew, Campbell, Cochran, Corbett, Corson, Curtin, Darlington, Dodd, Edwards, Ewing, Finney, Gibson, Green, Hay, Hemphill, Horton, Howard, Lamberton, Lilly, Littleton, M'Michael, M'Murray, Minor, Palmer, G. W., Palmer, H. W., Parsons, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reynolds, Struthers, Turrell, White, J. W. F., Woodward and Worrell—44.

So the main question was not ordered.

ABSENT—Messrs. Achenbach, Addicks, Andrews, Armstrong, Bailey, (Huntingdon,) Bardsley, Bartholomew, Broomall, Bullitt, Church, Clark, Collins, Craig, Cronmiller, Cuyler, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Gilpin, Hall, Hanna, Harvey, Kaine, Lawrence, Lear, Long, M'Camant, M'Clean, M'Culloch, Mann, Metzger, Mitchell, Mott, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Reed, Andrew, Ross, Runk, Russell, Sharpe, Simpson, Smith,

H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and White, Harry—58.

Mr. CORRETT. I move that the Convention do now adjourn.

The motion was not agreed to.

Mr. DODD. I move to reconsider the vote by which we went into committee of the whole on the amendment of the delegate from Northampton (Mr. Brodhead) to section seven.

Mr. AINEY. I second the motion.

Mr. MACVEAGH. If gentlemen would take a little more pains in voting amendments in, it would not be necessary to move to strike them out.

The PRESIDENT. The question is on the reconsideration.

The motion was agreed to.

The PRESIDENT. The question now recurs on the motion of the delegate from Northampton (Mr. Brodhead) to go into committee of the whole to insert an amendment which will be read.

The CLERK. The amendment was in section seven, line one, after the word "for" to insert "labor done or to be done or for;" in line two to strike out the word "labor;" and in the sixth line to strike out "sixty" and insert "thirty;" so that the section will read:

"No corporation shall issue stocks or bonds except for labor done or to be done or for money 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 thirty days' notice given in pursuance of law.

The motion was not agreed to.

Mr. S. A. PURVIANCE. I move to go into committee of the whole for the purpose of striking out section ten.

Mr. DARLINGTON. I hope that motion will prevail, and I want to state one single consideration. Ever since that section was put in there, it has been unsatisfactory, and if gentlemen will be kind enough to attend to me for one moment I will state wherein it is objectionable. Under that section any two persons may set up a grocery on the corner in any town, advertise that they have put in a thousand dollars, spend it all, and leave their creditors minus. An individual who goes to the same place and starts the

same business with the same capital, and squanders it, is answerable to the extent of his estate for all his debts. I am opposed to giving to any combination of two persons the power to do that which will injure the whole community, when you do not give it to one person if he is alone. I am in favor of the individual liability of corporators. I am in favor of leaving this matter as it is under the law of partnership. Let every man who ventures into business expect to pay his debts, and let every two or more who venture into business together expect to pay their debts. Under this section there is an easy escape for a company where there is no escape for an individual.

Mr. CALVIN. I hope this motion will not prevail. I regard this section as very important. It furnishes great facility for combining capital and labor. For example, a young man with skill fitting him for a certain kind of business wants a little capital. He has friends who would be willing to furnish him the capital on the principle of a limited liability. They would be very willing to furnish him the capital necessary for carrying on the business provided they were not liable beyond the amount of capital paid in or subscribed. It would furnish great facilities for the combination of capital and labor and would increase greatly the productive industry of the country, in my judgment. I hope therefore that this motion will not prevail. The very distinguished delegate from the city (Mr. Carey) read us a very elaborate and very able report on this section, and sustained it by a variety of views and arguments which I need only refer to.

Mr. HUNSICKER. I think this body is beginning to lose, if it has not already lost, its character of a deliberative body. A few moments ago, on the call of the yeas and nays, a very important amendment was made to the seventh section. Somebody in the back end of the Hall after a while rose and moved to reconsider, and without assigning a single reason, the Convention with a "yes" reconsidered it and voted down the original proposition.

Mr. BLACK. Oh, no.

Mr. HUNSICKER. Yes, sir, that is absolutely the truth; and now the gentleman from Chester rises in his place and asks us to strike out section ten, and very likely, judging from the past, that section, the most important of the whole article, in my judgment, will share the same fate that the amendment of my

friend from Northampton has just met. I think these two things put together have demonstrated the necessity for an immediate adjournment until to-morrow morning, and I therefore move that we adjourn.

Mr. MACVEAGH. It might demonstrate the necessity for an adjournment *sine die*, but not for an adjournment to-day.

Mr. PRESIDENT. I do sincerely trust that this section will not be stricken out. It enables men to do what they ought to have perfect liberty to do, to go into any business limiting their liability, without necessarily putting everything they have at the mercy of persons associated with them. It will be a benefit to the entire State, and I hope it will be retained.

Mr. BAER. I trust this section ten will not be stricken out, but that if it is too broad or not broad enough it may be amended. It provides that there shall be no liability beyond that of the joint capital which may have been invested or subscribed. If that does not include enough, let some one move to insert there that it shall include the earnings of that association in addition to the original capital, and in that sense I shall go for it. I hope the section will be retained.

Mr. WOODWARD. Mr. President: I rise to say that this section was the product of a good deal of careful thought under the guidance of our venerable friend who sits before me, (Mr. Carey,) and in the light of the legislation that has been had in the Parliament of Great Britain on this subject. But the committee reported the section with "five" instead of "two" persons; and if the gentleman from Chester objects to the section on the ground that it allows two persons thus to associate, I tell him that was put in on a motion which was carried in the Convention, and in a full Convention, and was not inserted by the committee. As reported by the committee the section enabled five persons to associate instead of two. I confess my own preference to be for a greater number than two, I thought five was about as small a number as we ought to provide for, and therefore we reported it in that way.

But, Mr. President, with or without the change from two to five, I trust the Convention will not let go of the valuable principle that is contained in this section. I say it was inserted in a comparatively full Convention after great deliberation; and now if in this thin body it shall be stricken out, I think we shall do ourselves and the

public great injustice. I do not want to reiterate the argument on the merit of the question. It was considered then; it was deliberately decided. If the gentleman from Chester will move to strike out "two" and insert "five," I will vote for that; but as to letting go the entire section, I think it would be a mistake, and I have heard no reason assigned yet that would justify us in reversing our deliberate action a few weeks ago.

Mr. HOWARD. I hope this section will not be stricken out. I regard it as a very valuable one. If this section is sustained, it will draw into active business in my judgment a very large amount of capital that is now refused, because men are unwilling to risk all they have in the world to the judgment and management of other persons. But this provides for notice to the community or creditors dealing with such persons, because they amount practically to a corporation where the stockholders are liable to the amount of their stock. The section provides for notice in this way:

"Such publicity shall be provided for"—

—That is, by law—

—"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."

Here is the protection to the public. The Legislature are to provide for publication, for notice, so that all persons who deal with these corporations, because they will be practically corporations, having the privileges of corporations, will deal with their eyes open. They are only liable to the amount of their stock. I believe that it will bring into actual manufacturing and other commercial pursuits millions of dollars that would not be invested or put into the hands of mere private parties where they would be liable to every dollar of debt that might be contracted.

I think it is a very valuable section and ought to be retained.

Mr. CAREY. Mr. President: This system has been in operation in Great Britain for five and twenty years, and so far from there having been any disposition to go back they have gone steadily forward from the first, making the power of association more perfect.

We have in the past done all in our power to force capital out of the State by putting on such limitations and restrictions as rendered it almost impossible for

any one to feel secure in engaging in any enterprise. This simply puts it in the power of men to come together and do that which every man has a natural right to do.

If you, Mr. President, and I, choose to come together and determine that we will trade with the world on principles of limited ability, and have it printed on a paper, and get every man to sign it, that accomplishes exactly what this does. We could do that to-day. This is simply to get rid of that difficulty in the way of it; and it is provided that the Legislature shall take such measures as will enable every one to understand that the liability is limited. When a man has that staring him in the face on every piece of paper that is issued, on every bill of lading, every bill of exchange, every bill of sale, every time he goes into the shop there is the word "limited," it is better than any law you can pass. He cannot do anything without knowing that it is limited, his eyes are open every minute, and I assert that there is more safety for men trading with associations under these circumstances than under any law that you can make, because you can hardly make a law through which a coach and six cannot be driven. We have found it so here. Now we want simply to do that which in England has proved most beneficial, and they have gone forward, as I tell you, from the first hour to the present, steadily enlarging and never have gone one single step backward.

I do hope this motion will not prevail.

Mr. DODD. Mr. President: It has struck me from the time this section was introduced on second reading as one of the most dangerous principles which we could possibly adopt in our Constitution. There being a difference of opinion in regard to it, on that ground, the argument that it is unnecessary and that it can safely be left to the Legislature should have great weight.

But I oppose it as a principle; what does it amount to? We say that any two individuals by subscribing to a certain paper can associate themselves together for any purpose whatever. Sir, if there was any one thing which the people demanded of us when we came into this Convention, it was to rid this State of the burdens that have been imposed upon it by corporations and associations. If there is any one thing for which we shall have to answer to the people when we return to our homes, it will be in regard to the

manner in which we have fulfilled our duty in that regard.

Corporations have more rights in this country than individuals have. It is useless to say that all men are free and equal while we are creating artificial bodies that have rights which individuals have not. Corporations have advantages by means of the association of individuals, by means of the association of capital, by means of their long life, by means of their lack of individual and of moral responsibility, and they stand opposed to the efforts of individuals in this regard and must necessarily do so, to say nothing of the valuable franchises which the State confers upon the most of them.

Now, instead of relieving the State from these burdens, instead of relieving individuals from these burdens and putting them upon an equality with associations as near as may be, we are offering a constitutional provision here that will enable every two men that desire to associate together in the grocery business, or in the butter business, or the hide and leather business, or anything they please, to do so, and what will be the consequence? The signs of "Smith & Co.," and "Brown & Co.," will be taken down upon your streets; we shall have no more partnerships; individuals cannot do business; it will be all done by corporations. We shall have "the Hide and Leather company," the "Shoe and Leather company," or whatever it may be; and every one knows that the moment men form themselves into a corporation they lose their moral responsibility in their business. The man who will deal with you honestly as one of the firm of "Smith & Co.," when he comes to deal with you under the name of some corporation, will not act in the same way. His moral responsibility is gone; he is not acting as an individual; he is acting simply as an agent of a machine. It is a well known truth that corporations have neither souls to be damned nor a proper place to be kicked; and this saying has a truth in it because they do not act in the same manner that individuals do.

But here is the worst part of this thing—its limited responsibility. It is said you make it safe by having the word "limited" put on every piece of paper and on every sign. I ask you, what good does it do to announce to the people that the responsibility is limited when you have no announcement of the amount of their debts. What care I that a corporation an-

nounces to me that its responsibility is limited? I may perhaps go to the trouble of hunting up the records and finding to what extent it is limited; but what good will that do me when I do not know what its indebtedness is, when it can conceal from me the state of its indebtedness? I cannot tell that its indebtedness does not exceed its responsibility. It may deceive me in relation to that; and when I am cheated and swindled they may say to me, "It was your own fault; the Constitution of our State protects us."

But now, how is the responsibility limited? It is limited to the amount of capital invested or subscribed. Three men may go into business and subscribe a capital of ten thousand dollars, if you please. They may carry on that business for years; they may prosper; they may make their hundreds of thousands of dollars out of it; and when they are found to be thus prosperous and wealthy, what is to prevent those men from incurring an indebtedness of a hundred thousand dollars? There is nothing whatever to prevent it; and then they may stop their business, may pay their indebtedness to the extent of the amount of capital subscribed, namely ten thousand dollars, and say to their debtors, who press them for payment: "The Constitution of the State protects us; that Constitution was made for capital and you, laborers and debtors, have no rights under it."

I am opposed to any corporation or association being created which will not impose individual responsibility upon the directors, at least for the wages of labor. I am opposed to doing anything in regard to this matter in the Constitution. Let it go to the Legislature. If they wish to try this dangerous experiment, let them do so; they can correct it, we cannot.

The corporations of this State will oppose our work at all events. Pass this section and we shall be ground between the upper and the nether mill stone, for those who are opposed to corporations will oppose it, and between the two we shall inevitably fall.

Mr. KNIGHT. Mr. President: This being an experiment, I have not made up my mind how it would work, whether for the benefit of the people or not; but there is one thing that I have made up my mind to, and that is, that the number should be increased to not less than three. If we allow any two persons to become incorporated we shall have a great many

very small institutions, and a great many that will not prosper. I think "two" should be stricken out and "three" inserted.

SEVERAL DELEGATES. Say five.

The PRESIDENT. The question is on the motion of the delegate from Allegheny (Mr. S. A. Purviance) to go into committee of the whole for the purpose of striking out section ten.

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

Mr. PARSONS. I second the call.

Mr. J. PRICE WETHERILL. Before the yeas and nays are called, I hope I may be pardoned for saying a word on the merits of this section and for giving a reason or two why I hope it will not be stricken out.

We have listened to the very eloquent appeal of the gentleman from Venango (Mr. Dodd) upon the other side of the question. He has drawn us a picture, and that picture really has a very terrible outlook to it; but that picture is not a true one, I submit, from the experience of the past and what we know as to what a free manufacturing law has produced, not only in this country but abroad. He cannot show me an instance where a laborer has lost by the manufacturing laws of this country one single dollar. Although in New England they have laws almost similar to the one which this section would give us, and although we have a clause in our manufacturing laws in this State which bind the stockholder to guarantee every dollar which may be due workmen for wages, yet neither he nor any other man on this floor can produce a single case where a laborer has ever been forced to make his wages from that security. Let him go through the coal regions, where there are a great many hundred companies under the general manufacturing laws of Pennsylvania; let him ask the miners there whether they ever lost a single dollar by any of these great manufacturing companies which have been working so prosperously for years, and they will say that they never lost a dollar. Now, sir, all this frightful picture which has been raised —

Mr. DODD. If the gentleman will permit me, I will say that in the oil region under the mining laws many of them have lost hundreds of dollars.

Mr. J. PRICE WETHERILL. All this frightful picture which the gentleman

from Venango has raised, I am satisfied exists but in his imagination.

It has been said that if we do not strike out this section we shall have the State shingled with corporations. Why, sir, the only satisfactory and thorough way to develop the great mining and manufacturing interests of this State is by this association of capital. New England is shingled over with corporations; but does New England suffer? Let the prosperity of New England, with its sterile soil, answer. Wherever it may draw material that would not otherwise come to it, it is attracted, and its prosperity is my answer. No, sir, we want a free manufacturing law, in order that we may have just such success in manufacturing enterprises here as they have had there; and have them here where we have our coal and where we have our iron. I say, sir, that by the passage of this section the great interests in this State, manufacturing and mining, will grow so as to make us the first State in the Union in regard to the products of each of those branches of industry.

It will not do for us to say that because we fear this trouble in the future, or because we fear that trouble in the future, therefore we should not take advantage of the wise experience of the past.

Now, sir, for these reasons I do hope that this Convention will not be frightened into voting against what they so carefully considered some months ago, and what they so prudently introduced into this article.

MR. S. A. PURVIANCE. Mr. President: When I made this motion I made it because I believed that legislation embodied in our organic law is a license to swindling, and the very argument presented by the gentleman from Venango was in part the one I intended to present to this Convention. It is certain that if this section is incorporated in the Constitution, any two men at any cross-roads in your Commonwealth may make the association therein contemplated. They may invest a capital of ten thousand dollars, and this section provides that their liability shall not extend beyond the capital invested. Now, sir, they may proceed in their business in the most reckless manner; they may use it up, they may destroy that capital, and when they come to close up their business, although they may have realized profits, they can pocket those profits, and they can say to their creditors:

"Our capital was ten thousand dollars, and it is all gone."

MR. MACVEAGH. If they have profits can they destroy the capital?

MR. S. A. PURVIANCE. Yes, sir, they can.

MR. MACVEAGH. They cannot.

MR. S. A. PURVIANCE. And, sir, they can again resume their business under the Constitution; they can contract debts in this city or elsewhere, and they can proceed in the same way until they have used up that capital, and then turn the cold shoulder to their creditors.

Now, sir, I ask whether this Convention will pass anything of the kind. Your Legislature can control this question; let it be left to them. Let us not put in the organic law what it seems to me, as I said before, would be a license to swindling.

THE PRESIDENT. The yeas and nays will be taken on the motion of the delegate from Allegheny.

MR. BAKER. I am paired with Mr. Finney on this question.

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

YEAS.

Messrs. Baily, (Perry,) Beebe, Bigler, Black, Bowman, Brown, Buckalew, Campbell, Cassidy, Cochran, Corson, Darlington, Dodd, Finney, Gibson, Guthrie, Hay, Hazzard, Hemphill, Landis, MacConnell, M'Murray, Minor, Mott, Palmer, G. W., Palmer, H. W., Parsons, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Struthers, Worrell and Wright—34.

NAYS.

Messrs. Alricks, Baer, Bannan, Biddle, Boyd, Brodhead, Calvin, Carey, Carter, Curry, Curtin, Cuyler, De France, Edwards, Ewing, Hanna, Horton, Howard, Hunsicker, Lamberton, Lilly, MacVeagh, M'Michael, Mantor, Patterson, T. H. B., Stanton, Turrell, Wetherill, John Price, White, David N., White, J. W. F., Woodward and Walker, *President*—32.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Bartholomew, Broomall, Bullitt, Church, Clark, Collins, Corbett, Craig, Cronmiller, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Fulton, Funck, Gilpin, Green, Hall, Harvey, Heverin, Kaine, Knight, Lawrence, Lear, Littleton, Long, M'Camant, M'Clean, M'Culloch, Mann, Metzger,

Mitchell, Newlin, Niles, Patterson, D. W., Patton, Porter, Pughe, Read, John R., Reed, Andrew, Rooke, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., Wherry and White, Harry—66.

The PRESIDENT. The yeas are thirty-four and the nays thirty-two. There is not a quorum voting.

Mr. MACVEAGH. Is it in order to move that my friend Mr. Dallas be sent for? He does not stay here, after all his anxiety on my account.

The PRESIDENT. It would not be in order to single him out.

Mr. MACVEAGH. He singled me out, and I desire to know if it will be in order to send for him, as I understand he is just needed to make a quorum.

Mr. CALVIN. I move that we adjourn for want of a quorum.

The PRESIDENT. There is a quorum in the room.

Mr. BOYD. Well, I move that we adjourn anyhow, and we can take another vote to-morrow.

Mr. HOWARD. There are some delegates here who did not vote. Mr. Baker and Mr. Knight did not vote.

Mr. CALVIN. I insist on my motion to adjourn.

Mr. MACVEAGH. There is a quorum present.

The motion to adjourn was agreed to, and (at two o'clock and forty-five minutes P. M.) the Convention adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND SIXTY-FIFTH DAY.

WEDNESDAY, October 15, 1873.

The Convention met at half-past nine o'clock A. M., Hon. John H. Walker, President, in the chair.

Prayer by Rev. J. W. Curry.

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

NEW MEMBER.

Mr. WOODWARD. I make a report from the delegates to whom was referred the subject of the vacancy occasioned by the resignation of Judge Black.

The report was read as follows:

To the Constitutional Convention:

The undersigned, members at large of the Convention who were voted for by a majority of the same voters who voted for and elected Hon. J. S. Black, do hereby fill the vacancy occasioned by his resignation by the appointment of James P. Barr, of the county of Allegheny, to be a member of the Convention.

GEO. W. WOODWARD,
R. A. LAMBERTON,
WILLIAM BIGLER,
GEORGE M. DALLAS,
WM. L. CORBETT,
S. C. T. DODD,
ANDREW A. PURMAN,
WILLIAM J. BAER,
A. G. CURTIN.

LEAVE OF ABSENCE.

Mr. MACVEAGH. I am desired by Mr. Cuyler to ask leave of absence for him today. He is obliged to go to New York with his family.

Leave was granted.

STATE CAPITOL BUILDINGS.

Mr. BRODHEAD. I wish to call up the resolution which I submitted on the 29th of September.

The PRESIDENT. The resolution will be read.

The CLERK read as follows:

Resolved, That the Committee on State Institutions and Buildings be and are hereby instructed to report an article to prevent the erection of any building for holding the sessions of the Legislature of

this State until the project shall be approved by two successive Legislatures.

On the question of proceeding to the consideration of the resolution, a division was called for, and the ayes were twenty-nine, less than a majority of a quorum.

So the motion was not agreed to.

PRIVATE CORPORATIONS.

Mr. MACVEAGH. I move that we proceed to the further consideration on third reading of the article on private corporations.

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

The PRESIDENT. When the Convention adjourned yesterday, the motion pending was to go into committee of the whole to strike out section ten. The yeas and nays were called, and there was no quorum present. The section will be again read.

The CLERK read as follows:

SECTION 10. 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 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 invested or subscribed.

Mr. CAREY. Mr. President: The report that was the basis of this article has never been read in this body. At very considerable expense to myself I printed several thousand copies and furnished them to all the members who would distribute them. Some members, I am afraid, have never read it, and some of them, judging from the vote yesterday, I think must have forgotten it. Now, I ask the Convention to allow the last three or four pages of that report to be read. It contains the argument which is the basis of the whole

thing. I think gentlemen will learn from it what is provided for in this section is nothing whatsoever but what has been done in Massachusetts for a century; in New York for half a century, and in Ohio for the last thirty or forty years. It has succeeded there. I see no reason why it should not succeed here. Now, will the Convention allow those pages to be read? ["Aye." "Aye."]

