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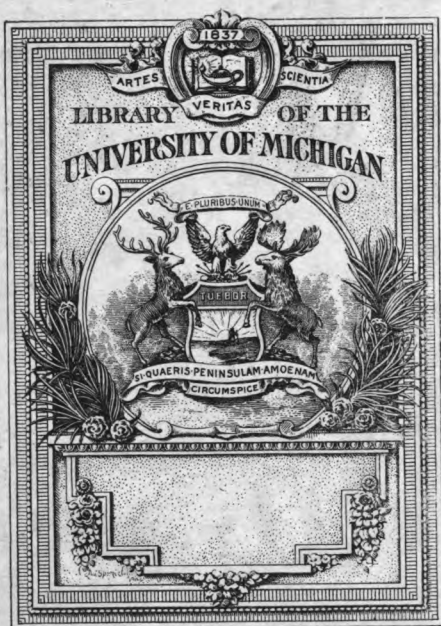
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