The CLERK read as follows from the report of the Committee on Industrial Interests and Labor:

The Massachusetts system was the most perfectly democratic of any the world had ever known. It afforded to every laborer, every sailor, every operative, male or female, the prospect of advancement, and its results have been precisely such as might have been anticipated. In no part of the world had talent, industry and prudence been so certain to command liberal reward.

That the State has not since gone backward is shown by a general law enacted three years since, whose first section reads as follows:

"Any such number of persons as is hereinafter provided who shall have associated themselves together by an agreement in writing such as hereinafter described, with the intention to constitute a corporation for any of the purposes hereinafter specified, shall become a corporation upon complying with the provisions of the eleventh section of this act, and shall remain a corporation with all the powers, rights, privileges, and subject to all the duties, limitations and restrictions conferred by general laws upon corporations except as herein otherwise provided."

Traveling westward the people of New England carried with them into New York that love of freedom by which they had been always so much distinguished, and which exhibits itself so fully in the provisions of "an act relative to a corporation for manufacturing purposes," passed in 1822, which reads as follows:—

At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, or the business of printing and publishing books, pamphlets or newspapers may make, sign and acknowledge before some officer competent to take the acknowledgment of deeds and file in the office of the clerk of the county in which the business of the

company shall be carried on, and a duplicate thereof in the office of the Secretary of State, a certificate in writing in which shall be stated the corporate name of the said company and the objects for which the company shall be formed, the amount of the capital stock of said company, the term of its existence, not to exceed fifty years, the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for the first year, and the names of the town and county in which the operations of the said company are to be carried on. When the certificate shall have been filed as aforesaid the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in such certificate; and by that name have succession and shall be capable of suing and being sued in any court of law or equity in this State, and they and their successors may have a common seal, and may make and alter the same at pleasure; and they shall by their corporate name be capable in law of purchasing, holding and conveying any real and personal estate whatever which may be necessary to enable the said company to carry on their operations named in such certificate, but shall not mortgage the same or give a lien thereon."

Traveling further west, the influence of that great portion of the people of Ohio which occupies the Connecticut reserve exhibits itself in the first section of an act to create and regulate manufacturing companies, passed in 1858, by which it is provided:

"That when any number of persons, as named in the first section of the act to which this is an amendment, associate themselves together for the purpose of engaging in the business of manufacturing, they shall, under their hands and seal, make a certificate specifying the amount of capital stock necessary, the amount of each share, the name of the place where said manufacturing establishment or any branch thereof having a place of doing business shall be located, the name and style by which such manufacturing establishment shall be known; said certificate shall be acknowledged, certified and forwarded to the Secretary of State, recorded and copied, as is provided in the second section of the act to which this is an amendment, and a copy of such certifi-

cate, duly authenticated by the Secretary of State, shall be forwarded by him to the recorder of every county in which such manufacturing establishment or any branch thereof having a place of doing business may be situate, and every such certificate shall be recorded by the recorder of deeds in a book to be provided for that purpose in every county in which such manufacturing company or any branch thereof may be located. And when so incorporated every such company is hereby authorized to carry on the manufacturing operations named in said certificate of incorporation, and by the name and style provided in the said certificate shall be deemed a body corporate, with their successors and assigns, shall have the same general corporate powers provided in the third section of the act to which this is an amendment, and be subject to all the restrictions therein contained."

Thenceforth all personal liability ceases except so far as regards "laborers employed in carrying out the interests of said company."

In each and all of the cases above described the tendency has been in the direction of removing previously existing obstacles to that combination of labor and capital to which alone can we look for increase of productive force. Of all, however, the England system is the most simple and the most advanced, and hence it is that the limited liability principle is there already more extensively applied than in any of the American States, whose position in this respect has been above described.

Turning our eyes now homeward, we find that in our own State the right of association, for any purpose of trade or profit, has never been admitted. Men might come together for the purpose of forming literary, religious or charitable associations; for building bridges; for making turnpike roads; but when they desired to associate in any manner for rendering labor more productive they were met at once by the assertion that they were in search of privileges which might be granted to the favored few, but were not to be allowed to the many who sought exemption from the absurd restrictions of the law of partnership. Mammoth banks obtained charters from legislators who denied to the people of a country town the right to create a little shop at which the money exchanges of the neighborhood might be performed. To the owners

of mineral lands anxious to bring to their aid the capital of distant cities all power of combination was denied; railroad companies being meanwhile authorized to buy and sell the coal for whose transportation alone they had been at the first intended.

The absurdity of all this becoming at length clearly obvious, public opinion, in 1849, forced upon the Legislature the passage of a general law for promoting the institution of manufacturing associations, soon, however, to be so amended as to require that every associate should be liable in his individual capacity for every dollar of indebtedness that might be incurred; and for exercise of the privilege of so becoming he was required to pay a bonus to the State of one-half per cent.; this, too, in addition to the fact that in his capacity of corporator he was liable to special taxation while compelled annually to exhibit the state of his affairs to the gaze of the world at large. As a consequence of this, the general law has remained almost, if not absolutely, a dead letter; few, if indeed any, having shown themselves willing to subject themselves to its absurd provisions. Since then, charters have been granted by almost thousands, and to the necessity that had been thus established for obtaining, by means of special laws, exemption from injurious and antiquated restrictions, we stand to-day mainly indebted for the legislative corruption of which we now so much complain.

How utterly inconsistent has been our whole course of action in reference to this great question of association is shown in this—that as early as 1836 an act was passed for enabling individuals to create that bastard and most imperfect form of corporation by means of which special partners are enabled to do business under the name of a general partner, with limitation of liability to the amount at first invested. How greatly inferior is this form of association, whether as regards the security of capitalists or that of those with whom they deal, will be obvious to those who reflect upon the fact that in the perfect form of association each and every individual is entitled to exercise some control over the action of the body of which he is a part; whereas, in the imperfect one all power is surrendered to the general partner, who may, or may not, prove to possess the capacity and the honesty required. Deficient therein as he may prove to be, he cannot in any manner

be ousted; and his partners may see their property gradually wasting away while precluded by the law, on pain of making themselves responsible for any and every liability that has been or may be created, from interfering in any manner in the conduct of the business in which they are engaged. The system was, however, an approach toward freedom of action, and it is satisfactory to state that as a rule it has worked so well as fairly to warrant such further movements in the direction of emancipation as has but now occurred.

At the last session of the Legislature there were enacted no less than five laws having for their object that of enabling associated men to do and perform certain acts from which they had been before debarred; and for facilitating associations for various operations of manufacture and of trade. Most of all important of these is that one which is entitled "an act to provide for the incorporation of iron and steel manufacturing companies," supplemented as it since has been by another act extending its provisions to many other branches of manufacture. By it, stockholders are made "individually liable for debts due for labor or services, and in that case for no period exceeding six months;" but outside thereof, they are at liberty to provide by their articles of association for limited or unlimited liability as they may prefer, the penalty for adopting the former being that all such companies are to pay to the State a bonus of one-half of one per cent.; whereas, those adopting the latter are to pay but one-quarter of one per cent. The idea of privilege is thus still retained, the legislators to whom we stand indebted for this advance towards freedom not having been quite prepared for that recognition of right so fully exhibited in the laws of both Old and New England above referred to.

Liberal as this appears to be, it is really less so than a law of the previous year, by which priority of wages was limited to claim on the joint property of the associates, to the exclusion of individual liability for any purpose whatsoever. In the opinion of your committee it is much to be desired that the principle thus established be now recognized as the fixed policy of the State. Labor and land need to invite capital to come to their aid, and the imposition of liabilities, such as have heretofore existed, is far more injurious to the laborer and the land-holder, both of whom need to stay at home, than to

the moneyed capitalist, who may seek abroad the profitable investments that at home are not permitted to him.

What now is needed to be done is little more than the adoption of a constitutional provision recognizing the right of all men to associate together, for every lawful purpose, upon terms closely correspondent with those which have been now established in relation to certain departments of manufacture—modified as even they will be by the constitutional provision in virtue of which corporate bodies are in the future to be put upon the same precise footing, so far as regards taxation, with individual men.

By one law it is now provided that men may associate for purposes of trade on the footing of limited liability, and those who so associate are subject to no taxation or supervision in excess of that to which they would be subject were they trading singly. By another law, other men may associate for the construction of roads and bridges, on a footing of perfect freedom from liability for any obligations beyond that required for protecting the workmen in their employment. By a third, all this may be done by men engaged in smelting or rolling iron, making paper, and in various other branches of manufacture. Why should we not now make one great step forward, adopting a constitutional provision such as is above recited, limiting the power of the Legislature to the enactment of laws, providing for regulating internal organization, and for securing to the world at large that full knowledge of the character of the associations with which they deal, which characterizes the British law whose provisions have above been given? Of all the laws on record there is none which has so much tended towards enabling capital and labor to work together. Of all, there is none whose adoption here would so much tend toward diminution of the power of that lobby to which we now stand so much indebted for all that is discreditable in our legislation.

Most of all important, however, it would enable thousands of intelligent working men, miners, mechanics, inventors, and others, to obtain the aid required for enabling them to pass from working in the pay of others to working on their own account. In this city alone there are hundreds, if not even thousands, who would be enabled to accomplish this could they but assure the neighboring great or little capitalist that he

might grant aid to a certain limited amount, freed from all danger of further liability. Again, the wealthy owner of mills or furnaces would find himself enabled to co-operate with his employees in ways that would be profitable to them and him, but which are now by law forbidden. Further, our working men would be enabled to participate in the great co-operative movement which was inaugurated some thirty years since in England, but made little progress until Parliament, in 1851, recognized the limited liability of the parties so engaged. Since then, the course of things has been so rapid that Britain now presents to view no less than 1,500 associations having for their object the purchase and sale of commodities required by their members; others, meanwhile, being engaged in various branches of manufacture which previously had been wholly in the hands of individual capitalists. Look where we may, we are struck with the fact that what most is needed is that perfect freedom of association which so recently, despite all previous prejudices, has found its place in Britain. Believing that the time has come for this, your committee recommend the adoption of the following, as the closing section of the chapter on corporations:

"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. There are those of us in this Convention, Mr. President—

Mr. BOYD. I rise to a point of order. Is debate in order after the yeas and nays have been directed to be called? They were ordered yesterday, were taken, and there being no quorum voting, the Convention adjourned. I suggest, that the only thing in order now is the calling of the yeas and nays, which is still pending. Under these circumstances, I raise the point of order that debate cannot be permitted.

The PRESIDENT. Under the circumstances the Chair thinks that debate is in order this morning; there are so many

more gentlemen here to-day than there were yesterday. The gentleman from Clearfield will proceed.

Mr. BIGLER. I feel very reluctant, sir, to impose myself upon the body in this way; but I was about to say that there are those in the Convention, for whose opinions I have much respect, who earnestly favor this measure, and for that reason I regret that necessity compels me to say it is manifestly too sweeping in its provisions. It is extended to all lawful business. This question is presented here as self-adjusting matter in the Constitution. We settle in the Constitution that corporations of this character may be brought into existence to take charge of any and every kind of lawful business.

Now, Mr. President, in all this discussion, excepting only the reading of the report, there has been assigned no striking necessity for so broad a provision. I would be somewhat inclined to favor a proposition extending these facilities to mining and manufacturing and other leading branches of industry; but it is going quite too far to create artificial beings for the management of every kind of business. And that is precisely what this section will do. I cannot see the necessity of creating a creature superior in its opportunities and advantages to the natural man in the ordinary pursuits of life; and that is precisely what you propose to do. Adopt this section, and it will be absurd for you or for me to enter into any business, no matter what, as common partners. It would be easy for us to seek another business and then become an artificial creature to enjoy the advantages proposed; and first are the advantages of the limited liability. Many of these enterprises, and especially those to which corporate facilities should be extended, are experimental. They are somewhat hazardous. It is very agreeable to make an experiment without hazarding any means beyond that which you put in. Under this section that could be done. You, as an individual citizen, making an experiment in a business which might turn out profitable and useful to the country, find out that you are deeply involved in debt, and every dollar you have goes to pay the liabilities.

In short, as I have said before, in the management of all the ordinary lawful business of the country, this creature would be superior to the creator. We should set an institution above ourselves, having greater privileges and greater ad-

vantages than would come to a private citizen in his daily pursuits after life and comfort.

I have suggested one restriction, and I will suggest another. What is the primary purpose of these facilities? We are told it is to associate capital for business purposes. Well, sir, I have no kind of objection to that. I would facilitate the association of capital; but when you have gone to such extreme lengths to facilitate the association of capital, I must oppose it. There ought to be capital there, and I insist that a corporation of this kind ought not to be allowed to create any liability.

When the subject was under consideration before, I suggested the policy of protecting the laborers by a clause which would make the corporators individually liable in their estates for debts due for the wages of labor; but that was so unwelcome that I withdrew it. Now, sir, one or the other ought to be done. Laborers never know anything about their employers. They know nothing about the responsibility of a corporation of this kind. All they would know would be that they wanted to be employed and they would embrace the opportunity and enter upon the service of an organization of this kind. And it was shown conclusively by the gentleman from Venango (Mr. Dodd) yesterday, that almost unlimited fraud could be committed under it.

Sir, I am not illiberal. I know myself to be otherwise. I am anxious to facilitate every enterprise and every business; but I cannot come up to the idea of, in a single section, providing for the incorporation of banks and every imaginable company all over the country for every kind of lawful business. I think it is taking a very hazardous step, one that I am unwilling to take. You remember well, sir, and so do I, the time when the only plea for corporate powers was the necessity to accomplish great ends which could not be met by individual enterprise, such corporations as were largely public in their character, public roads and great works where it was impossible to raise the necessary amount of capital by mere individual means. Now we propose to go entirely to the other extreme, and make corporations superior to individuals in all business opportunities. Whilst I say all this, whilst as it stands I shall be obliged to vote against the section, I will vote for any well guarded, moderate measure in this direction.

Mr. KNIGHT. Mr. President: If it is in order I would move to strike out "two," in the first line, and insert "three."

The PRESIDENT. That is not in order.

Mr. BEEBE. Mr. President: I do not propose to take up the time of the Convention in discussing this matter at any length; but I am afraid that the deference that this Convention feels toward the distinguished member from Philadelphia, who is the advocate of this measure, (Mr. Carey,) may induce them to vote for this proposition without giving it that consideration and personal attention which it deserves.

I wish in making a few remarks to call the attention of this Convention to one fact that is evidenced by the argument of the gentleman from Philadelphia himself, that how much soever or wherever this principle has been introduced and has been in use, no Constitutional Convention has ever ventured to put it in as an established principle of the organic law. And while he tells us that the principle is in use in the State of New York, I tell you that there has been sitting recently a commission for constitutional revision in the State of New York, and they have not thought of incorporating so untried and so dangerous an experiment as this into their organic law. So in the State of New Jersey; so in the State of Michigan. The report of the commission of the State of New York was made last spring, and besides I feel sure, sir, that the adoption of this principle would be more dangerous to the rights of the masses than all the special legislation we are sent here to correct or all that we have devised here to correct it.

Now, sir, if this be a true principle, and for the benefit of the Commonwealth of Pennsylvania, we can safely entrust it to the Legislature, where it properly belongs; but so far from considering that it would be for the benefit of the masses and only in the interest of capital, I do not believe a Legislature could be elected on this issue by the people. I do not believe one-fourth of the members of the Legislature could come to Harrisburg elected upon this issue. At least let us leave this matter to the Legislature and to the people instead of incorporating it as a part of the organic law.

It has been said that this Convention is composed of one hundred and one lawyers and thirty-two men of other classes and professions. I call the attention of the Convention to the fact that capital

employs lawyers, and their ideas of associations would be in connection with it; but let them revert back and consider that they are here as the representatives of the vast interests of labor; and if I understand this matter aright, inasmuch as speculation is the order of the day, inasmuch as fraud prevails throughout the land, inasmuch as morals upon this point are at very loose ends, I feel sure they would look at this in a different light. I call their attention to the fact that there is a class of men throughout this Commonwealth who have attempted and succeeded in setting aside the dictate of the Almighty, that man should earn his bread by the sweat of his brow, and by various devices taken advantage of, under the statutes, by special legislation, are already over-riding the State with fraudulent speculations and bogus companies of which this would be but the foundation, not for legitimate purposes or with any intent of using it for those purposes, but for the mere purpose of defrauding the masses, by "limited liability," and after incurring a large indebtedness realizing profits.

There are many things that are good in and of themselves, and this might be one. But what I wish to call the attention of the Convention to is that it is not the iron-stone principle of the thing itself that would be an injury, but it is the foundation for abuse. No member of this Convention can tell me that special legislation has not added to our magnificent school houses, has not added to our churches, our religious corporations, has not added to our resources, to a vast development of this Commonwealth by corporations generally; special legislation has had much to do with bringing that about; but why do we meet here in Convention to say that special legislation at this time shall cease? In consequence of the abuse of special legislation; and so it is with this. However correct the principle may be, I am satisfied that its abuse in the hands of dishonest men would be of more injury to the Commonwealth of Pennsylvania than any existing special legislation on this point; and this very special legislation that we denounce, that we say is a curse to the country, is an infringement of the rights of the masses, has never gone so far as this section of the Constitution proposes or permits.

Now, sir, calling the attention of the Convention to the fact that this is an untried principle in this country, that it is

not a well developed experiment, that it is not our business to put in the organic law a principle of this kind, which the people themselves can regulate through their Legislature, I leave the subject, trusting the section will be voted down, and the experiment left to the people through their representatives if it is to be tried.

Mr. CALVIN. Mr. President: I regard this as a very important provision, one of the most important passed on second reading. The gentleman on my left, (Mr. Beebe,) the gentleman from Clearfield (Mr. Bigler) and the gentleman from Venango (Mr. Dodd) yesterday seemed to apprehend a great danger from corporations of this kind. The only difference that I can see between these and other corporations is that this provision will furnish greater facilities for forming them. The argument that this system would be a swindle, that it would enable the corporators to commit frauds upon their creditors, would apply with equal force to all other corporations whatever.

Now, Mr. President, pray tell me what is it that has accomplished such wonders in this country and throughout the civilized world within the last forty years? Has it not been incorporations? Has it not been labor and capital associated together in the form of corporations? Why, sir, within the last forty years in this country we have built not less than sixty thousand miles of railroad, spread out all over the whole face of the country. The only difference between corporations incorporated by the Legislature, by special act, and this form of corporation, is that this mode would furnish greater facilities and extend the system much further.

The truth is that just in proportion as you enable men to associate and combine together their various faculties, capacities, and means, just in that proportion precisely have you progressed on advancing civilization. It appears to me that in this case it is all-important for almost every section of the country. For example, in my town we may have the facilities for carrying on the manufacturing of certain things. A skilled mechanic comes to us, and he shows how he could carry on a certain kind of business. He shows very clearly that it could be made profitable—that it would furnish a demand for labor there, that it would build up and increase the wealth of the place. All the natural facilities for the business are there. All that he wants is capital. He may have

some capital, perhaps three, four or five thousand dollars, but he wants a capital of twenty thousand dollars or thirty thousand dollars, and he says to one, "will you subscribe," and so on to another and another. "If you will only raise me about fifteen thousand dollars more capital, I and my artisans will build up here an important trade, an important manufacture." Almost every one would be willing to put in some capital, one, two, three, four or five thousand dollars, but he is not willing to risk his whole estate in an undertaking of that kind. He is anxious to improve the condition of the town and develop the resources of the neighborhood, but he is not willing to engage in a business that will involve all he has; but if he is permitted to put in a certain amount of capital and be liable only for that amount, as he would be if he applied to the Legislature for an act of incorporation, he would not hesitate a moment; and the consequence would be, you would develop the resources of the country and build up a prosperous business. Just in the proportion in which you thus enable capital and labor to combine, do you have progress and civilization.

Why, sir, the great question of this age, not only in this country but in Europe, is the question between capital and labor. It is the most fearful and most interesting question now agitating the public mind all over the civilized world. The proper solution of that question is the very system which we propose here. Capital and labor are not antagonistic. They have got into antagonistic positions; they fancy that their interests are conflicting; but they are not. They are the natural allies of each other. Capital can do nothing without labor; labor can do nothing without capital. They are natural allies, and the most effective way that I can imagine to solve this question is to furnish facilities for uniting capital and labor; and just in the proportion in which you thus furnish facilities will you get rid of this whole question, and will you have general progress and civilization.

Mr. BOYD. I am in favor of this section because it will meet and overcome the supposed abuses that will exist under it, as contended for by the gentlemen from Venango and Clearfield. Gentlemen seem to forget that we have upon our statute books a law now in force which provides that:

"It shall be lawful for any person or persons to loan money to any individual, firm, association or corporation doing business in this Commonwealth upon agreement to receive a share of the profits of said business, as compensation for the use of the money so loaned in lieu of interest; and such agreement or the reception of profits under such agreement shall not render the person or persons making such loans liable as a copartner in such business to other creditors of such individual, firm, association or corporation, except as to the money so loaned: *Provided*, That such agreement shall be in writing," &c.

Now, Mr. President, under this act of Assembly it is competent for a man who has money to invest with a corporation or with individuals as a firm, to do so without incurring any loss or liability beyond the amount paid in. What protection is there for the laborer or for the creditors under such an act of Assembly as that, and an agreement framed under it? On the other hand, in the section now before us it will be observed that whilst the same thing can be done, yet it must be done under such requirements of law as the Legislature may provide from time to time, so that the Legislature will have it in their power to protect the wages of labor and to throw any other protection around creditors that they in their wisdom may see proper. In the act of Assembly that I have read no such authority is to be found. If gentlemen will look at the act they will find that the disposition of the Legislature has become extremely liberal, if not lax, in indulgence to these partnerships without responsibility on the part of those who put in their capital beyond the amount invested. If the tendency of the Legislature is to legislate in that direction, as it has done, I maintain that this section is a necessity, because under it it will be in the power of the Legislature to protect the people from the very evils that are anticipated by the gentlemen who oppose the section. The Legislature would have no power under the law I have read to protect labor or protect creditors in any way, because by simply applying that act of Assembly they are without responsibility to anybody, and nobody knows who the firm is composed of, because the agreement in writing which is provided for need not be recorded, and need not be published, and it is a private affair between the party who loans the money and the firm or corporation who get it.

On the other hand, this section, it will be observed, contains this provision, which is a very wholesome one:

"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 of law," &c.

Thus giving the Legislature the power to impose additional requirements as they may think necessary for the protection of creditors and the protection of laborers of companies or associations formed under this section. It seems to me that while gentlemen are striking at this section they had better aim a blow at the act of Assembly which is on the statute books and is more formidable for mischief than the section which is here proposed. I shall vote for the section because more protection to laborers and creditors is afforded by it than is afforded by the act of Assembly that I have read.

Mr. DARLINGTON. I cannot see the difficulty which my friend from Montgomery thinks he does. Because, under the law, any gentleman who is disposed to lend money to a partnership may do so and receive an equivalent for the use of his money in the shape of profits instead of interest, that by no means relieves those parties from entire liability to the fullest extent of their estate, the same as all others.

Mr. BOYD. Under this act?

Mr. DARLINGTON. Yes, sir. There is nothing in that act which limits the liability of partners for the whole of their debts; and that is exactly what I wish to see maintained as the law under our Constitution.

Mr. LILLY. I rise to a point of order. The gentleman has spoken on this question.

Mr. DARLINGTON. I have not spoken to-day.

Mr. LILLY. He spoke yesterday.

Mr. DARLINGTON. I wish to answer that by saying that Mr. Carey, as well as myself, spoke yesterday, and if one of us is to be allowed to speak to-day, the other ought to be, and all ought to be. ["No." "No."] I am not for making fish of one and flesh of another. I claim to be heard.

Mr. BOYD. I wish to ask—

Mr. DARLINGTON. I have the floor. Now, Mr. President, what I want to say is, that individual liability is the rule and

always has been the rule, not only for individuals, but for partners one or more.

Mr. LILLY. I rise to a point of order. My point is, that the gentleman spoke full ten minutes on this question yesterday. Now, I insist that the Chair shall decide whether the point is well taken or not.

The PRESIDENT. If the delegate makes the point—

Mr. LILLY. I do most certainly make the point.

The PRESIDENT. Then the Chair most reluctantly sustains the point of order. He cannot help it.

Mr. CURTIN. I do not desire to debate this question, as I have no doubt the Convention fully understand it; but in answer to the gentleman from Chester, I wish to read from the eighth section of the general manufacturing law passed at the last session of the Legislature, and here is the only individual liability:

"That the stockholders shall only be liable for debts due to laborers for service, and in that case for no period exceeding six months.

That is the last law of the State. The delegate from Chester certainly has not turned his attention to it.

Mr. DARLINGTON. What law is that?

Mr. CURTIN. The act of 1873, which is quite as liberal as anything proposed in this article, with an ample protection to the laborer only for six months, and no other liability on the part of the stockholder. Under this act of Assembly any three persons can form a corporation, get a patent, and go into operation. They can fix the amount of their capital stock at their pleasure and the location of their corporation. Then I say that the remarks of the delegate from Montgomery apply with great force, that you provide limitations in this constitutional provision which are not found in the act of Assembly, which indicates the present and general policy of the State?

Mr. MANTOR. Mr. President: Yesterday when this question was before the Convention, I contented myself with voting to keep this article in the Constitution. As we were forced to adjourn for the want of a quorum, and as the question comes up again this morning in its place, I feel it a duty that I owe to myself to give some expression in favor of the faith I have in me. I desire this section to remain as a part of our work, and, if accepted, to become a part of the organic law of the State.

I take occasion here to say that the argument offered yesterday by the venerable and learned delegate from the city (Mr. Carey) must have struck most minds present with great force, as he showed the similarity that existed in all sections of this country with regard to the mode and manner in which the mining interests were commenced and conducted, and the necessity of combining capital in order to secure greater and more practical results. The extent to which such combinations can produce far exceeds, a hundred times, any private enterprises when left to small capital, and therefore requiring greater risks on such capital.

I believe that if men can have the privilege to combine by association, as this section suggests, the interests of the creditor and the debtor will both be enhanced, as the party asking credit must expect that his business and capital will have to stand scrutiny and thorough investigation; and should such associations be found using their credit to any great extent beyond their capital invested they would no doubt be checked in their credits and would be kept within the reasonable limits of their investments. I believe I am safe in saying that as a general thing there is less money lost according to the investments made through those soulless corporations that have not a soul to be damned or a place to be kicked, as was the language of the honorable delegate from Venango (Mr. Dodd) yesterday, than there is or ever has been by private, individual enterprise.

Yet, sir, I am no apologist for over-riding and grinding corporations when they become monopolies. I simply desire this section to remain, because I believe that experience in other States has shown its advantage and that it is an advance step in the right direction to combine capital and labor, and thereby bring them into closer alliance and safer results.

Mr. PURMAN. Mr. President: On principle the section under consideration is unsound, and in practice will be mischievous. It can only be maintained, if at all, on the ground of policy; on the ground that by its practical operation you will bring into activity a certain amount of capital which would otherwise be unemployed. In this State and all over our country there are large capitalists, men who have retired from the active pursuits of life, who are willing to risk a portion

of their capital in the hands of young and active men, who, themselves, have no capital, but who are unwilling to risk their whole estate in such ventures. It is thought to be the interest of the State to so employ such capital. This is the only ground upon which this section can be sustained. The true principle is individual responsibility, and to this there should be no constitutional exception. On principle, as I have said, it is unsound and mischievous. In its practical effect it is unfriendly to the interests of the great body of the people, because at no time would or could anything like a large proportion of the people ever avail themselves of its provisions, and if they did it would soon convert us into a general state of bankrupts, while the individuals would be rich.

Much complaint is often made by creditors about the small exemption of three hundred dollars that the poor enjoy against their execution creditors; but here you propose to place in the Constitution a barrier between the execution creditor and the great capitalists of the country, thus making your Constitution unfriendly to the poor and laboring man and in the interest of capital. The poor man has claimed the right to waive his exemption of three hundred dollars, and the Supreme Court have sustained it; and none of the friends of this section propose to place the Constitution between the poor man and his execution creditor as to his exemption, but in the interest of capital we are asked to plant the strong arm of the Constitution between the execution creditor and the capitalists and save their property from the payment of their debts. No such a proposition can ever receive the approval of the people. And yet you send out this Constitution to the people and ask them to ratify it with this unfriendly feature to them in it.

I call upon the Convention to reflect for a moment and pause before they put such a section as this in the Constitution and send it forth to the people, and ask them to ratify it. Certainly this is a mischievous section, and it ought not, in my judgment, to be sustained. If it has any value in it, the same can be secured by appropriate legislation, when such wholesome restraints as are necessary can be placed around the exercise of such an exclusive privilege.

The PRESIDENT. The yeas and nays will be taken on the motion to go into

committee of the whole to strike out the tenth section.

Mr. DARLINGTON. On this question I have agreed to pair with Mr. Cuyler.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Andrews, Bally, (Perry,) Bailey, (Huntingdon,) Baker, Beebe, Bigler, Black, Bowman, Brown, Buckalew, Campbell, Church, Clark, Cochran, Corbett, Curry, Davis, Dodd, Dunning, Elliott, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Hanna, Hay, Hazard, Hemphill, Horton, Kaine, Landis, Littleton, MacConnell, M'Murray, Mann, Metzger, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Sam'l A., Reynolds, Ross, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Van Reed, Wherry and Wright—61.

NAYS.

Messrs. Addicks, Armstrong, Baer, Banan, Barclay, Bartholomew, Biddle, Boyd, Brodhead, Broomall, Calvin, Carey, Carter, Corson, Curtin, De France, Edwards, Ewing, Hunsicker, Lamberton, Lilly, MacVeagh, M'Clean, M'Culloch, M'Michael, Mantor, Reed, Andrew, Rooke, Stanton, Struthers, Turrell, Wetherill, J. M., Wetherill, John Price, White, David N., White, J. W. F., Woodward and Walker, *President*—37.

So the motion was agreed to.

ABSENT.—Messrs. Achenbach, Alney, Bardsley, Bullitt, Cassidy, Collins, Craig, Cronmiller, Cuyler, Dallas, Darlington, Ellis, Fell, Green, Harvey, Hevèrin, Howard, Knight, Lawrence, Lear, Long, M'Camant, Mitchell, Newlin, Porter, Pughe, Read, John R., Runk, Russell, Sharpe, Simpson, Temple, White, Harry and Worrell—34.

The Convention accordingly resolved itself into committee of the whole, Mr. Cochran in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article on corporations, with instructions to strike out the tenth section. The section will be read.

The CLERK read the section as follows:

SECTION 10. Any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of associ-

ation 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 invested or subscribed.

The CHAIRMAN. Under the order of the Convention the amendment is made, and the section is stricken out.

The committee of the whole rose, and the President having resumed the chair, the chairman (Mr. Cochran) reported that the committee of the whole had stricken out the tenth section in pursuance of the direction of the Convention.

Mr. BRODHEAD. I move that the Convention go into committee of the whole in order to amend the seventh section by inserting after the word "for," in the first line, the words "labor done;" and in the second line by striking out the word "labor," so that the section will read:

"SECTION 7. No corporation shall issue stocks or bonds except for labor done, money or property actually received; and all fictitious increase of stock or indebtedness shall be void," &c.

This, as will be seen, is only a transposition of the language of the section and is right and proper. This amendment is not as broad as that which I offered yesterday and which was voted in and then so unceremoniously voted out. To this, I apprehend, there will be no objection.

Mr. WOODWARD. I hope the amendment will not prevail. The amendment which that same gentleman got into this same section yesterday, I am sorry to say, seems to me most mischievous in its consequences.

Mr. EWING. This is, not the same amendment.

Mr. PARSONS. The amendment made yesterday was reconsidered and stricken out.

Mr. WOODWARD. I know there was a motion to reconsider, but I thought it failed. If the fact be that the amendment of the gentleman from Northampton was stricken out, I am glad of it. I thought the motion to reconsider did not prevail, and I now trust that this amendment will not be adopted. I rose for the purpose of demonstrating that the gentleman had opened the way, inadvertently of course, for very mischievous results.

The PRESIDENT. The Chair believes the amendment was reconsidered, but does not wonder that in the general confusion there should have been doubt about it. The Clerk will state how the question was disposed of.

The CLERK. In the first line of the seventh section, yesterday, an amendment was inserted, adding the words "labor done or to be done" after the word "for," and erasing the word "labor" in the second line. This amendment was afterward reconsidered and stricken out. The amendment now offered by the gentleman from Northampton is to strike out the word "labor," in the second line, and insert the words "labor done" after the word "for," in the first line.

Mr. EDWARDS. How would the section read as amended? I want to hear the whole section read again.

The PRESIDENT. It will be read.

The CLERK read the section as proposed to be amended as follows:

"SECTION 7. No corporation shall issue stocks or bonds except for labor done, money 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."

Mr. EDWARDS. I see no objection to that.

Mr. BRODHEAD. It is simply a transposition of language which I think materially improves the section.

Mr. MACVEAGH. Certainly there will be no objection to that amendment; let it be made by unanimous consent.

SEVERAL DELEGATES. No, I object.

Mr. MACVEAGH. Certainly there can be no objection. It is right. It is simply a verbal change, and is only the difference between "done" and "received."

Mr. WOODWARD. I did not understand the amendment, but as it is now proposed I will vote for it.

On the question of agreeing to the motion, a division was called for, which resulted sixty in the affirmative to seven in the negative.

Mr. CORSON. As one of the delegates who voted in the negative, I withdraw my objection, and ask that the amendment be made by unanimous consent.

Mr. LILLY. Yes, I give it up now. [Laughter.] Let it be made by unanimous consent.

Unanimous consent was given and the amendment was made.

Mr. DARLINGTON. I now move that the Convention go into committee of the whole in order to amend the ninth section by striking out the words "any general" in the first line and inserting the word "every," so that the section will read:

"Every banking law shall provide for the registry and countersigning," &c.

We are to have none but general laws hereafter; and therefore there is no necessity for using the words "any general" in this connection.

Mr. MACVEAGH. That is all right. We can do that by unanimous consent also.

Unanimous consent was given and the amendment was made.

Mr. STANTON. I move to go into committee of the whole for the purpose of amending the article by inserting as a new section the following:

"It shall be unlawful for any association or combination to make limitations as to the number of apprentices that may be employed for the purpose of learning or carrying on any art, trade or mystery."

I offer this proposition now because it seems to have some relation to corporations, they employing, as they do, so many mechanics of various kinds. I offer this amendment to carry out the spirit of a resolution which I submitted on the eleventh of January last, in the following words:

Resolved, That the Committee on Legislation be instructed to inquire into the expediency of, and report a provision, as an amendment to the Constitution, prohibiting any art or trade association, or any combination of mechanics, or others, from making limitations upon the number of apprentices that may be employed by any master or association, for the purpose of carrying on any art, trade or mystery.

The necessity of legislative action as regards the apprentice system has become every day more apparent. Much of crime, particularly that which comes under the head of "juvenile depravity," can, in a great degree, be traced to a want of proper employment of youth. That very pauperism which exists in all large cities could be materially lessened if the means were presented for that purpose. Parents are as anxious now to put their children

at trades as they were at one time opposed to them. The reason is simply this: The mechanic and the artizan are now among the solid men of the country, and thus labor is dignified.

Estimations have been made of how many children of different ages are little more nor less than actual paupers; some twenty thousand, the estimate. This is a fearful number. Some of these, boys particularly, are seen in our streets begging, others again selling matches, peddling, and I regret to add, pilfering. Scarcely a day passes but we see instances of the latter being brought before the magistrates, many of whom would gladly have been apprenticed to some trade if the means to do so would have been allowed them.

The objections to apprenticeships by those who now have control of the system, outside of law and justice, are based on selfish motives altogether. The journeymen consider it an encroachment on their rights, and to protect themselves form associations and combinations to keep boys from learning trades, thus becoming good and honest citizens. No set of men have a right in this country to establish laws and make rules for the purpose of depriving others of the means of livelihood by honest labor. All such combinations are not only unlawful, but detrimental to the growth and prosperity of a country.

The journeymen, under the present system of apprenticeship, are the actual masters of a work-shop. Thus the employer cannot take an apprentice without consulting the employees. The result of such a system is already foreshadowed in the estimate given of the number of children now wandering through our streets.

In France, at the latter end of the seventeenth century, there were in Paris no less than one hundred and twenty-nine communities or companies having their own laws, rules and regulations, one of which was that no master should have more than one apprentice at a time, and the time for his term of service was from eight to ten years. In the thirteenth century, however, for such combinations only belong to the dark ages, so strict were these monopolists of trade, "that no master was allowed to take as an apprentice any but his own son."

In France it required a revolution to abolish this system, when a perfect freedom of labor, industry and right was recognized by the laws, and this with a few exceptions has continued to the present day. Cannot an amendment to

the Constitution of our State prohibiting any art or trade associations of mechanics from exercising such power be accomplished without a revolution? I, for one, think it can.

In this, the nineteenth century, a century of education, enlightenment and liberal views, will such combinations be allowed to work evil on the rising generation? Will they be permitted to control the great mechanical interests of our State, and I may say the country, and deprive our children the benefits arising from a knowledge of trade only to be gained by proper instruction under a well digested law of apprenticeship? This system is not of American growth—it never originated here. I do not say it is altogether foreign, but I do say it is endorsed by us.

No enlightened mind would sustain a principle that strikes at the root of our young republic. It is a relic of the past, and why it has so long been permitted to exist may be attributed to the influence these associations have on the political portion of our community.

The consequence of thus barring boys out from our workshops is seen daily; numbers are seeking some other employment—running from store to store, answering every advertisement, with little or no success. Two-thirds of these boys are anxious to learn trades, and their parents equally so to have them thus employed. Idleness begets crime—crime its consequences; hence the house of refuge becomes the poor boys workshop wherein to learn a trade, which he ultimately finishes in the penitentiary! All this the result of the want of an apprentice system founded on a proper legislative law, which it is to be hoped this Convention will suggest. Let us have a law which, while it will protect the master, will also defend the apprentice. I wish to allude to another feature necessary in this contemplated amendment. Long apprenticeships should not be allowed unless it was necessary in some of the higher and more difficult branches of the art. In common mechanical trades the same length of apprenticeship is manifestly unnecessary and inexpedient. Long apprenticeships in these branches have a tendency rather to repress than encourage a love of industry. Journeymen and apprentices in our time worked together in harmony, and the employer could take as many apprentices as were necessary to his business

without consulting the employees. We had no "combinations" then.

Our public schools have done much toward advancing boys in their education, thereby preparing them for a profession or a trade; the greater portion of whom are as willing to learn a mechanical branch of trade as they are to learn the less uncertain one of a profession, and to protect them is their laudable desire to do so, it is essentially necessary that the obstacles unlawfully placed in their way should be removed.

The PRESIDENT. The question is on the motion of the delegate from Philadelphia (Mr. Stanton.)

The motion was not agreed to.

The PRESIDENT. The question is on the passage of the article.

The article was passed.

IMPEACHMENT AND REMOVAL FROM OFFICE.

Mr. BUCKALEW. I rise to a privileged question. I move to reconsider the vote upon the impeachment article for the purpose of making a correction.

Mr. MACVEAGH. I second the motion. This motion has to be made to-day in order to bring it within the rule. The reconsideration having now been moved, the gentleman from Columbia has all the benefit of that, and in order that we may proceed with the article on railroads and canals, I move, to which he assents, to postpone the motion to reconsider for the present.

Mr. BUCKALEW. I think our rule is that a reconsideration must be made within six days. At all events I understand the chairman of the Committee on Impeachment and Removal from Office has no objection to the reconsideration.

The PRESIDENT. How did the gentleman from Columbia vote?

Mr. BUCKALEW. I voted with the majority.

The PRESIDENT. Did the gentleman from Dauphin vote in the same way?

Mr. MACVEAGH. I did.

Mr. BUCKALEW. I desire this reconsideration, and then I am willing to postpone so that it shall not be taken up at this present time.

The motion to reconsider was agreed to.

Mr. BUCKALEW. I desire now to move an amendment, and then when the amendment has been read I will make a motion to postpone so that the amendment may not be considered to-day.

I move that the Convention go into committee of the whole for the purpose of striking out in the fourth line of the article all after the word "crime," as follows:

"Appointed officers other than judges of the courts of record, may be removed at the pleasure of the power by which they are appointed. All officers elected by the people, except Governor, Lieutenant Governor, members of the General Assembly and judges of the courts of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate."

And inserting in lieu thereof the following:

"Removals from office of civil officers holding for fixed terms may be made by the Governor upon conviction in courts of competent jurisdiction for removable offenses, and the Governor may also remove such officers for reasonable cause upon address of two-thirds of the Senate after due notice and full hearing of officers to be removed; but the Governor, Lieutenant Governor and judges of the Supreme Court shall be removable only by the Senate on conviction, on impeachment, and other judges required to be learned in the law only in the same manner or upon address to the Governor of two-thirds of each House of the General Assembly.

"Additional provision may be made by law for the removal of municipal or local officers below the grade of city or county officers for misconduct in office or the commission of any infamous crime."

Mr. MACVEAGH. I move the further consideration of that question be postponed, and that this proposed amendment be printed.

The motion was agreed to.

RAILROADS AND CANALS.

Mr. COCHRAN. I move that the Convention proceed to take up the report of the Committee on Revision and Adjustment on article number seventeen, "of railroads and canals."

The motion was agreed to.

The CLERK read the amendments of the Committee on Revision and Adjustment.

Mr. DALLAS. I move that the report be adopted.

The motion was agreed to.

Mr. DALLAS. I move that the article be transcribed for third reading.

The motion was agreed to.

Mr. BIGLER. I move to proceed to the third reading and consideration of the article.

The motion was agreed to, and the article was read the third time as follows:

ARTICLE XVII.

OF RAILROADS AND CANALS.

SECTION 1. 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; any railroad may intersect and connect with any other railroad, and may pass its cars, empty or loaded, over such other railroad, and no discrimination shall be made in passenger or freight tolls and tariffs on persons and property passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination. The General Assembly, shall, by general law prescribing reasonable regulations, give full effect to these powers and rights.

SECTION 2. Every railroad or canal corporation organized or doing business in this State shall maintain an office therein, where transfers of its stocks shall be made, and books kept for inspection by any stock or bondholder, or any other person having any pecuniary interest in such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock and the amounts owned by them, respectively, the transfers of said stock, and the names and places of residence of its officers.

SECTION 3. The property of railroad and canal corporations, or other corporations of a similar character doing business in this State, and of other joint stock companies now existing or hereafter created, shall forever be liable to taxation, and the power to tax the same shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

SECTION 4. No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges of 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 for

excursion and commutation tickets. Reasonable extra rates within the limits of the charter of a company may be made in charges for any distance not exceeding fifty miles.

SECTION 6. 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, or 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 the question whether railroads or canals are parallel and competing lines, shall always be decided by a jury in a trial according to the course of the common law.

SECTION 6. 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 its works; 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.

SECTION 7. 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 therein, in the transportation of freight or passengers 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.

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 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, in the transportation of property on such railroads and canals, shall be void, and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships and companies shipping and transporting thereon, in furnishing cars or motive power.

SECTION 9. 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 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.

SECTION 10. No railroad company shall grant free passes or passes at a discount, to any person except officers or employees of the company.

SECTION 11. No street passenger railway shall be constructed within the limits of any city, borough or township, without the consent of its local authorities.

SECTION 12. No railroad, canal or other transportation company, in existence at the time of the adoption of this article, shall have the benefit of any legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

SECTION 13. The existing powers and duties of the Auditor General in regard to railroads, canals and other transportation companies, are hereby transferred to the Secretary of Internal Affairs, 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.

Mr. CAREY. I move that we go into committee of the whole for general amendment.

The PRESIDENT. The question is on the motion of the delegate from the city (Mr. Carey.)

Mr. CAREY. Mr. President—

Mr. HOWARD. I rise to a point of order. This question is not debatable.

Mr. CAREY. I beg pardon.

Mr. HOWARD. There is nothing before this House.

Mr. DALLAS AND OTHERS. The motion is debatable.

The PRESIDENT. The motion of the delegate from the city (Mr. Carey) is before the House.

Mr. CAREY. Mr. President: Anxious to become better informed on this railroad question, I spent a part of the recess in the north-western States—

The PRESIDENT. The Chair must rule that when a motion is made to go into committee of the whole for general amendment, it is not debatable; when for special amendment it is, because the vote on the special amendment is decisive. This motion is not debatable. The question is, shall the Convention go into committee of the whole for general amendment?

Mr. D. N. WHITE. I call for the yeas and nays.

Mr. DARLINGTON. I second the call.

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

YEAS.

Messrs. Addicks, Andrews, Armstrong, Baer, Bannan, Brodhead, Broomall, Carey, Clark, Corbett, Corson, Curry, Curtin, Dallas, Darlington, Edwards, Elliott, Hall, Hanna, Hemphill, Knight, Lamberton, Littleton, MacVeagh, M^r. Michael, Mann, Niles, Palmer, H. W., Patton, Read, John R., Reed, Andrew, Rooke, Turrell, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F., Woodward, Wright and Walker, *President*—39.

NAYS.

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bartholomew, Beebe, Biddle, Bigler, Black, Bowman, Brown, Buckalew, Calvin, Campbell, Carter, Church, Cochran, Davis, De France, Dodd, Ewing, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Hazzard, Horton, Howard, Hunsicker, Kaine, Landis, Lilly, MacConnell, M^r. Culloch, M^r. Murray, Mantor, Minor, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T.

H. B., Purman, Purviance, John N., Purviance, Sam'l A., Reynolds, Ross, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Wherry and White, David N.—55.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Ainey, Barclay, Bardsley, Boyd, Bullitt, Cassidy, Collins, Craig, Cronmiller, Cuyler, Dunning, Ellis, Fell, Finney, Green, Harvey, Heverin, Lawrence, Lear, Long, M'Camant, M'Clean, Metzger, Mitchell, Mott, Newlin, Porter, Pughe, Runk, Russell, Sharpe, Simpson, Struthers, Temple, Van Reed, White, Harry and Worrell—38.

Mr. BIGLER. I move that the Convention now resolve itself into committee of the whole for the purpose of amending the sixth section by inserting after the word "works," in the third line, the words: "Except that they may manufacture cars, engines, and other machinery for their own use."

A very few words will explain the object of this motion, and, I think, satisfy every member of the Convention that these words ought to be inserted. It amounts almost to a necessity that large railroad corporations should have the right to manufacture their own cars, engines and other machinery. There seems to be no authority in this article, anywhere, to manufacture such machinery; and I therefore propose that the Convention resolve itself into committee of the whole for the purpose of inserting the words which have been read.

Mr. MACVEAGH. I submit that that is unnecessary. If the distinguished delegate at large will consider for a moment, the very power of being a railroad company implies the power of providing themselves with the necessary implements to carry on that business. There is no doubt about it on general principles of jurisprudence, and there is nothing here that impairs or diminishes that right in the least. I think every lawyer, on a consideration of the section, will say that there is not a shadow of doubt about the right of the company to manufacture what they need for their own use, in the exercise of the franchise they enjoy.

Mr. BIDDLE. It seems so to me.

The PRESIDENT. Is the Convention ready for the question.

Mr. CURTIN. I think the motion had better be withdrawn.

Mr. BIGLER. I withdraw it. I was going to say that I drew it hastily, and if

the ground is covered, I am glad of it. It seems to me to be a very necessary power.

Now, Mr. President, I have another amendment to offer. I desire to say here that I shall offer the amendments which occur to me to be very necessary and dispose of them so far as I am concerned, as briefly as possible. I have no other purpose whatever, except to put the article in a shape to answer the public welfare. I now call the attention of the Convention to section nine, which seems to contemplate some restriction upon the powers of transporting companies.

The PRESIDENT. What is the motion?

Mr. BIGLER. That the Convention resolve itself into committee of the whole for the purpose of striking out section nine.

The PRESIDENT. The question is on that motion.

Mr. BIGLER. The reasons for this motion are these: This section undertakes to impose restrictions upon transportation companies; but as it stands here it would have no application except to the express companies. As to the other transportation companies, the mode of their agreement is that they are charged the regular rates for transportation, and the railroad company allows such transportation companies a commission for looking up business and handling it. They are paid a commission, but they are charged the regular rates. Therefore section nine would not interfere with that class of companies. But it is otherwise with the express companies. This section would forbid any allowance to the express companies, except that which they would be allowed by the railroad companies; they could make no other charge.

Now, sir, an express company pays a railroad company a certain amount per day for certain space in the cars on certain trains. Beyond all that, the express company does all the business. It is attended with a great deal of expense, as you all know. They have many agents and officers and have immense deliveries. All that expense is their own, and for that they must charge. If you deny them the right to charge, they cannot bear this expense, and the practical effect would be to break down the express companies.

So far as any other class of fast freight is concerned, I believe it to be the substantial interest of the country to break them

down, but express matter is different. There are certain articles to be distributed throughout the country that must be passed rapidly, such as oysters and perishable fruits, and I would not be willing to adopt a measure that would embarrass seriously or break down these companies. I can see no other effect of section nine, because it would not be applicable to the ordinary transportation companies, and I think it would be better to leave it out.

MR. S. A. PURVIANCE. I was not aware of the fact that this amendment was to be moved. This is regarded upon the part of, I think, a majority of this Convention as one of the most important sections in this railroad article. I had the honor of presenting this question in the Convention, and after it was fully discussed before the body, and through all the committees; the section passed in the identical language in which it is now presented. Is there any weight in the argument advanced by the honorable delegate from Clearfield? What injury does this do to express companies? What injury does this do to transportation companies, except to simply declare to them that in the future they must not depend upon their contracts with railroad companies by which they become the carriers of the freights of the Commonwealth at less rates than the railroad companies will carry them for the public? I undertake to say that without this section in our organic law this mode of swindling the public and swindling stockholders will go on to an unlimited extent.

So far as regards that, I have already explained the nature of this section. What is it? Why, a transportation company makes a contract with a railroad company by which the railroad company agrees to carry for that transportation company all its freights at, say one and a half cents per ton per mile. The transportation company, when you and I and others go to the company for the purpose of having our freights carried, tell us that their rates are three cents per ton per mile. This is earning a hundred per cent., and from whom does that come? It comes from the people in the first instance; or if the railroad companies charge the maximum rates, then the difference would be made properly distributed amongst the stockholders. But instead of that the public are not benefited nor are the stockholders in their dividends.

So far as regards transportation companies that may have furnished cars, et cetera, as I understand that was the objection by the gentleman from Philadelphia (Mr. J. Price Wetherill) when this section was up before, there is nothing in this section that prevents a railroad company from leasing the rolling stock of a transportation company or an express company, or otherwise. They may contract for the leasing of that rolling stock at fair and reasonable rates, but they are not permitted to make a rate of charge for the actual carrying of freights beyond that which they themselves have between themselves and the company. Now, sir, the railroad companies, as every one knows, have within their companies those who bask in the sunshine of the railroad companies. They, sir, in the course of a year or two amass immense fortunes. How? Simply because they are permitted to act as a ring within a ring, and they are permitted to enjoy these large profits, to come off the people or off the company, one or the other, inevitably.

I do not wish to take the time of the Convention, but I say that this matter was well considered, fully discussed, thoroughly debated, and carried in this Convention by an overwhelming majority, and on that account I feel that I am trespassing to say anything further.

MR. BIGLER. The gentleman will allow me one question. Does he hold that this section will apply to any of the fast lines except the express companies? Would it apply to all of them? I have no doubt I have precisely the same object in view in this matter as he has.

MR. S. A. PURVIANCE. This section applies to every company, of every denomination, whatever you may call it. What I aim at is this: As these railroad companies are declared to be common carriers, they are bound to carry my goods at the same rates that they would carry goods for a transportation company. They are a general carrier; the road is a high thoroughfare, and they have no right to make employments within a ring by which neither they as stockholders will be benefited nor the people.

How is it with reference to every other company? If these railroad companies have the means and consider it profitable to carry on their business, why do they not have these different departments? Why not within the company itself have a department for transportation, a de-

partment for package, and everything of the kind, just as you see in the immense companies, the dry goods companies and others, in the city of Philadelphia? There is nothing to prevent it whatever, there is no inconvenience, and the only argument in favor of its retention is that it may afford an opportunity amongst favorites to distribute that which belongs to the people or the stockholders.

Mr. BIGLER. The gentleman did not answer my question.

Mr. S. A. PURVIANCE. Before I sit down allow me to say that I am told the Delaware and Lackawanna railroad company have an express company within the limits of their own organization. So, too, has the Reading railroad company, why not make it applicable to all the companies?

The PRESIDENT. The question is on the motion to go into committee of the whole in order to strike out the ninth section.

The motion was rejected.

Mr. CAREY. I move that the Convention go into committee of the whole for the purpose of striking out the fourth section.

The PRESIDENT. The Clerk will read the section proposed to be stricken out.

The CLERK read as follows:

"SECTION 4. 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 for excursion and commutation tickets. Reasonable extra rates within the limits of the charter of a company may be made in charges for any distance not exceeding fifty miles."

Mr. CAREY. Anxious, Mr. President, to understand this railroad question better, I spent part of the recess in the northwestern States, the seat of the great railroad war. While there I heard from men of influence doctrine so revolutionary as to utterly astonish me. I read in the newspapers statements calculated to inflame the public mind, so utterly false—aye, so obviously false—that it seemed to me almost incomprehensible that anybody should print them; yet

they were printed and circulated by thousands and tens of thousands.

I left there with the conviction that no sane man would invest a single dollar in western railroad bonds or stocks. The day, as I saw, for selling railroad bonds was over; the day for making railroads was over, and the crash was inevitable. I was mistaken in this, that I did not think it would come quite so soon, and I did not think it would produce effects so lamentable as those we see now everywhere around us.

I ask you now, Mr. President, what have these men accomplished? They have carried on this war against railroads for the last two or three years. What have they gained? It has been war against monopolies. Have they done anything to diminish monopolies? Directly the reverse. They have strengthened them. Every unsuccessful attempt at revolution strengthens the government. They have made the attempt, and it is a failure. And I will show you how.

While I was at St. Paul I learned that there were three railroads being made to compete with the present road from St. Paul to Duluth. These three roads were to intersect the Northern Pacific at different points, to make competition with the existing road. On these roads many millions have been expended, but many millions more are yet required for their completion. Not one dollar will now be furnished. What is the consequence? These three roads, every one of which would have been finished within the next two years, are now hung up for years to come, and the monopoly of the St. Paul and Duluth railroad is now established for years to come. Have they gained anything? Nothing whatever. They have destroyed credit, and in so doing they have inflicted losses upon themselves that will, before the existing crisis comes to an end, count up to hundreds of millions of dollars.

Now we are asked to move forward in the direction. Before doing so, it might be very well to study carefully the measures to be pursued, and the cost at which they may be pursued. To that end I have moved to strike out this section, and I propose to examine it in each of its parts, providing the Convention is willing to give me the time that is required therefor. It is not a thing to be done in ten minutes, but it is not a question to be disposed of hastily.

Mr. NILES. Take all the time you want.

MANY DELEGATES. GO ON. GO ON.

Mr. CAREY. It will require some twenty or thirty minutes for its discussion.

Mr. ARMSTRONG. I move that the delegate have leave to proceed indefinitely.

The motion was agreed to.

Mr. CAREY. By this fourth section it is provided that there may be discrimination of rates "within the limits of the charter of a company for any distance not exceeding fifty miles."

As we are making an organic law, it is exceedingly desirable, before adopting this provision, that we clearly understand what here is meant. What that is, I myself have certainly no very clear conception. From the first mile on a railroad to the last, there is a perpetual diminution of rate. On the Reading railroad it commences with 10 cents per mile for 5 miles, falling to 2.60 at 50, and terminating with a little more than 2 at 90 or 93 miles. Now, is it proposed that the rate established at 50 miles shall be maintained and further discrimination cease? If that is not what is intended, I should be glad to have it explained what really is meant. On the Pennsylvania Central road the charge for a barrel of flour for the first 10 miles is a cent a mile. At 50 miles it becomes 2-5 of a cent, and at Pittsburg 1-5 of a cent. Is the price established at the end of the 50 miles to be maintained thereafter? If it is not, the provision has no meaning whatsoever, so far as I can understand it.

By the tariff just now issued by the reform commissioners of Illinois, the charge for a ton of coal for the first 10 miles is 7 cents per mile. Thenceforward, it is but 1 cent per mile until it reaches 200 miles, after which it is but half a cent. The rule is thus uniform, that from first to last all discrimination is in favor of the public. Of what use then is the provision to which I have referred?

Again, it is provided that:

"There shall not be a higher charge for a shorter distance than for a longer distance, including such shorter distance."

A few weeks since at Marquette, on Lake Superior, I found, to my surprise, anthracite coal being freely used for smelting iron ore. Inquiring how this could possibly be, I learned that the price of the former, at the great distance of one thousand miles from the mines, was but one dollar more per ton than I myself was paying for it at a distance of less than a hundred miles, with a downward grade the whole distance. The philosophy of

this was very simple. Marquette was shipping ore at the rate of one million two hundred thousand tons per annum, and the vessels that carried it had but the choice between returning in ballast, on the one hand, and, on the other, that of taking coal at a charge of fifty cents per ton. Further, the Philadelphia and Erie railroad company, having occasion to carry large quantities of raw products from the west, found it better to carry coal to Erie at a lower rate considerably, per mile, than they would charge for shorter distances. In this manner the lumber of Williamsport, and the food of Northumberland and Union, having passed through the coal region and been converted into fuel, has been enabled to find a market a thousand miles distant, on the shores of Lake Superior.

Now, is it desirable to put an end to this important trade? If the charge per mile to Williamsport is to be taken as the price to Erie, no more coal can go in that direction. Williamsport complains, but would not the loss resulting from diminution of her lumber trade be far greater than any extra price her people now pay for coal?

The presentation of this question by the delegate from Union, Mr. Rooke, himself a manufacturer, was so clear and practical, and exhibited so fully the difficulties that must grow out of the establishment of cast-iron laws such as are now proposed, that I must ask the Clerk to read an extract from his speech, as follows:

"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 than they can afford to be carried, I do 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 of our county, 'If you will take the iron ore that is being developed in New York we will carry it 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 gentlemen 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 Lock Haven, 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."

The view here presented, to the effect that "the question is not whether they have charged others to little, but whether they have charged us too much," is strictly accurate. The post-office charges me three cents for delivering a letter in Camden, directly across the river. Have I any reason for complaint in the fact that, for the same money, it carries another letter for my neighbor to San Francisco? The car that passes my door charges me seven cents for half as many squares; should I complain because of its charging no more to another who is carried four times that distance? Assuredly not. My friend, the delegate from Warren, pays more freight on his ton of anthracite than is paid by coal that passes his door on its way to Erie, and ultimately to Marquette. Is he injured by this? Is he not, on the contrary, benefited by having the Lake Superior mines contribute toward maintenance of the road by which his neighbors send their oil to market?

Further it is provided that:—

"No special rates or drawbacks shall, either directly or indirectly, be allowed."

Now, the coal of the Schuylkill region passing through Philadelphia competes, in Boston, with Cumberland coal from Baltimore, with Nova Scotia coal, and with Scranton coal passing through New York. To enable it so to do, the Reading company finds itself compelled, by certain allowances to shippers, to make some small contribution toward the cost of transportation between Philadelphia and Boston. Such allowances are not made voluntarily. They are forced upon the railroads. Is it desirable to insert in the organic law a provision by which competition in the Eastern market shall be prohibited in all the future?

To enable anthracite to compete in Baltimore with coal from Cumberland similar allowances are required, the charge for carriage being thus reduced below that to York. Do the people of this latter suffer injury from this? They do not. But for such allowance anthracite miners would lose the market, and the railroad would lose the contribution anthracite now makes towards its maintenance and further improvement.

The cost of maintaining a mine in working order is very great, and it must be paid whether work be performed or not. The larger the quantity mined the smaller becomes the contribution of each ton

toward this fundamental item of expense.

As a consequence of this, the export trade toward both east and south tends towards cheapening coal everywhere within the State.

The most important provision, however, in this section is found in this:

"There shall be no discrimination in charges for the carriage of either freight or passengers against the people of the State."

What precisely is meant by this, it is very difficult clearly to understand. Seeking information, I find myself advised that the object sought to be accomplished is the prevention of the passage of any merchandise into, or through, the State, except on payment of the same rate of freight that has been established in reference to our own interior commerce. The precise equivalent of this would be found in placing around the State a cordon of custom house officers, empowered to tax all merchandise to the full extent of the difference between through rates over thousands of miles and way charges over hundreds of miles. How this will work we may now inquire. Flour seeks to reach New York on its way to Europe, and the charge for carriage, greatly modified, as it is, by facilities of water transportation, maybe taken at or about a dollar per barrel. Of this the Pennsylvania company could claim somewhat less than half, giving scarcely more than a cent per mile. Now, the actual cost on the Reading road, wholly exclusive of any charge for interest for transporting the coarsest quality of freight, with a down grade throughout the whole distance, is about nine-tenths of a cent per mile, being but little less than the price actually charged for transporting flour from Chicago to New York.

The choice that is now to be presented to our own transporters is this: On one hand wholly to abandon the outside trade: or, on the other, to reduce its interior rates to a level with those now paid, on long distances, outside the State. That the latter cannot be done is clearly obvious. That the former must be done becomes thus absolutely certain.

Again, the cattle trade within the State is but a retail one. West and south-west, at a distance of fifteen or eighteen hundred miles are the great herds which supply the droves that pass through it on their way to the east and north. For all the future these latter are to be arrested on their arrival at our border and ordered

to go around by New York or Baltimore, if not prepared to pay retail rates for passage through the State. How far this will benefit those of our farmers who are accustomed to purchase western cattle to be fattened here for market remains to be determined. So again with merchandise from the north and east bound for the south and south-west. Like the cattle, it must be stopped at the frontier if its owners be not prepared to pay largely for the privilege of contributing to the maintenance of roads employed in facilitating our own domestic commerce.

We are thus in effect required to secede from that great railroad union which ties our States together, and to remain in all the future in a state of isolation. Our sister States, New York and Maryland, could well afford to assume the payment of our entire State debt, conditioned only that we place this section in our organic law. To accept such an offer, at first sight so advantageous, would be simply an act of suicide. How far it would tend to promote our material prosperity, or to elevate the State in the eyes of the nation at large, the Convention may now determine.

Boston is seeking anxiously, by construction of a great tunnel, at a cost of several millions, to make of Massachusetts a perfect thoroughfare for the produce of the west. Baltimore is engaged, for the same purpose, in making a road to Chicago, Virginia following suit with her Chesapeake and Ohio road, by means of which western produce is to be carried to the port of Norfolk. New York is anxious for an enlarged canal and a new railroad with quadruple tracks. The Welland canal is being enlarged for the purpose of carrying western products to Montreal at cost greatly reduced even below its present rate. If, with all this full in view, we require that the charge for passage through the State be made to conform to that within it, the State must cease to be a thoroughfare. That being the case, in what manner are our manufactures to reach the west? How is our iron to be moved? How is our coal to go? At present, all these things are carried as return freight in the cars that bring cotton from the south, grain and flour from the west, hemp from Missouri, and raw products of every description from the various portions of the west and south.

The farmer may complain of the fact that a barrel of flour passing from Pittsburg to Philadelphia pays seventy-two

cents, a similar one from Illinois to New York meanwhile paying but about a dollar. He fails, perhaps to remark that his great markets are found in our own towns and cities, among our own mines and furnaces, and that the great mass of his products requires to travel on the main road so short a distance that the difference is trivial; he himself meanwhile profiting by the fact, that in the form of coal, iron, cloth, or carpets, they travel freely to the west and south at the reduced rates consequent upon an abundance of cars returning empty after bringing eastward the various products of the south and west. Look where we may, we find such compensations becoming more and more apparent.

The choice offered to us under this provision appears to me to be a reduction of the rates within the State with ruin to the railroads, or an increase of charges on property from without the State with ruin to the State.

Some five and twenty years since the learned delegate from York (Mr. J. S. Black) remarked to me that on every occasion when the four country members of the Supreme Court needed to come together in this city, three of them were obliged to go outside of the State. At that time the real, corrected, estimate of the wealth of our people was seven hundred millions of dollars. The manufacturers of Philadelphia had then made but little progress. Pittsburg was but a village, and there was no thoroughfare of any description through the State. To-day, the manufactures of Philadelphia amount to four hundred millions, and those of the State to nine hundred millions. Pittsburg has so far grown that her people claim to have the richest city of the size in the world. The wealth of the State, as now certified from Harrisburg, has attained to thirty-five hundred millions, and our population has so far grown that we have just added three members to our congressional delegation, being as much as New York and Ohio put together.

To what is all this due? First and foremost to a financial policy looking to development of the internal commerce, and next to our railroad system. With all this growth of prosperity, there should be something like content, and yet, from every quarter of the State we have complaints of railroad management. Pittsburg at one moment complains of favors granted to Johnstown, and at another assures us that horse-shoes pass through

that city to the south and west at less charge than those made at home. Centre county makes a similar complaint in reference to axes, Philadelphia meanwhile telling us that she has been reduced to a mere way-station. Nevertheless, New York merchants, assembled at the Cooper Institute, have just now assured the world that in every direction the discriminations are against New York. That there is much reason for some of these complaints is not to be doubted; but the question is, can we obtain correction of them by adoption of the measures which have been suggested? Is it possible to devise any mode entitled to a place in the organic law, by means of which these small oppressions may be corrected? Is it not to be feared that in endeavoring to remove a corn from the toe, we may inflict injury that may cause the loss of the foot, if not even of life?

Of what avail will be the labors of the thousands of men, who are now, as I understand, engaged at the mouth of the Schuylkill, in preparing for a great export trade, if we shall here determine to put a fence around the State having written upon it, in the largest letters, NO THOROUGHFARE?

Three years since Massachusetts organized a board for the purpose of supervising railroad companies in the interest of reform. It was composed of some of the ablest and purest men of the State, men of sound and discriminating judgment. After a most careful investigation they made a report, the closing paragraphs of which I now request the Clerk to read.

"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 commissioners 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 Legislature or the Joint Committee on Railways arrive at a different conclusion as 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."

The perfect accuracy of the view thus presented has been already proved by the working of the reformed Illinois freight tariff, as yet but few weeks old, sundry charges that may now legally be made being so greatly in excess of those of previous years as to have brought about the suggestion that "it would be wisdom for the Governor to call an extra session of the Legislature to have the law repealed or amended." Happily for the State, its tariff finds no place in its organic law, and may, therefore, readily be amended.

Is there then, Mr. President, no remedy for railroad evils, no guarantee to be obtained against even an increase of those which now exist? There is but one, and that is to be found in the close approximation of producers and consumers. The nearer they are brought the less must be the power of the railroad over the producer on the one side and the consumer on the other. This is so clearly obvious that protection ought certainly to be adopted throughout the west; and yet, the very people who are now most bitterly denouncing railroad oppressions are trying to hoist the free trade flag with a view of compelling increased export of wheat to Europe and increased import of iron and cloth from Europe, knowing, as they must, that with every step in that direction the railroad power must be increased.

I hope, Mr. President, that the section will be stricken out.

The PRESIDENT. The question is on the motion to go into committee of the whole to strike out the fourth section.

Mr. T. H. B. PATTERSON. Mr. President: Before the vote is taken I want to say a few words. If I can get the ear of delegates in the Hall for about five minutes I shall not detain them long. I wish to say that as one of the advocates of the restriction on railroads, I am perfectly willing for the submission of this article and every section of it to a separate vote of the people. I ask nothing more. If the people do not want these sections then I do not wish them to have them; but I shall contend that the supporting of these sections is representing the demands of the people of Pennsylvania from one end to the other.

In reply to the very able argument of the learned gentleman from Philadelphia who has just spoken, I have but a few words

to say. He started out with a proposition, which is only the echo of the French philippic made here from one end of this discussion to the other, that we had better leave this question alone, because if we dare to agitate it we will get worse than we have now. He announces the proposition that unsuccessful revolution strengthens the government. That is the foundation of his proposition, that revolution, if unsuccessful, strengthens the government; in other words, that we must bow down now and admit that the railroad companies are the government, that the corporations are our masters, and that we must not dare to move hand or foot, for fear if we do not succeed in some reasonable restriction, they will master us, and our slavery will be worse than before. For one, I say that if my rights as a citizen of Pennsylvania are only held by indulgence, then I wish they were all taken away at once. Let me know whether I am a slave or whether I am a freeman. If am not free, if I do not enjoy my privileges and rights as a man and as a citizen, then I do not want them at the indulgence of any master.

Now, a few words with regard to the question of charges. As to the exemption of fifty miles, that provision was put in on the motion of the gentleman from Columbia, (Mr. Buckalew,) and I am not a stringent advocate of it. I think it might be stricken out or left in, just as the members of the Convention choose; but I do not contend that there is a relation between the expenditure of carriage and the charges that are to be made. I do contend that common carriers have not the right to charge as they please. They must observe some relation to the cost of their road and to the various expenses that they incur in carrying freight and passengers; and as long as they do that, there is no discrimination. I desire delegates to remember that all that this section aims at is that when railroad companies and corporations ship over the same road in the same direction, they shall not charge more for a shorter than a longer distance; and there is where the great fallacy of the argument against this section, as made by the learned gentleman from Philadelphia, lies. His argument with regard to return freights, with regard to return empty cars, does not apply whatever, because the section does not prevent their making their rates for return freights and return empty cars as they choose and giving all the ad-

vantages arising from the various courses and fluctuations of trade which he contends for. Therefore, this section is not open to the attack which he has made upon it on that ground.

The next proposition that he advocated was, that it did not make any difference how much they charged others, provided they did not charge us more than is fair. Now, gentlemen, I simply wish to ask you this question: If a man takes my property and gives it to another man, free, does it not make any difference to me? That is the principle here. The corporations of Pennsylvania that we propose to restrict, have taken your property and mine, our public highway rights, and they propose to give that property free to outsiders. I say that does make a difference, because when they got their franchise and obtained this property they said they would give us facilities for going to market, and give us the advantages of railroads; but when they take these advantages and give them to others cheaper; when they bring the products and the manufactures of the far west and the far south and the far north, where they have peculiar advantages of location, low prices and everything of that sort, and put them down at the market cheaper than they will take ours, then I say every farmer and every manufacturer in Pennsylvania knows that it does make a difference to him whether an outsider or a neighbor is charged less than he is. It is a plain, common-sense proposition, and no sophistry as regards the great laws of trade can change the relations of facts and principles.

Further than that, it is alleged that this section precludes through freight. If I can get the ear of delegates for one moment, I will show them that there is nothing in this section to prevent through freight just as it is now. The State of Pennsylvania has no jurisdiction over its corporations beyond its State lines. Any provision that we put in this Constitution only applies within the State lines. We cannot reach into Ohio or New York or the surrounding States. The effect of this section is simply to say that if through freight passing between the State lines pays seventy-two cents a ton, they shall not charge more than seventy-two cents a ton for freight within the State. That is all it says as to through freight.

The position of the learned gentleman from Philadelphia is, that in order to compete they must carry the through freight

at seventy-two cents or less, and charge a dollar for home freight on the same road. I will show you the fallacy of that argument. No competition will be carried on for the benefit of a State or a people or a person which is carried on below cost. Now, if it costs seventy-two cents to carry through freight from one end of the State to the other, or to carry it over any portion of the road in the State, then I say the people of Pennsylvania are entitled to get it at cost, too. If they are carrying through freight through the State limits at seventy-two cents, and that is less than cost, then in order to live they have got to make up the difference on the people of the State; and I say it does make a difference to me if a corporation takes my property and uses it to carry other people's freight and other persons lower than my freight or my person. If they are carrying them at cost or above cost, then they can afford to do it for us as well as for other people. The fallacy of the position taken by the learned gentleman and by others on this section is, that they forget railroads can put down their freights outside of the State lines from Chicago, or San Francisco or St. Louis to this State to nothing if they choose; they can say: "We shall carry your freights to the State lines for nothing." But we propose to say that the moment it crosses the State line and comes into this State, then from that point they shall not charge less in the aggregate—remember it is not a *pro rata*—they shall not charge less after they cross the State line than they charge the citizen of the State over the same road. That is all this section proposes to do, and all it does do; and I ask if there is anything unfair in that? Is there anything to preclude through traffic in that? Not one word, because they can put through freights down as low as they please in order to compete.

MR. J. PRICE WETHERILL. Will the gentleman allow me to ask him one question?

MR. T. H. B. PATTERSON. No, sir, because my time is limited, and I want to get through. It is all I want to say on this article.

Now, sir, I say that is not an injury to railroads. The argument of the gentleman from Philadelphia (Mr. Carey) went on the supposition that bringing in iron from the west and then carrying our anthracite coal out there and giving it to them as cheap, if not cheaper, than to the manufacturers of our State, was a benefit to

the State. That proposition answers itself. Of course if the railroad companies carry the fuel out of our mines at cheaper rates to the west, and allow western men, with their cheap lands and their cheap houses, to manufacture their iron on the ground, it is a discrimination direct against the manufacturers of Pennsylvania. The argument answers itself; and so with many of the arguments that have been presented. All these arguments are based on the supposition that railroad companies cannot put down their freights outside of State lines, and that they are entitled to carry through the State at less than cost, which I have already answered.

Now, Mr. President, I have said about all that I desire to say on this subject. The only real question here is, whether or not the corporations of this State shall take our public roads, and then use them below cost for the benefit of others, in order to bring in their products and put them down between us and our markets, allowing them all the advantages of their locality away out of the State, and then bring them in to compete with us at lower rates than cost. If they are doing so above cost, then none of the arguments apply against this section, because as long as they are not losing money they are bound to give us the use of our property just the same as outsiders or neighbors. If they are doing it below cost, it is simply a question of arithmetic how much below cost they are doing it, and we have got to make up the difference; and I do not think any arguments about the laws of trade, or about the theories of political economy, or anything else, is going to deceive a plain Pennsylvania farmer, or a plain common-sense business man into the position that he will not only give up his property, but also pay the cost of other people's freight. That is just what it amounts to, nothing more and nothing less.

I think in view of these facts that we ought to stand by this section. Modify it, if you please, by striking out "fifty miles" and reducing it to a less amount; modify it as you choose in non-essentials in order to perfect it; and I will stand by anything that perfects any section in this article. I want to give the people what they are asking for. I desire simply to submit these provisions to them and let them approve them or vote them down; but do not let gentlemen come and tell us that we are under a power we cannot control; do not let them tell us that this

is a wrong that never can be reached in this country.

The PRESIDENT. The gentleman's time has expired.

Mr. J. PRICE WETHERILL. One word in reply. I desire to call the attention of the gentleman to the first part of section four. He seems to think that the gist of this section is contained in these words: "Nor make a higher charge for a shorter distance than for a longer distance, including such shorter distances," and he imagines that is not understood by this Convention. I think we are fully as able to understand the meaning of those words as the gentleman from Allegheny. I suppose he means that it would not be right for any railroad company to charge \$1 25 to Pittsburg and \$1 25 to Alliance, in Ohio. That is all proper and right as he understands it.

But, sir, let me tell the gentleman from Allegheny that the members of this Convention understand the former part of this section just as fully as himself, and although it may be entirely clear to him that there is no *pro rata* discrimination as understood in this section, yet I think when he comes to read the section carefully he will find that under it you must *pro rata* as to distance; that is, if the rate of freight to Chicago is forty cents for a thousand miles, the rate of freight to Harrisburg must be four cents for one hundred miles. It is not in the clause that there shall be no higher charge for a shorter than a longer distance, but it is in this: "No corporation engaged in the transportation of freight or passengers through this State shall make any discrimination in charges"—that is, any difference in charges—"for the carriage of either freight or passengers between or against the people thereof;" that is, that they shall not make any difference in charges between the people of the State or against the people of the State. What does that mean? It applies clearly to people out of the State, or why use the word "against?" They have no right to charge the people within the State wanting freight transported for a hundred miles any more than they charge people outside the State using transportation for a thousand miles. I think that is clear; and I am a little surprised at the ingenuity of the gentleman from Allegheny. I am not surprised at his prejudice, because it does seem to me as if the united prejudice in the State of Pennsylvania

against railroad companies comes from his county.

We are told by one of his colleagues from Allegheny that the railroad companies are a set of swindlers. I ask whether that is the right spirit in which to approach so important a section as this. I ask whether in the consideration of a vital matter, a matter upon which the very life of the State depends, we should approach it in any such spirit? I regret to notice on the part of the gentlemen from Allegheny, and also on the part of a great many of the members of the Committee on Railroads, a degree of prejudice against railroads which I deem is very important for them to get rid of before they can fairly and clearly and satisfactorily understand the article which they have presented. Sir, I say in my place that if I know the views of the people of this State, they do condemn us more in this than in any one act of ours, that we have thus hastily endeavored to "crib, cabin and confine" the great railroad interests and enterprises of this State.

I do not desire to be led into an argument outside of the matter immediately before us. I wish to call the attention of the Convention to the fact that although the gentleman from Allegheny denies that by this section railroad companies are bound to carry freight at the same rate for a longer as for a shorter distance, that is a mistake, and in my opinion by the former part of the section we do bind the railroad companies to do it, and if we do bind them to do it, we bind them to carry one hundred pounds of freight to Harrisburg at the same rate that the government charges for carrying a single letter to that point. The folly of such a proposition, with such results, is too apparent for further remark.

MR. T. H. B. PATTERSON. I rise to make a personal explanation:

SEVERAL DELEGATES. Order.

THE PRESIDENT. The Chair thinks the gentleman is in order.

MR. T. H. B. PATTERSON. I understood the last speaker to charge that I was interested in this question. I wish merely to state to this Convention that every dollar of interest I have in the world is directly opposed to this article. I have no interest whatever in any restriction contained in this section.

MR. BEAR. I do not wish to detain the Convention, but I desire to put myself fairly upon the record. I shall vote

against the motion to strike out section four, although I am not satisfied with the section as it stands. I shall vote against this motion in the hope that the section will be amended as we go along.

MR. HOWARD. Mr. President: Perhaps the opponents of this section and of the railroad article would be relieved by the friends of the article stating that they will vote for submitting this article separately, because we do not want it defeated by the balance of the Constitution. I am satisfied that this article will command more votes, two to one, than all the balance of the Constitution put together; and this section, which is struck at by the distinguished delegate from Philadelphia, (Mr. Carey,) is of all other sections just what the people of Pennsylvania want.

I was surprised at the argument of the distinguished delegate when he commenced by saying that he could not understand the latter clause of this section, namely, why discrimination should be allowed upon a distance of fifty miles. That certainly was an extraordinary statement coming from a gentleman from whom we certainly expected a very high degree of intelligence. The reason for that discrimination is in the mouth of everybody. The reason can be given by every other delegate in this Convention, namely, because of the handling for the short distance. It was argued before the committee fully, thoroughly and completely; it was argued in this Convention upon two of the readings of it, and everybody understood it, and I am sorry that the delegate from Philadelphia did not understand it as well.

The motion of the delegate from Philadelphia (Mr. Carey) is to strike out the fourth section of the railroad article, and to support this motion the gentleman spoke of coal that went out to Marquette, Wisconsin, for within a dollar a ton as cheap as he received it in Philadelphia. Why, sir, there is not anything in this section that comes within a thousand miles of prohibiting that. It does not touch it at all, and the argument does not touch the section within the same distance. You might as well shoot west when you meant to shoot east. What an idea—that this section, which simply says that they shall not discriminate against the people of Pennsylvania, would prohibit them from carrying our coal out there for five cents a ton if they choose to do it. It does not prohibit it at

all; and if they choose to bring their iron ore here at the same rate, it does not prevent that. They can bring it just as cheap as they like. They can carry out of the State just as cheap as they please. They can bring into the State just as cheap as they please, only that they shall not discriminate against the people of this State.

This section seems to contain four distinct propositions. The first is, 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 between or against the people thereof." If they want to carry the freights of Pennsylvania at a very low rate to find some other market, they can carry them as low as they like, so that they treat all alike. If they bring freights into and through Pennsylvania, they can carry them just as low as they please, so that they treat all alike.

Now, Mr. President, what is there about railroads that their business is so different from all other business under heaven, that they cannot work under an honest principle? I should like to know why it is that an honest principle seems to murder them? It is a most extraordinary thing that the moment you propose anything like fairness, to bring them down to fair rules, to treat all men alike, that moment they begin to squirm and yell and declare that they are going to be murdered and destroyed. I should like to see gentlemen address such an argument as that to the hard common sense of the people of Pennsylvania.

Gentlemen talk about this article weighing down the Constitution. Why, sir, if they could tack to it the very worst article you have got in this Constitution, it would carry that article with it by the overwhelming power with which this article will recommend itself to the people, if it can get through a third reading as fairly as it has got through the first two readings.

The next idea of this section is that these railroad companies shall not charge more for a shorter distance than they do for a longer one. What does that mean? That they shall not charge more for fifty miles than they do for one hundred. That is plain enough. And yet they are doing that. They charge more for fifty miles than they do for one hundred and fifty. They have actually forced the freights out of this State. They have forced them to go west, out of the State,

hundreds of miles, in order to be re-shipped to Philadelphia; and yet when we undertake to apply a provision that shall compel them to stop this injustice, they come and talk about being ruined. Sir, there is no danger of ruining anybody by this section. It is one of those fair propositions that is intended to do justice. It is perfectly right and proper.

What is the next proposition contained in this section? "No special rates or drawbacks shall, either directly or indirectly, be allowed." Is not that right? Is it not perfectly proper? What man will say that is wrong? Shall they allow drawbacks? Shall they allow special rates? What is that but building up one set of men and destroying another, building up one man's business and breaking down another's? We are making a Constitution for the entire people of this Commonwealth. We must insert in it rules of justice that shall be equal and do exact justice to all men. We cannot allow them to make these special rates and these drawbacks. That is one of the crying evils of the railroad system, and it has been a robbery of the stockholders as well as an injury to individuals, and we know it well.

We allow them, however, to make discrimination "for excursion and commutation tickets," and we provide further that "reasonable extra rates within the limits of the charter of a company may be made in charges for any distance not exceeding fifty miles."

Mr. President, I was surprised at the argument that was sent up to be read from a pamphlet: "We have no right to complain if the railroads carry the freights of the people of other States cheaper than they do those of the people of our own State; the question is, do they charge us too high." That was the argument and really all of the argument of the gentleman from Philadelphia, that we have no right to complain because they carried the freights of other people into and through the State of Pennsylvania cheaper than they carried ours. What is that argument? It is that the people of Pennsylvania shall surrender their highways to the people outside of Pennsylvania, and that railroad companies shall be permitted to bring in the products of other States to crush our manufacturing establishments. That is the argument; that is what it means. Is it no injustice for them to carry for people outside of Pennsylvania at lower rates than they carry

for us? The real question, we are told, is, do they charge us too high? Of course they charge us too high, every time they charge us more than they do anybody else. The argument is that they have got to carry cheaper for others, or otherwise they will break up. Very well, if it is a losing business for them to carry so cheap for outsiders, they had better quit it. They cannot carry for others at a loss unless they put on to us not only what is fair payment for our carriage, but enough also to make up the loss which they sustain in carrying other people's freights too low. That is the real state of the case. When they make these discriminations, when they carry for one man for a dollar and half and charge another man two dollars for the same service, the latter is charged to make up the loss on the first, besides paying what is fair for carrying his own freight. That is the true argument, and there is no question in regard to it in my mind.

The idea is assumed to be unanswerable that we should not complain that they carry for other people cheaper, so that they do not charge us too much for carrying our freight. I answer again that every cent they charge us more than they charge others is a cent too high. It is too high because they charge us more. If they can afford to carry for others at the lower rate, they can afford to carry for us at the same rate. If they cannot, let them readjust their rates, and let them do it upon an honest basis; let it be forced upon them by the public law—like the Constitution, under which it shall be provided that they shall not make these unjust discriminations. That is the true rule. It is what the people demand, and it is the principle that must be finally arrived at all over this land in regard to transportation by railroad companies.

Mr. President, I would not give a pinch of snuff for the whole article if you strike out this section. It is the key to it; it is the heart of it; it is what the people of this Commonwealth want, and less than this they will not be satisfied with.

Mr. KNIGHT. Mr. President: I rise to put an inquiry; not to make a speech. The fourth section 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," &c.

It does not say of any particular class. I want to inquire of the chairman of the

Railroad Committee, or some wise member of the Convention who is on that committee, whether they intend by this section to require a railroad company to carry a ton of gunpowder, silk, or tea at the same price they would charge for carrying a ton of iron ore or limestone, and whether they expect a company to carry an emigrant passenger at the same rate as they would carry a first-class passenger?

Mr. COCHRAN. I take great pleasure in replying to the inquiry of the gentleman from the city of Philadelphia. That is not the design nor the intention of the section, nor, as I understand it, or as other gentlemen understand it who probably are better able to give a legal construction to it than I am, is that the correct construction of the section.

Mr. KNIGHT. I fear that the construction might be put on it.

Mr. LEAR. Mr. President: The motion to strike out this section I am very much in favor of; not because I profess to know that this section provides anything that is not right, but because, as I have said before during the sessions of this Convention, we are doing that which we cannot properly understand, and which does not belong to this Constitutional Convention; and I desire particularly to be understood with regard to my opposition to this section and to several other sections, if not the whole of this article, that it is not because the provisions might not be proper in the proper place, but because we are called upon to vote on that which gentlemen on one side and the other do not profess to know the meaning of themselves. We are called upon to amend the Constitution; and when I said in committee of the whole that this report had been made by a committee who did not seem to comprehend the nature of their duties, I was assailed by some gentlemen of that committee as assuming to know all about what ought to be done, and to have the power, the ability and means to do it myself. They either misunderstood or misrepresented me. Because I find out and say that my watch does not keep time, they would infer that I thought I could make a better one. That is a *non sequitur*, unworthy of gentlemen upon this floor. When they attribute to me the vanity of supposing that I knew better how to make a railroad article than themselves from the arguments I had used on this floor, they did me injustice and stultified themselves. Because I look at a picture

and know the difference between a fine painting and a mere daub, do I presume to say that I can make a mere daub myself? It is a very sickly fly that does not love honey; but it would be a very conceited one which would ever undertake to make it. And that would be the case with me. I do not pretend to such ability.

But yet after I had spoken, the gentleman from York (Mr. Cochran) and the gentleman from Allegheny (Mr. Howard) got up and "pitched into" me, and said that if I had had charge of the matter they had no doubt I could make a railroad article, inferring that I assumed I could do what they had failed in. And by such reasoning as this arguments are answered, and by such reasoners a Constitution is to be made! It is the business of the Convention to make a Constitution to limit the powers of legislation, to prescribe who shall compose our Legislature, what their qualifications shall be, how they shall be elected, when they shall meet, and what shall be their duties; but whenever we assume ourselves to perform the functions of the Legislature, we become usurpers, and are usurping the rights and powers of the people; and whenever we supersede the rights and powers of the people through their legislators, we arrogate to ourselves an authority that never was conferred upon us by the people, and when we assume that position and act upon it, the liberties of the people of Pennsylvania are gone, and nothing is left of that self-government of which we are so justly proud, and we may

"Buy for the cold corpse of Freedom a shroud,
And bury our hopes in her grave."

Here we are asked to provide a toll sheet and time-table for all the railroads and to go into various details which ought to belong to the Legislature; and we are to put all this into the Constitution of Pennsylvania, and say to the people of this State: "Your rights upon this subject are gone forever; we have assumed to lock them up in a Constitution. You do not understand your interests, and we have put your interference out of your reach." It does not matter, if we choose to divest ourselves of the power of self-government, whether we surrender our rights to a monarchy, whether we vest them in any autocracy, or whether we lock them up in a Constitution. If we prohibit the people from doing that which belongs to the administration of their gov-

ernment by locking up in the Constitution that power which they have of right, and which a republican form of government guarantees to them to do through their Legislature, that which we are pretending here to do for all time, at least so long as this Constitution shall last, we are usurping an authority, a privilege, a power which has never been conferred upon us as delegates in this Convention, and we are doing that which is sapping the very foundation of republican government. We have no right to legislate either in the form of this section or in many other forms proposed in this article; and as long as I understand my position to the people of this State, as long as I understand my duties as a delegate in this Convention, I never will support a section like this or an article that has many other provisions much more objectionable than ever this section itself is. I never will support them, and I never will support a Constitution that has them in.

Not in this article alone, but in other articles, is this the case. I am not particularly partial to a railroad article; but there has manifested itself in this Convention a fanaticism on this particular subject that has not been exhibited upon any other subject; and therefore it is that my attention has been particularly called to the course of certain delegates in this Convention upon this article. There has, I say, been a radicalism, a fanaticism upon the subject of railroad corporations that does not manifest itself upon any other subject, and therefore it is that I have felt called upon to speak and act against this article more particularly than against any other; but these views apply wherever the principles of self-government is assailed. I am for the power of people in the law-making department. "We, the people," are supposed to legislate in Pennsylvania. We legislate by the delegated authority which we confer upon the Legislature of the State; and whenever we take that away, we take away all that is the controlling and prevailing idea of a republican form of government. It is for that reason that I oppose this section; it is for that reason that I oppose many other sections. If the people of this State are willing to surrender their rights of self-government, let them do so; but they will do it without my aid, without my procurement, and against my protest. I shall protest to the end against it. If we want to do

it, let us do it in a direct manner, not insidiously or by any indirection.

Several members upon this floor have alluded to *Magna Charta* as the great bulwark of English liberty. Sir, there is no more resemblance in that to the Constitution of a State like Pennsylvania than there is between white and black. There the government was all centred in the crown, and the crown surrendered a part of its power to the people. The crown doled out, in small instalments, liberty to the people. The liberty of the people of Great Britain is found in the Great Charter, in the Petition of Rights, and some other concessions by the government to the people. Here we are dissolved into the original elements of a State. The power is all in our hands, while the crown granted charters of liberty to the people; we are, as a people, chartering the government to curtail us in the amplitude of our freedom instead of the government granting charters of liberty to us. We charter the government, and thus curtail and circumscribe our liberties and our rights to a certain extent, and we undertake to define and limit the powers of the people. When, however, we undertake to surrender all our rights, all the powers that we have, and lock them up in the Constitution, we are doing that which strikes at the very vitals of self-government. Therefore it is, as I have said, that I oppose this section; therefore it is that I oppose some other sections of this article much more strongly than I do this; and it is for the very same reason that I oppose several other sections in different articles of the Constitution that we have passed finally; and I predict that the people of Pennsylvania, if they are not insensible to the advantages which have been conferred upon them under our system of self-government, will repudiate the whole instrument, unless we are either cautious about how we proceed or retrace our steps and undo some things which we have done amiss.

Mr. COCHRAN. Mr. President: I shall have to say a few words on this section before we come to a vote, because I regard the motion now pending as one which, if it be successful, is fatal to the whole article. The gentleman from Philadelphia proposes to strike out this section entirely and offers no substitute, no alternative. We are to do without any provision in the article for the protection of the people against the discriminations of

which they complain as made against them in the transaction of their business.

Now, sir, I do not understand what it is that has given inspiration to the eloquence of the gentleman from Bucks (Mr. Lear) this morning. He has brought up before us "chimeras dire" of all kinds of autocrasies and monarchies, wrapped up and invested in this poor section of this railroad article. I do not see in it those things, nor can I see them. The fact is that the gentleman seems to have "nursed his wrath to keep it warm" against some members of the Railroad Committee ever since this article was before the Convention in committee of the whole and on second reading, and the flood-gates of that wrath have been poured out on us this morning in the stream of eloquence which has flowed over us.

Sir, we propose neither to bury liberty nor otherwise to assail the interests of the people of this Commonwealth. We could not do it if we would, we would not do it if we could. The whole of what we do is to go to the people themselves; they will pass upon our work; and depend upon it, sir, the people of Pennsylvania are not going to fasten the chains of monarchy or autocracy on their own necks, nor are they going to bury liberty in an everlasting grave.

With regard to the section immediately before the House, I have said heretofore that it is the very heart of the article, and in that I concur with the gentleman from Allegheny (Mr. Howard.) It is a thing which goes home to the business and the daily dealings of the people of this Commonwealth. There is nothing in the section which I conceive to be wrong. Again and again has this Convention, after distinct and protracted discussion upon it and deliberate consideration of it, adopted this section, although the gentleman from Bucks is of the opinion that the committee who reported it in the first instance did not understand their duty. I take the decision of the Convention rather than the opinion of the gentleman from Bucks on that question.

The gentleman from Philadelphia also has charged the members of this committee with prejudice on this subject. Prejudice, sir! I say that the members of the committee acted on this question without prejudice. There were none of the members of the committee who had any occasion or any ground for the entertainment of prejudice on this subject.

They took up the question and considered it upon its merits, and they reported in this article what they believed to be just and true without any prejudice. And let me say here to the gentleman from Philadelphia, that they had not the ground of prejudice which may exist, on the other hand, in his mind, because, probably, he has a personal interest in these questions which members of the Railroad Committee had not.

Mr. CAREY. Does the gentleman refer to me?

Mr. COCHRAN. No, sir, I was not speaking in relation to the gentleman in front of me, (Mr. Carey,) but in regard to the gentleman on my right (Mr. J. Price Wetherill.)

Now, sir, will this Convention deliberately determine to refuse to enact any provision on the subject of these unjust discriminations? Will they, by a single blow aimed by the hand of the gentleman from Philadelphia who sits before me, destroy this article utterly and refuse all relief to the people of the State? Is there any argument which can sustain the propriety of an act like this? Is it denied, has any one stood up and denied the fact, that these discriminations exist? It is undeniable. The people everywhere throughout the State know that they exist, and they complain of them, and have been complaining of them for years, and they are unjust discriminations. And the relief which this section affords is at best a partial relief. It does not go to the full extent of what under other circumstances it might be advisable for us to do.

Now, sir, what is the last clause of this section, which was first objected to? That is a saving clause, and a saving clause in order to prevent too stringent an operation of the preceding provisions of this section, a saving clause which, in consideration of the fact that additional expenses always attend short distances of transportation, allows some play to be given in the rate of charges. The objection which I have to that particular part of the section, I may state here is that the distance within which this change is allowed is too long. Instead of fifty miles, I think it should not exceed half that distance. But it is an allowance made for the purpose of relieving the stringency of the operation of the other parts of the section. I believe that it might probably with justice be omitted entirely; but the Railroad Committee, though it has been charged with acting with prejudice here,

have made this saving clause in consideration of what they believed to be a just regard to the facts connected with these short distances of transportation.

Well, sir, is there any injustice, anything unreasonable in providing that you shall not charge a man more for transporting his property a shorter than a longer distance, when you have this saving clause in addition? I do not see it. Why should you compel men to pay more for transportation for short than for long distances, when you have allowed this discrimination to be made on such distances as it would be proper to allow it for the expense of stoppage of trains and the discharging of the load. The thing is perfectly fair and reasonable.

What is unjust and improper in this matter is the discrimination. When railroad companies were first created by the Legislature of the State they were created for the purpose of promoting the interests of the people of *this State*, and the law then regulated the rate of freights per ton per mile and fixed the rate of transportation on that principle. This section does not go to that extent. It does not pretend to fix the rate of transportation per ton per mile. That, I admit, would under the circumstances be unjust. But it does say, "you shall not charge more for a shorter than a longer distance, nor shall you charge the people of Pennsylvania for transportation over their own soil greater rates than you charge the people of other States for transportation over the same soil." Where is the injustice of that? Are you going here to establish a principle that the people of this State, by whom these corporations were created and for whose benefit they exist, shall be set at a disadvantage with all other people throughout this country in transportation over the works of their own creation?

Mr. President, there may be parts of this section which may be properly modified. It may be proper to add to or to alter certain provisions in the section without destroying its principle and its general purport; but I hope that this Convention will not now, on this vote, strike out the whole section, and say that they will do nothing whatever on this subject, say that they are incompetent to apprehend the justice of the simple principle which every man, whether he ever saw a railroad or not, it seems to me, is perfectly able to apprehend.

I hope, sir, then, without delaying the Convention further, that the section will stand as against this motion, and that if there is anything necessary to be done to make it more perfect, more just and more right in itself, it will be done after this motion shall have been voted down.

The PRESIDENT. The question is on the motion to strike out the fourth section.

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

Mr. DALLAS. I second the call.

Mr. CURTIN. Mr. President: As a member of the Committee on Railroads and Canals, I desire to say something in justification of my vote on this section, and it is proper that I should say in this connection as a member of that committee, that no committee of this body sat more hours or labored more industriously to produce results that would be acceptable to the Convention than this Committee on Railroads and Canals. There were differences, of course, and there were differences on this section, and I regret extremely that on account of the differences which I have with the committee of which I am a member on this section, I am constrained to vote to strike out the whole section when it would be much more acceptable to my conscience and my duty in this Convention if I could vote to modify or change it.

The section declares that no special rates or drawbacks shall directly or indirectly be allowed except for excursion and commutation tickets. I object to that part of the section. Let me refer to the practical operation of that language. Suppose that in a remote part of Pennsylvania where they have not had the benefit of the public improvements of the State, an association of capital and skilled labor should propose to enter into some new enterprise of manufacture. I will locate it in the county represented by my friend from Potter. They are remote from market, they come in competition in the product of their enterprise with men who are nearer to market, who have more capital, more benefit of experience and skill in the business; and they ask as a means of introducing what may shed benefit over the whole community in which they propose to erect their new enterprise that the railroad company shall give them a drawback on their freights at long distances to the place where they find their market, so that they may have the means thus of competing with those

who are nearer to market and more fortunate in capital. By this section you preclude any railroad company from giving any drawback or other benefit such an enterprise.

I cannot think it would be wrong in a railroad company to give some indulgence or immunity to a community in a distant part of the State, proposing to establish a new enterprise, not only for the benefit of the locality, but for the benefit of all the people of the State. With that language in the section I cannot give it my approbation.

As to that part of the section which declares that railroads shall not charge a greater rate for passengers and tonnage for a shorter than a longer distance, I give it my most hearty approbation, for to such a discrimination the people of this State are not educated and never can be. I can well understand how the people of Pennsylvania can submit that railroads may carry for a longer distance at the same rate they carry for a shorter distance, so as to reach out for the commerce and the trade of the west; but the people of Pennsylvania never can understand how the railroads of the State can charge the people of the State a greater rate for freight or for passengers for a shorter than a longer distance. If it is the pleasure of the railroad companies to charge no less, no more from Illinois to Philadelphia than from Pittsburg to Philadelphia, let it be so. They come in competition with the great lines north and south of the State, and in that competition they must reduce their charges; but you never can get the people of Pennsylvania to understand how they should charge more for tonnage or passengers from Philadelphia to Pittsburg than from the great west to the same market.

That part of the section might do; but as I am compelled to vote for striking out this section, I shall do so because of the obnoxious feature which prevents a railroad company from offering benefit to a distant part of the State, to new enterprises where there is less capital, and the only means of improvement and progress comes from the fact that they can come into competition with those nearer the market by having a reduction of rates. I will vote to strike the section from the article, for I am compelled to do so by reason of my general views upon it.

Mr. HOWARD. I ask the delegate whether instead of trying to strike out the whole section, he would not reach his

purpose better by sustaining the section, and then moving to amend it by striking out what he objects to.

MR. CURTIN. I do not know that I can do that.

MR. HOWARD. Certainly you can.

MR. CURTIN. That would depend upon the pleasure of the Convention.

MR. HOWARD. If the Convention refuse to strike out the entire section, the delegate can move to strike out part of it.

MR. CURTIN. Let me ask my colleague on the Railroad Committee, the gentleman from Allegheny, how it is possible for us to vote together, disagreeing as we do in our views upon this article?

MR. HOWARD. If I stood as you do on this question, then I should certainly vote to sustain the article, and after it is sustained, move an amendment to any particular section by striking out what I objected to. That is perfectly parliamentary and right.

MR. CURTIN. I am not willing to make a bargain that is all on one side. [Laughter.] If my colleague will pledge himself to vote with me to amend the section as I desire, I will agree to vote to keep the section in the article. But inasmuch as he says "I am in favor of the whole section and will vote for it," and I am opposed to this part of it, I do not see how we can meet.

MR. STANTON. If the Convention refuse to strike out the section, it will be perfectly competent for the gentleman then to move to insert an amended section embodying his views, and that, I think, would be the more appropriate course.

MR. CALVIN. It appears to me that the gentleman from Centre comes to a wrong conclusion from his premises. He is in favor of certain provisions in the section and opposed to certain other provisions. My idea is, that the consistent course for the gentleman would be to vote against striking out the section, and then seek to amend it so as to meet his own views. I do not agree at all with the gentleman in relation to that part of the section about special rates and drawbacks. I believe that they are a source of great wrong, favoritism and injustice. If you will allow railroad companies to make special contracts and grant drawbacks, to what extent may they not carry their practice of favoritism? It has been carried to a most ruinous extent already. I have no prejudice against railroad companies. I regard

them as of the very highest importance. I look upon them as one of the great levers of modern civilization and progress; but I am in favor as a member of this Convention of correcting abuses. The railroad companies have risen to great power. They have become a third estate in this country, and threaten to become the dominant power of this country. The people have been laboring and suffering under their discriminations and injustice very much, and they expect this Convention to redress at least some of these evils.

Now, this section which it is proposed to strike out is the very gist of the whole article, and if you strike out this section you may as well strike out the whole article. The Convention will propose certain amendments to the people for their separate consideration; and as has been suggested by several of the delegates, I am perfectly content that this article shall be submitted separately; but I maintain and insist that the people have a right and ought to have the opportunity of deciding upon this question.

The first proposition in this section is that there shall be no discrimination *between* the people of the State or *against* the people of the State. Have there not been discriminations against the people of the State and between the people of the State? Has the Pennsylvania railroad company shown no inequality, no injustice, no favoritism? They are bound by this section to treat the people of the State all alike. There is to be no discrimination, no system of favoritism, no special contracts, no drawbacks by which favorites and rings and cliques can be made to amass great fortunes whilst other men must stand back.

I do not suppose there is a man in this body who is in favor of discriminating or permitting railroad companies to discriminate *between* the people of the State. Will it bear examination for a single moment? Shall not two men standing on the same platform and freighting from the same point be entitled to equal and exact justice without any discrimination whatever?

Then, again, a most important feature in the provision is that there shall be no discrimination *against* the people of this State. We know very well that the Pennsylvania railroad company carry freights west of Pittsburg—from the far west—on to Philadelphia and New York at much less rates than they do from Pittsburg,

aye, than they do from points on this side of Pittsburg. Here is a great corporation enjoying great privileges, and franchises granted by this State for the benefit of the people of the State. We are perfectly willing, of course, that the people west of us shall receive all the proper facilities that can be extended to them, but we say and maintain here, I think with perfect justice and propriety, that the people of the State shall not be discriminated against in their favor.

Why, sir, under the present order of things, the further off you are from market the nearer you are to it, and the nearer you are to it, the further you are from it. If this is a correct principle we have learned something new. Bring the consumer and the producer close together, my friend from Philadelphia (Mr. Carey) says; but the further they are apart the better for them under this modern dispensation of the railroad companies. Distance is an element in the charge which ought always to be considered, in the transportation of freight or passengers, and it is absurd and it is unjust to carry one man's freight one thousand miles or three hundred miles for less money than you charge to carry another man's half the distance.

This section does not propose to establish a schedule of prices. It says that there shall be no special contracts, that there shall be no drawbacks, that there shall be no discrimination between individuals, and that there shall be no discrimination against the people of the State. So far it goes, and no further. We have not assumed that the railroad companies shall carry at the same rate per ton per mile. The charter of the Pennsylvania railroad company does provide that they shall not charge more than a certain rate per ton per mile, and the truth is that there ought always to be some proportion between the charge and the distance. We do not undertake to regulate it here, and for my own part, whilst I approve of the main features of this article, there is one provision in it which I would rather see stricken out, that is, the provision that they shall not charge more for a shorter distance than for a longer distance, embracing the shorter distance. I would like to see that stricken out, because it implies clearly that they may charge as much for a shorter distance as for a longer distance. I believe that there should be no discriminations against the people of the State;

that these great corporations should be run and operated as favorably for the people of the State, at least, as for the people of any other portion of the country. To say that no railroad company shall make any discrimination against the people of Pennsylvania is a proposition which I think no man ought to deny. That there should be no special contracts or drawbacks, no system of favoritism, is another proposition which I think is clearly just and right.

The question is on the motion to go into committee of the whole in order to strike out section four, on which the yeas and nays have been ordered.

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

Y E A S.

Messrs. Addicks, Ainey, Armstrong, Barclay, Boyd, Brodhead, Broomall, Carey, Clark, Corbett, Corson, Curry, Curtin, Dallas, Darlington, Davis, Edwards, Elliott, Fulton, Green, Hanna, Hemphill, Hunsicker, Knight, Lamberton, Lear, Lilly, Littleton, MacVeagh, M'Michael, Mann, Minor, Niles, Palmer, H. W., Parsons, Patton, Read, John R., Rooke, Stanton, Stewart, Van Reed, Wetherill, J. M., Wetherill, Jno. Price and Walker, *President*—44.

N A Y S.

Messrs. Baer, Bailey, (Huntingdon,) Baily, (Perry,) Baker, Bannan, Bartholomew, Beebe, Biddle, Bigler, Black, Bowman, Brown, Buckalew, Calvin, Campbell, Carter, Church, Cochran, De France, Dodd, Ewing, Finney, Funck, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hazzard, Horton, Howard, Kaine, Landis, MacConnell, M'Clean, M'Culloch, Mantor, Metzger, Mott, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Ross, Smith, Henry W., Smith, Wm. H., Struthers, Turrell, Wherry White, David N., White, J. W. F., Woodward and Wright—57.

So the motion was rejected.

ABSENT.—Messrs. Achenbach, Alricks, Andrews, Bardsley, Bullitt, Cassidy, Collins, Craig, Cronmiller, Cuyler, Dunning, Ellis, Fell, Heverin, Lawrence, Long, M'Camant, M'Murray, Mitchell, Newlin, Porter, Pughe, Reed, Andrew, Runk, Russell, Sharpe, Simpson, Smith, H. G., Temple, White, Harry and Worrell—31.

Mr. DALLAS. I now move to go into committee of the whole for special amendment, and indicate the following:

Strike out that part of section one from and including the word "and," where it occurs the first time in the fifth line, to and including the word "destination," in the eighth line.

Strike out the whole of section four.

Strike out all of section eight from and including the word "and," in the third line.

Strike out all of section nine, and insert as follows, to be called section four:

"No railroad, canal or transportation company shall ever make any unfair, unjust or unreasonable discrimination in their rates of charge for transportation of freight or passengers or in any other manner or particular whatever."

Mr. DALLAS. I call for the reading of those portions of the different sections which I propose to strike out, so that the Convention may understand them.

The CLERK. In the first section it is proposed to strike out the words:

"And no discrimination shall be made in passenger or freight tolls and tariffs on persons and property passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination."

Then it is proposed to strike out the whole of section four, as follows:

"SECTION 4. 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 for excursion and commutation tickets. Reasonable extra rates, within the limits of the charter of a company, may be made in charges for any distance not exceeding fifty miles."

It is also proposed to strike out all of section eight after and including the word "and," in the third line, as follows:

"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."

Also, all of section nine, as follows:

"SECTION 9. 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. CAMPBELL. I rise for information. I understand that we cannot call for a division of the question. Am I correct?

The PRESIDENT. You are correct.

Mr. CAMPBELL. Then we shall have to vote either for the entire amendment or against it.

The PRESIDENT. Certainly.

Mr. DALLAS. Mr. President: I asked the Clerk to read these portions of the different sections, which I proposed to strike out, in order that the Convention might perceive that every line that I propose to strike out related to discriminations, and those lines were intended to incorporate into this article those discriminations which, in the view of this Convention, were unjust and unreasonable. I propose to strike out that which is simply an expression of the view of this Convention as to the unreasonableness of certain discriminations: What I propose to insert is that the unreasonableness, the injustice, of any discrimination shall be left as it has heretofore been left, with the courts and the Legislature.

It is a principle of the common law in England and in this country, that no common carrier can make unjust or unreasonable discriminations as against the body of the people; and my view of this matter is this: While it may be well enough to harden that principle into the Constitution, to undertake here to say what shall be unreasonable and what shall be unjust, is to run into two dangers in two opposite extremes. One danger is that we may, in our want of all foreseeing wisdom, include

something as unfair and unreasonable which may turn out not to be so; and in the second place, that we may fail to include something which we may afterwards discover is unreasonable and unfair.

Now, sir, the first proposition, that we may include something which is not unfair and unreasonable in our restrictions, I think is demonstrated by what has occurred this morning in this body. The debate here has developed the fact that very few minds can agree as to what is unreasonable and what is unfair, and it is certainly a fair yielding to the minority to admit that it is possible that where they honestly and earnestly differ from the majority, as they have done here, they may be right in assuming and contending that some of these restrictions are not reasonable on the question of discrimination. If the minority should possibly turn out to be right, if gentlemen like my friend from Philadelphia, who sits in front of me, (Mr. Carey,) if a gentleman understanding this subject as he certainly does, should turn out to be right, then by engrafting these specific provisions into the Constitution you have made it impossible for the courts to liberally construe it, or for the Legislature to aid the people of Pennsylvania if they should come to his view upon this subject.

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

Mr. DALLAS. Certainly.

Mr. WOODWARD. Who is to decide whether it be reasonable or just?

Mr. DALLAS. There are two tribunals to decide that. In the first place, if the people of Pennsylvania become satisfied that any one particular discrimination is, beyond question, unreasonable and unjust, through their representatives in the General Assembly of this Commonwealth they will say so by statute, and it is proper for statutory regulation and not for constitutional provision.

Mr. WOODWARD. By what standard will the Legislature proceed?

Mr. DALLAS. I take it that the Legislature can proceed on the standard of each man on his responsibility to his constituents.

Mr. WOODWARD. Then it amounts to this, that you submit the whole question to the Legislature.

Mr. DALLAS. I would either remit the whole subject to the Legislature; or, my second answer to the gentleman's propo-

sition is, that the courts, under the common law of the State of Pennsylvania, are constantly called upon to decide what is unreasonable and what is unjust in discrimination, and legislation in my judgment is not now necessary on that subject; and it is more safely left to them, for not only are we usurping the place of the Legislature here and seeking to place that in the Constitution which is only matter for statutory provision, but we are trying cases in advance.

The question of whether a discrimination is just or unjust, reasonable or unreasonable, fair or unfair, is a question depending upon the facts and circumstances of each case. Half of this argument has been by way of illustration. One gentleman gives you an illustration of injustice; grant it may be true. Another gentleman gives you an illustration of necessity for the very discrimination complained of; that may also be true. Now, I say that those cases should not be brought here to be decided. These cases should go to the courts, which upon all the circumstances, with all the light of judicial investigation, should determine for each case the justice, fairness and reasonableness of the discrimination complained of.

But, sir, I am not one of those who have objected to many propositions in this body because they were legislative in their character. I believe that in the article on legislation and the article on elections it was proper, so far as necessary, that we should go into legislation. The people sent us here, and expected us to secure to them pureness, fairness, honesty in elections. I believe we have done that. They expected us to purify the Legislature by our article on legislation, by our provisions, especially, against special legislation. I believe we have done that. And, sir, we have done both of those by disregarding the idea that we should not legislate; but I do not think we should go one step further in the direction of legislation in this Convention, for having given to the people fair elections, having thrown proper barriers around the purity of legislation, we can safely leave all the rest to the people and to the Legislatures that they will elect. But here we are proposing now to legislate upon these questions which are simply matters of business, of policy and of interest to the people, and which ought properly to be referred, as I said in answer to the gentleman, and now repeat, to

the Legislature if it sees proper to act upon general principles, and to their courts to decide on particular cases.

Mr. BEEBE. Mr. President: I take it that no man who has heretofore voted against the striking out of these sections will have any hesitation as to where his vote should be upon this proposition.

The gentleman says that the purpose of his amendment is to leave this question where it has been heretofore, to the Legislature and the courts. Did we come here for this? Can we safely leave it there? On the contrary here, sir, I supposed that it was known all over this land that legislation was for corporations, and it was some restriction upon that legislation that we were sent here to place in the Constitution.

Again, he says the courts will protect in individual cases. I believe very likely that they would, if, as the gentleman from Philadelphia stated this morning in his proposition, every effort to free ourselves from the shackles of the power of corporations did not increase their determination to put on the engine of oppression and make it worse for us; but when the gentleman from Philadelphia (Mr. Dallas) says the people have exhausted their power and their efforts on this matter, let me tell him that they have just begun. They have just begun to give these evils their attention, and it is not characteristic of the American people to move hastily and harshly, but rather to endure burdens as long as they can be endured; but when they be can no longer endure it is not the breath of an idle wind that goes forth, but it is the sweeping whirlwind; and God grant that we may avert that by such wise restrictions as shall put corporations upon an equality and give to our people their rights in this matter instead of compelling such a necessity.

Individual cases, as the gentleman from Philadelphia says, might be left to the courts if it were not for this very gigantic power that the gentleman speaks of overawing our people. Thirteen years ago, in the transaction of business, I was in Pittsburg visiting several wholesale houses along the line of a certain street there, and it being about this season of the year, I observed the very dry goods boxes in front of the street and on the walks marked first from the eastern cities to Cleveland and then from Cleveland back to Pittsburg. I thought that was a novelty; I thought that was a peculiarity

for a wholesale house in Pittsburg, transporting large amounts of goods, to be getting goods back from Cleveland, and I inquired into the cause of that and they answered: "We pay less freight by it. The discrimination in favor of Cleveland requires and compels us to do this in order to enable us to compete with them in trade."

When the oil business was first developed, the first point upon which it centred, the first point to which the shipping of oil commenced in any of the large towns was the city of Erie, and very successfully for a while. In a short time that business, as you know, was wiped out, and all of it transferred to the city of Cleveland, and why was that? That point on the great lakes should be one of the most important and one of the most magnificent cities of the Commonwealth; and why was that business transferred from there to the State of Ohio, and the city of Cleveland, and the unparalleled prosperity and wealth of that city promoted and its population increased as it has been? They tell me there, "we cannot compete with Cleveland, for the simple reason that discrimination in freights destroys our business."

Mr. President, it is well for us to have railroads, it is well for us to develop the resources of this Commonwealth; but do the people of Pennsylvania grant franchises to corporate power for the purpose of accomplishing such an end, destruction to their own interests and to their cities, and to allow these unwise and unjust discriminations against the prosperity of the people of the Commonwealth of Pennsylvania themselves?

Again, why are not these matters redressed in our courts? When I asked these men that question they answered with bated breath, "We dare not." Is there a gentleman on this floor who is not aware that this is the truth, that the interests of any individual can be destroyed by these corporations? Look along the line of any railroad at the people doing business there, transporting coal and selling it at a certain price. If one of them offends these corporations he is notified, "If you will sell out it will be all right; we do not wish to make trouble, but you must sell out. We give you notice to sell out." And that man's individual interest is wiped out at one stroke by discriminations in favor of some other carrier, if he dares to disobey the behests of that corporation.

These are the reasons why, if the gentleman intends to remand the matter to the Legislature and the courts, I think the people of Pennsylvania cannot safely leave it to them, nor can the friends of this article vote for the amendment.

MR. MINOR. It seems to me, Mr. President, that this amendment is going altogether too far and is taking out the real bone and sinew of the virtue that is in the article itself. There are several points in it, but I will examine only a part.

I will direct attention, for instance, to the expressions, "unreasonable and unfair." Three terms are used, unjust, unreasonable, unfair; indicating thereby that there are three degrees of impropriety, each one going further than the other. Now, sir, I ask whether those are the right terms to put in a Constitution together, so that every shipper is at the mercy of the railroad company, so that he can be compelled to go into court and establish the proposition that the thing is unfair or unreasonable, even though it may be, or may not be, in strict sense unjust. Let me give an illustration. It is not two years since it fell to my lot to resist as best I could the attempt of sundry railroad companies to establish rates of freight on the product of my own section. We met them. They claimed that their rates were not unreasonable or unfair. Men came before tribunals and testified to it, and yet they admitted at the same time that the rates were double the ordinary rates of freight or those that had been regarded as fully remunerative for the service rendered.

I say, then, that to insert such terms as these is simply to insert terms under which any and all railroad companies may charge just what they please and bring in experts to prove them not unreasonable or unfair. Was it limited to the word unjust it would be better. That is the common law and is in the Constitution of Illinois.

Section four, in its present form, I did not like, not because I am opposed to the principle it aims to assert, but because it prevented modifications in favor of shippers below usual rates under a change of circumstances, and also gave an advantage to the railroad companies to make what struck me as unjust discriminations within fifty miles, and hoping that a better section could be introduced. These discriminations on short distances have largely injured my own section of

country; just these little advantages that are given by piece-meal are often all that are wanted. Whenever they can find a nice plumb they are very apt to take everything that is in it, no matter what may be the result to others. But the Convention seems to think its present form safe, and I therefore do not press it. Then another point I will refer to, and it is this: While I would do no wrong to railroad companies or to anybody else, yet this is a fact, that we need to exercise more care in restricting corporations like these companies than other persons, simply for this reason. A railroad company is a unit; it has its moneyed interests at stake; it can concentrate its power upon the Legislature, upon the courts, upon the community, and has a chance, we might almost say a hundred to one, of obtaining its end that separate individuals have who may be affected by it.

The individuals in a community are scattered, one in one place and one in another; whereas in a railroad company everything is concentrated; and on that account I say we are justified in using stronger terms and adopting stronger measures to secure just ends as to them than we would be as to individuals. It is for that reason, that the railroad companies have already in many instances gone too far, that while formerly the great cry was, "protect the individual from the power of the State," now we are obliged to turn around and say in many instances, "protect the State from the power of the associated individuals." The rule is largely reversed from what it was. I therefore must oppose this amendment as going too far under the circumstances, considering the power and the positions of the parties interested.

THE PRESIDENT. The question is on the motion of the delegate from the city (Mr. Dallas.)

MR. DALLAS. I call for the yeas and nays.

MR. J. PRICE WETHERILL. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Addicks, Boyd, Brodhead, Carey, Corbett, Corson, Dallas, Darlington, Davis, Edwards, Green, Knight, Lilly, Patton, Rooke, Stanton, Struthers, Wetherill, J. M., Wetherill, John Price, and Walker, *President*—20.

N A Y S.

Messrs. Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Bartholomew, Beebe, Biddle, Bigler, Black, Bowman, Brown, Buckalew Calvin, Campbell, Carter, Clark, Cochran, Curtin, De France, Dodd, Elliott, Ewing, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Kaine, Lamberton, Landis, Lear, MacConnell, MacVeagh, McCulloch, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Ross, Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Van Reed, Wherry, White, David N., Woodward and Wright—72.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Ainey, Barclay, Bardsley, Broomall, Bullitt, Cassidy, Church, Collins, Craig, Cronmiller, Curry, Cuyler, Dunning, Ellis, Fell, Hanna, Heverin, Lawrence, Littleton, Long, M'Canant, M'CLean, M'Michael, M'Murray, Metzger, Mitchell, Newlin, Porter, Pughe, Read, John R., Runk, Russell, Sharpe, Simpson, Smith, H. G., Temple, White, Harry, White, J. W. F. and Worrell—40.

Mr. BRODHEAD. I move that the Convention go into committee of the whole for the purpose of striking out the word "or" where it last occurs in the first line of the second section, and inserting the word "and."

Mr. HAY. It seems to me that this is a very dangerous proposition, and one that ought not to be adopted. It will defeat the very object of the section. The section is intended to cover not merely companies that are organized in the State, but any that are doing business in the State. This amendment will defeat its operation completely so far as one class of corporations is concerned.

Mr. BRODHEAD. Mr. President: With the wording this section has now, it accomplishes an object which I cannot think the committee had in view. For instance, the New York Erie, the New Jersey Central, the Delaware, Lackawanna and Western railroads are all doing business in this State. They are not organized under the laws of this State, but this section will require them to keep stock lists here and

transfer clerks. Under other provisions of this Constitution, they are made amenable to the service of legal process; but this section will require them to keep their stock lists here. Now, what will be the result if we pass this section and they are obliged to keep these offices in this State? The New Jersey Central will put theirs at Nanticoke, away up in the woods; the New York Erie will put theirs at Susquehanna. They will be put at places where they will be of no use to any person; and the fact is, if they were put here in the city of Philadelphia they would be of no use. There is no stock transferred here. The stock is not held in this city to any extent. This work is all done at their offices, and can be done more conveniently at their offices in New York than it can be in any office upon the line of the road. They will not come to Philadelphia and put their offices here; they will put them along the line of the road, and the stock dealers here or the holders of stock will find it more convenient to go to New York.

Another objection to forcing all these companies to do this is that it will open our companies doing business in other States to retaliation, because the Legislatures of other States will not permit this State to put such useless, oppressive and expensive obligation upon their companies without their doing the like to our companies in return.

If I could see any good that would be accomplished by this provision, or if any man can show me that an injury is done by the present method of their entering stock in the city of New York or other place that they have fixed, I should be willing to yield my opinion on this matter; but as the section stands now, I think it does a great wrong to those companies. It puts a great expense upon them; it puts a great deal of annoyance and inconvenience upon them, and it benefits nobody.

Mr. MACVEAGH. I suggest to the gentleman to make that amendment in a different form, to make it to strike out the words "or doing business." That will bring the question to the minds of members more distinctly.

Mr. BRODHEAD. Very well; I will modify my motion accordingly.

Mr. MACVEAGH. I should like to have the ears of members of the Convention for one minute, not to endeavor to persuade them to vote one way or the other, but to let them know exactly what is in-

volved in the question. The section requires that every railroad company organized under the laws of this State shall keep its stock office and its lists of stock owners in this State for public inspection; and as it now stands it not only applies to every one of our own corporations, but it imposes this burden upon every foreign corporation that comes here to compete with any company organized under our own laws. Recollect, we have already passed a section requiring them to keep authorized agents and places of business in this State. They must do that now; but this section, unless the amendment proposed is adopted, goes further and says that they must keep their stock accounts, their stock ledgers, and the list of their stockholders here; that is to say, when the Baltimore and Ohio railroad company come here and open an office at Seventh and Chestnut streets, they shall bring clerks and keep their stock accounts here; that the Erie railway company that passes only along the northern border of our State shall not only have authorized agents and a place of business here, but shall keep its stock ledgers here; and so of the New Jersey Central and every other corporation that comes into the State.

Now, what practical result can it be to anybody to have a stock ledger of the Erie railway company on the northern border of this State? There is probably not a stockholder of that company in Pennsylvania, and if there is, he buys the stock knowing that he buys in a foreign corporation. Why should you compel Mr. Garret to bring clerks here and to keep stock ledgers anywhere in this State?

Mr. WOODWARD. That is not required.

Mr. MACVEAGH. Yes, it is. The language of the section is: "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 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."

I say that is very just as to companies organized here. I do not care where they do business, if we breathe into them the breath of life we ought to require that to

be done; but I say it is putting an unnecessary burden upon foreign corporations that choose to come here. You make them amenable to your process, and you require them to have a place of business here. That is right. You require them to have an authorized agent here. That is right; but it is not right to put this additional burden and expense upon them merely for the chance that some Pennsylvanian may hold stock in a foreign corporation. There is no more reason why it should apply to railroad companies than to insurance companies—not a particle. There is nothing in the nature of a railroad company that makes its stock ledgers desirable in a State. On the other hand, it tends directly to prevent competition, which we all desire; and not only that, it tends most directly to the encouragement of fraudulent issues of stock. It is now one of the most dangerous opportunities for fraud—

Mr. KAINE. Will the gentleman allow me to ask a question at this point?

Mr. MACVEAGH. Certainly.

Mr. KAINE. Do I understand him to say that because the Erie railroad runs through a corner of this State, this section would compel it to keep its stock books within the State for the purpose of examination?

Mr. MACVEAGH. I say this section certainly would, and I do not think it was so intended by this Convention. I have no possible object in this matter but that the Convention shall understand it. I do sincerely believe that this provision is a mistake, that it is not wise to require it to be done. I think this is one of those concessions that can very well be made by the Convention, because I have been unable to see a single good reason that can be given for this requirement. Go just as far as you can see any benefit resulting to the public, but do not go beyond that.

It has not been of late years, but not many years ago one of the greatest frauds in this country was the issue of fraudulent stock of the New York and New Haven railroad company; and experienced railroad men, I am very sure, will remember that not only in America, but in England, that has been a very frequent source of fraud.

Now, these stocks are transferred very rapidly, and it is necessary for the companies to have an office for the transfer of their stock in one place that shall be final authority as to who owns it. Suppose

every State in which the Pennsylvania railroad company is doing business were to require that that company should keep books there wherein should be entered the names of stockholders and transfer of every share of stock?

This provision will not answer any good end, and I do trust the Convention will adopt the amendment now proposed, unless I am in error about it, unless I can be shown to be wrong, and that some real, tangible benefit is to be attained by retaining this clause.

Mr. WOODWARD. If this section is fairly subject to the construction the gentleman has placed upon it, then his argument strikes me as conclusive, and we ought to strike out these words, because, we do not mean, at least I do not mean, to do anything so preposterous as to require railroad companies organized outside of our borders, and doing business within our borders, to keep here stock lists and ledgers of all their transactions in New York, Baltimore and elsewhere.

But, sir, is that the just construction of this section. This is a law of Pennsylvania. It operates nowhere but in Pennsylvania; it can have no operation outside of Pennsylvania; and I think the true construction of it, perhaps, is that a list of Pennsylvania stockholders alone is intended to be kept, a list of Pennsylvania stock, stock transferred to and by Pennsylvanians. If the committee meant to make a law for corporations chartered by other States, they have run into direct conflict with those charters, because they prescribe where the office shall be kept and where the stock shall be transferred, and this provision would be a dead letter, would have no operation. It could have no extra-territorial operation. The construction, therefore, must be, if we enact it—perhaps we had better not enact it—that this relates simply to such transfers of stock as take place among our own fellow-citizens here in Pennsylvania. It cannot be possible that this section would have the construction which the gentleman gives to it; but in order to avoid any doubt or litigation about it, I think it would be safer to strike these words out.

The PRESIDENT. The question is on the motion of the delegate from Northampton (Mr. Brodhead.)

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

The CHAIRMAN. The committee of the whole have had referred to their section two of the article on railroads and canals, with directions to strike out the words "or doing business," in the first line. That amendment will be made.

The committee rose, and the President having resumed the chair, the Chairman (Mr. Green) reported that the committee of the whole had made the amendment referred to them.

Mr. ANDREW REED. I move that the Convention go into committee of the whole for the purpose of striking out section seven. Mr. President, this section prevents presidents, directors, officers, agents and other employees of railroad and canal companies from being interested, directly or indirectly, in the transportation of freight or passengers over their road or any leased road connected with it. The evil which is designed to be corrected by this section, I think, is sufficiently provided for by section four, which prohibits any special rate or any drawback or any extra allowance to be given to one person and against another. I presume the evil intended to be remedied was that officers of these companies might discriminate in their own favor as against other persons, and therefore it was proposed that they should be prohibited entirely from being concerned in this business.

I have always believed that this section as it stands would have the effect of preventing any further improvement in the way of railroads in our State. It would prevent the development of that part of the State which is at present undeveloped, because any person who knows anything about the building of railroads knows that no set of men will construct a railroad except those who are interested in getting out the iron, or the coal, or whatever product is to pass over the road. Suppose there is a valuable coal mine or valuable timber land, the owner of which is anxious to find a market, who is going to build a railroad in order to transport that coal or that timber? Surely no other person than those who own it. Suppose they do not do it, and other capitalists come in to build the road, and the owners should refuse to let their timber be cut down or their coal dug, what will become of the railroad? It will be an absurdity. No railroad will be built if you insert this section in the Constitution.

I believe the best remedy against all the discriminations which the people of

our State complain of is a perfectly free railroad law, and that we have in the first section of this article. That section is worth all the rest of the article. That gives all men who have the means the right to build railroads from any one place to any other place. That will be the best remedy we can give the people against unjust discriminations.

Another thing. A Constitution should be such that all the people should obey it implicitly. Now, what would be the practical effect of this? Suppose a man who is a director or officer of a railroad company should have a factory along the line. He cannot send a load of wheat to the mill or to market. He is entirely shut off. He cannot bring a barrel of sugar home, because, if he is interested at all, he is violating this section. He cannot be interested either directly or indirectly in any trade that passes over the road because the phrase "common carriers" has been stricken out by the committee. I say an officer or an agent of the road, living along the line, cannot go to the store and bring home the necessities of life. He must get somebody else to do it for him. Suppose one of the members of the Convention should happen to be employed as a lawyer by one of our leading railroad companies, he would then become an employee covered by this section. He comes to this city and he cannot take home a barrel of sugar or a suit of clothes as freight.

As I have said, the remedy for the evil intended to be reached by this section is, I think, completely afforded by section four, which prevents any special rates or any drawbacks or anything in favor of one portion of the people against another. It certainly must be evident, I think, to any person who looks at this calmly that it will have the effect of preventing the building of any more railroads.

For these reasons I trust the section will be voted down.

Mr. COCHRAN. In the first place, if I heard correctly the argument of the gentleman from Mifflin, I think he misapprehends the force of this section. The section, I think, was introduced by a gentleman from Philadelphia (Mr. Rullitt) on a former occasion on second reading. I had myself intended to propose a section for the purpose of covering the same ground as nearly as I could, but I was anticipated by the introduction of the matter by him.

It is not intended to prevent officers of railroad companies from having their property transported over the road; it is intended to prevent them from themselves entering into the business of transportation, which is a very different and distinct thing. It will not prevent any man who is an officer or a stockholder from having his goods transported over the line of the road; but it will prevent him from forming an outside ring to eat out the substance of the railroad company itself and to injure the interests of the stockholders, whose rights he is bound to protect by the very position which he held. The formation of fast freight lines and the giving of special privileges to them by railroad companies has been most detrimental to the interest of the stockholders of the roads themselves, as well as exceedingly injurious to the community at large. I do not understand that there are many gentlemen who are themselves associated with the management of railroads who oppose the introduction of a restriction of this kind. It is done for their benefit and advantage, and if I am not mistaken there are gentlemen here present, possibly on this floor to-day, themselves holding this very position, who believe in the propriety of the policy of such a section as is here pending before the Convention. It is looking in the same direction as the ninth section, which the Convention has already refused to strike out, and I do think that the argument of the gentleman from Mifflin does not hit the mark in regard to this particular section and that the evil which he conceives is not contained in it.

The PRESIDENT. The question is on the motion of the delegate from Mifflin.

Mr. ANDREW REED. I call for the yeas and nays.

Mr. J. N. PURVIANCE. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Baer, Bailey, (Huntingdon,) Boyd, Brodhead, Corbett, Corson, Darlington, Davis, Edwards, Fulton, Green, Lamberton, Lear, Lilly, Niles, Parsons, Patton, Purviance, John N., Reed, Andrew, Smith, Henry W., Smith, William H., Struthers and Wetherill, John Price —23.

NAYS.

Messrs. Alricks, Andrews, Baily, (Perry,) Baker, Bannan, Beebe, Biddle, Big-

ler, Black, Bowman, Brown, Buckalew, Calvin, Campbell, Carter, Clark, Cochran, De France, Dodd, Dunning, Elliott, Ewing, Finney, Gilpin, Guthrie, Hall, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Kaine, Landis, MacConnell, MacVeagh, M'CLean, M'Culloch, Mann, Mantor, Metzger, Minor, Mott, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Sam'l A., Read, John R., Reynolds, Rooke, Stanton, Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Worrell and Walker, *President*—60.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Armstrong, Barclay, Bardsley, Bartholomew, Broomall, Bullitt, Carey, Cassidy, Church, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, Ellis, Fell, Funck, Gibson, Hanna, Harvey, Heverin, Knight, Lawrence, Littleton, Long, M'Camant, M'Michael, M'Murray, Mitchell, Newlin, Palmer, H. W., Porter, Pughe, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Stewart, Temple, Van Reed, White, Harry, and Wright—49.

Mr. BOYD. I now move that the Convention go into committee of the whole for the purpose of amending the seventh section, by restoring in the fourth line the words, "as common carriers."

Mr. COCHRAN. I hope that amendment will be agreed to by common consent. There was some slight mistake in striking out these words.

Unanimous consent was given and the words were inserted.

Mr. HEMPHILL. I move that the Convention go into committee of the whole in order to strike out section twelve.

The PRESIDENT. The Clerk will read the section proposed to be erased.

The CLERK read as follows:

SECTION 12. No railroad, canal or other transportation company in existence at the time of the adoption of this article, shall have the benefit of any legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

Mr. HEMPHILL. The same object that is sought to be accomplished by this section has already been reached by the amendment of section two of the article on private corporations. That section was amended by striking out the word "Legislature," and inserting the words "General Assembly," and inserting in the second line, after the word "same," the

phrase "or pass any other general or special law." That section therefore, as amended, reads:

"The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same or pass any other general or special law for the benefit of such corporation, except upon condition that such corporation shall thereafter hold its charter, subject to the provisions of this Constitution."

That fully covers section twelve of the article now under consideration, and therefore the latter section is unnecessary.

Mr. HOWARD. This section twelve is certainly a very important section. If it is supplied in the article on private corporations, I suppose there will not be the slightest objection to striking it out. My own judgment is that it has been stricken out.

Mr. HEMPHILL. If gentlemen will listen to the reading of section two of the article on private corporations, they will see that it fully covers all that section twelve of the article on railroads and canals can embrace.

Mr. MACVEAGH. I am not sure about that, and I call upon the chairman of the Committee on Private Corporations (Mr. Woodward) and on the gentleman from Philadelphia (Mr. Biddle) to state to this Convention whether that is so.

Mr. HEMPHILL. If the gentleman will turn to section two of the article on private corporations, he will see that it does fully embrace all that is included in the section I have moved to strike out. That section says:

"The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution."

Mr. MACVEAGH. I gravely submit that that does not cover section twelve of the article under consideration. I do not think there ought to be a question among lawyers in this body as to the fact that the one section is not an equivalent for the other. We seemed about to vote as if the Convention considered the two sections covered the same ground, and therefore it was that I appealed to the chairman of the Committee on Private Corporations and to the gentleman from

Philadelphia (Mr. Biddle) to state what their opinions were. I hope Mr. Biddle will express his views on this subject.

Mr. BIDDLE. I am certainly not of the opinion that one is an equivalent for the other. You will observe that the language of the second section of the article on private corporations is that no law shall be passed for the benefit of such corporations. That is a very different thing from a company having the benefit of any legislation. It is one thing to pass a law which, in the opinion of the Legislature, may be for the benefit of corporations, and another thing to have the company regard it as a benefit. They may not think it is a benefit, and they may not choose to accept it. They may say that such laws are injurious instead of beneficial. This section points directly to that which, after a great deal of discussion, this Convention thought right to be adopted; that is to say, the argument having been heretofore that these sections which were introduced will not touch existing corporations, we then endeavored to say, and I think have said conclusively in the pointed language of this section, that they shall not hereafter go before the Legislature asking favors from them, either by way of amendments to their charters or by new charters unless they bring themselves under the control of this article. So the argument that the two sections are alike in application is not well founded the distinction being made between transportation corporations now existing and those incorporated after this Constitution is adopted. If this language could be by a review of the article on corporations, thrown into the article on corporations, I should be perfectly satisfied; but as that is not the proposition, I trust the Convention will not vote out this twelfth section of the railroad article.

Mr. HUNSICKER. If I understand this proposition at all, section two of the article on private corporations most unquestionably does cover all that is contained in section twelve of the article on railroads and canals.

Section two of the private corporation article is:

"The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same or pass any general or special law for the benefit of such corporation, except upon condition that such corporation

shall thereafter hold its charter, subject to the provisions of this Constitution."

Section twelve of the article on railroad and canals is:

"No railroad, canal or other transportation company, in existence at the time of the adoption of this article, shall have the benefit of any legislation by general or special laws, except on condition of complete acceptance to all the provisions of this article.

"Shall not have the benefit of any legislation." I ask you, sir, I ask any member of this Convention, to tell me what is the meaning of "general or special laws." They need not be to make an amendment to a charter. "The General Assembly," reads the article on private corporations, "shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same or,"—or—"pass any other general or special law for the benefit of the same."

Mr. MACVEAGH. I think I can so explain to the gentleman from Montgomery that he will see the difference. The distinction is very broad between a provision which is an inhibition on the Legislature and says they shall not pass any law for the benefit of a corporation, and a provision which is an inhibition on the corporation, and says no matter for whose benefit the law is passed, the corporation shall not be benefited under it until it accepts the provisions of this article.

Mr. HUNSICKER. So it was in section two of the article on private corporations.

Mr. MACVEAGH. No. That is a prohibition on the Legislature not to pass laws for their benefit.

Mr. HUNSICKER. It makes no difference. If the Legislature cannot pass any law for the benefit of a corporation, how is the corporation to be benefited by it? Who does pass the law? If it is the Legislature that passes the law, although the corporation may not have any benefit under it.

Mr. MACVEAGH. A law may be passed by the Legislature not specially designed for the benefit of any corporation, and yet a corporation may derive great advantage from it.

Mr. HUNSICKER. Yes; that may be so.

Mr. MACVEAGH. That law will be constitutional under your section, not under this.

Mr. HUNSICKER. But I say that under section two of the article on private corporations, before the corporation can have

the benefit of such a law, it must accept the provisions of this Constitution.

Mr. CALVIN. You are certainly in error.

Mr. HUNSICKER. Certainly not.

Mr. BUCKALEW. I prefer the form of this section very much better than the form contained in the article on private corporations. I think it is here in proper form and that it is not in proper form in the other article. It will probably be better to consolidate these two sections and have but one, and if the Convention will agree that the Committee on Revision and Adjustment have power over this subject to report a consolidated section, having the leading features of both, then I am in favor of adopting this simple principle that corporations in this State who hold under their grant from the State a contract which we cannot affect, shall stand upon the letter of the existing bond. I do not propose to affect them, or attempt to affect them in any way whatever; but if they desire from the Commonwealth additional franchises or facilities for operating the franchises hereafter, they shall take such subsequent grant upon condition of coming under the same regulations applied to all other bodies of a similar character in the State hereafter created.

Therefore, this section is in the proper form, that no railroad or canal company shall take any benefit under any law of the State hereafter enacted except upon condition that it places itself completely under the provisions of this amended Constitution. It has another clause which is better than the section in the article on private corporations, and that is that there shall be an explicit acceptance of all the provisions of this article. That, therefore, provides that in some method reference can be had to the fact; this acceptance must be publicly made. They must file their acceptance of the provision of the new Constitution in the office of the Auditor General, or some other office, by which a public record of the fact shall be established and proved for all future time.

I shall vote to retain this section in the hope that we can consolidate the two hereafter.

The PRESIDENT. The question is on the motion to go into committee of the whole for the purpose of striking out the twelfth section.

The motion was rejected.

Mr. STRUTHERS. I move to go into committee of the whole in order to

amend the article by striking out the first section and substituting a new section.

The PRESIDENT. The Clerk will read the section proposed to be omitted.

The CLERK read as follows:

"SECTION 1. 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; any railroad may intersect and connect with any other railroad, and may pass its cars, empty or loaded, over such other railroad; and no discrimination shall be made in passenger or freight tolls, and tariffs on persons and property, passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination; the Legislature shall, by general law prescribing reasonable regulations, give full effect to these powers and rights."

The PRESIDENT. The proposed substitute will be read.

The CLERK read the proposed substitute, as follows:

"Railroad and canal companies may construct railroads and canals between any two points defined in their respective charters, and may intersect and connect with any other railroads and canals in such manner as to pass their cars or boats conveniently from the one to the other. And any railroad shall have the right to cross any other railroad at grade. Each railroad company shall receive the cars of every other railroad when offered and haul them over its railroad at reasonable charges for the motive power, in case such cars are empty, and at the same rates for freights and passengers as it charges for other freights and passengers on its road, with proper allowance for the use of the cars; and shall pass the cars, passengers and freights so received over its road without discrimination in favor of other cars, passengers or freight on its road, or undue delay."

Mr. STRUTHERS. There are two reasons why I have proposed this amendment. In the first place, it is rather more brief, and I think expresses all the ideas gentlemen wish to introduce. I think there is nothing left out of it that would be introduced in the section as it stands; and there is something additional added. The section as it reads provides that the one company may pass its cars over the road of another. That would authorize them to pass their motive

power over the road of the other company and to haul their own cars over the other road. That I do not suppose was designed or expected. The provision as I have it in the amendment, requires the company to whom they are offered to receive the cars of another road and to pass them over at reasonable charges. That is the difference, and I think the section is more succinct and expressive, and in that part of it I think it is decidedly better. It requires the company to whom the cars are offered by another company to receive them and carry them over its road, and that for reasonable charges.

The PRESIDENT. The question in on the motion of the delegate from Warren.

The motion was not agreed to.

Mr. ARMSTRONG. I move to go into committee of the whole for the purpose of inserting the following in place of section seven, and I desire to invite the attention of the Convention to it; I have re-written the section, retaining all that is of value, I think;

"No officer, agent or employee of any railroad or canal company shall be a stockholder or officer in any transportation company doing business over such railroad or canal, or be interested, directly or indirectly, in the business of a common carrier thereon."

It occurs to me that this phraseology is less obscure than that in the printed section, and embraces all that is valuable in the section, and probably the whole of it.

Mr. NILES. It occurs to me that that is not a substitute, because it does not prevent the president or the officers of the road from engaging in the business of common carriers over leased roads or roads in which they have a majority of the stock.

Mr. ARMSTRONG. I think it would embrace that. It was my purpose that it should.

Mr. BUCKALEW. There is another point I would call the attention of the gentleman to, which was considered in committee. By referring to the language of our statutes it will be ascertained that the term "officers of a corporation" does not necessarily include the directors or managers. In a certain general sense it may include them; but there is a distinction in our legislation which runs through most of the statutes on the subject. Therefore, where the gentleman from Lycoming uses the expression "officers and agents of a company," it is very possible his language might be con-

strued not to include the directors themselves, but only those persons whom they may appoint to conduct the business of the corporation. Hence, in that particular the language of the section as we have it in print is better, because it uses the term "president, directors, officers and employees." However, this may be obviated by a slight modification.

Mr. ARMSTRONG. I have no objection to adding the words "president and directors," if there be any doubt that they are officers, for certainly it is the intention to include them; but I suppose there can be no doubt on that question. As to leased roads, it was also intended that they be embraced. If there be doubt on that, I will add, "or any railroad or canal leased by them." The purpose was not to strike out anything that is really contained in the section, but to divest it of obscurity in construction.

The PRESIDENT. The amendment will be read as modified.

The CLERK read as follows:

"No officer, agent, or employee of any railroad or canal company shall be a stockholder or officer in any transportation company doing business over such railroad or canal, or any railroad or canal leased by them, or be interested directly or indirectly in the business of a common carrier thereon."

The PRESIDENT. The question is on the motion to go into committee of the whole for the purpose of substituting what has just been read for the seventh section.

The motion was not agreed to.

Mr. J. PRICE WETHERILL. I offer a new section as a substitute for section two, not altering the substance but the phraseology so as to make it read, as I think, better:

"Every railroad and canal company shall keep, for the inspection of any stockholder, bondholder, or other creditor, a record containing the account of its capital stock subscribed or paid in, and by whom; the names of the stockholders and the amount owned by them, and the names and residences of its officers."

It will be seen by section two as we now have it, striking out the words "or doing business," in line one, that we say by constitutional enactment that every railroad or canal corporation organized in this State shall maintain an office therein. Well, if the chairman of the Committee on Railroads will point out the railroad or corporation in this State that

has not an office therein, I shall be very much obliged to him. This company must have an office therein where, among other things, they must keep "a book in which transfers of stock shall be contained." I contend that no railroad company has a book containing the transfer of its stock. I want to sell my stock; I take my certificate, with a power of attorney attached, and I make my sale, and the entry is made in the stock-ledger of the company and nowhere else.

Now, let us consider what we are about and let us recollect that we must not place in a section of this sort railroad books when those books are not necessary for the organization of a company and are never kept. If any gentleman of the Convention will show where I have not carefully guarded all the substance of section two, I should like him to point it out:

"Every railroad and canal company shall keep for the inspection of any stockholder, bondholder, or other creditor, a record containing the amount of its actual stock subscribed or paid in, and by whom, the names of the stockholders and the amount owned by them, and the names and residence of its officers.

It seems to me that the wording of the section as I have offered it is preferable to that of section two after we have altered its phraseology by the amendment offered by the gentleman from Dauphin.

Mr. CAMPBELL. These sections of the report have been carefully considered, have gone through two readings before the Convention, have passed through the Committee on Revision and Adjustment,

and they are now before us in as perfect a shape probably as it is possible to put them. I think there is danger in adopting propositions which are hastily offered, without consideration, and therefore it would be wise where the substance is the same, as the gentleman himself says, to adhere to the report of the committee.

The PRESIDENT. The question is on the motion of the gentleman from Philadelphia (Mr. J. Price Wetherill.)

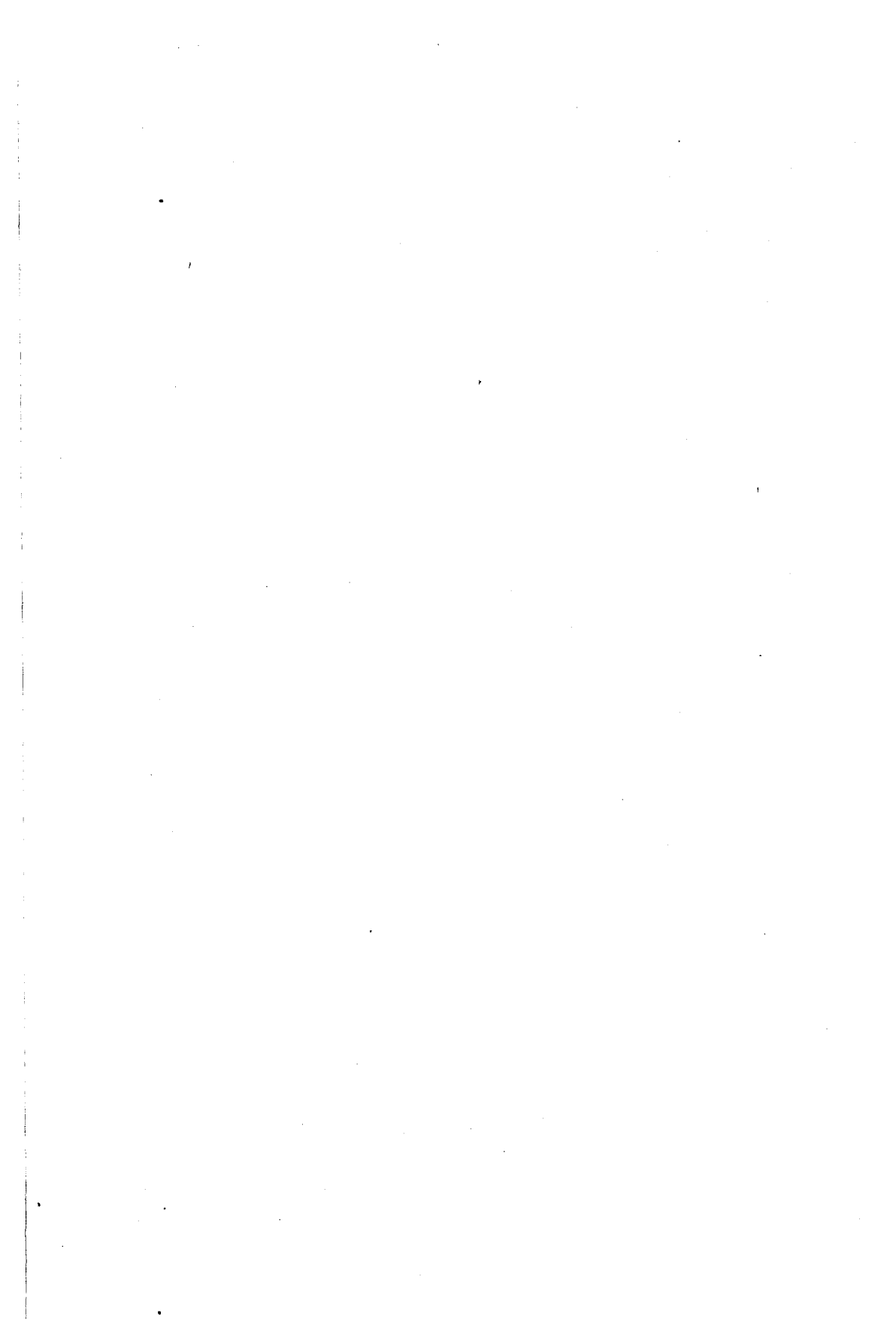
The motion was not agreed to.

Mr. WOODWARD. I move to go into committee of the whole for the purpose of striking out all after the words "shall not," in the second line of the seventh section, and inserting the following:

"Be permitted to form or belong to transportation companies or associations who engage in the transportation of freight or passengers over the works of any railroad owned or worked by the railroad company of which they are employees or officers."

The chairman of the committee pointed out in very expressive language the necessity for this section as it stands, and I entirely concur with him as to the substance of it; but as my friend on the left (Mr. Armstrong) says, the language of the section is obscure and is possibly subject to the criticism the gentleman from Mifflin (Mr. Andrew Reed) made so well.

The PRESIDENT. The hour of three having arrived, the Convention stands adjourned until to-morrow at half-past nine o'clock.



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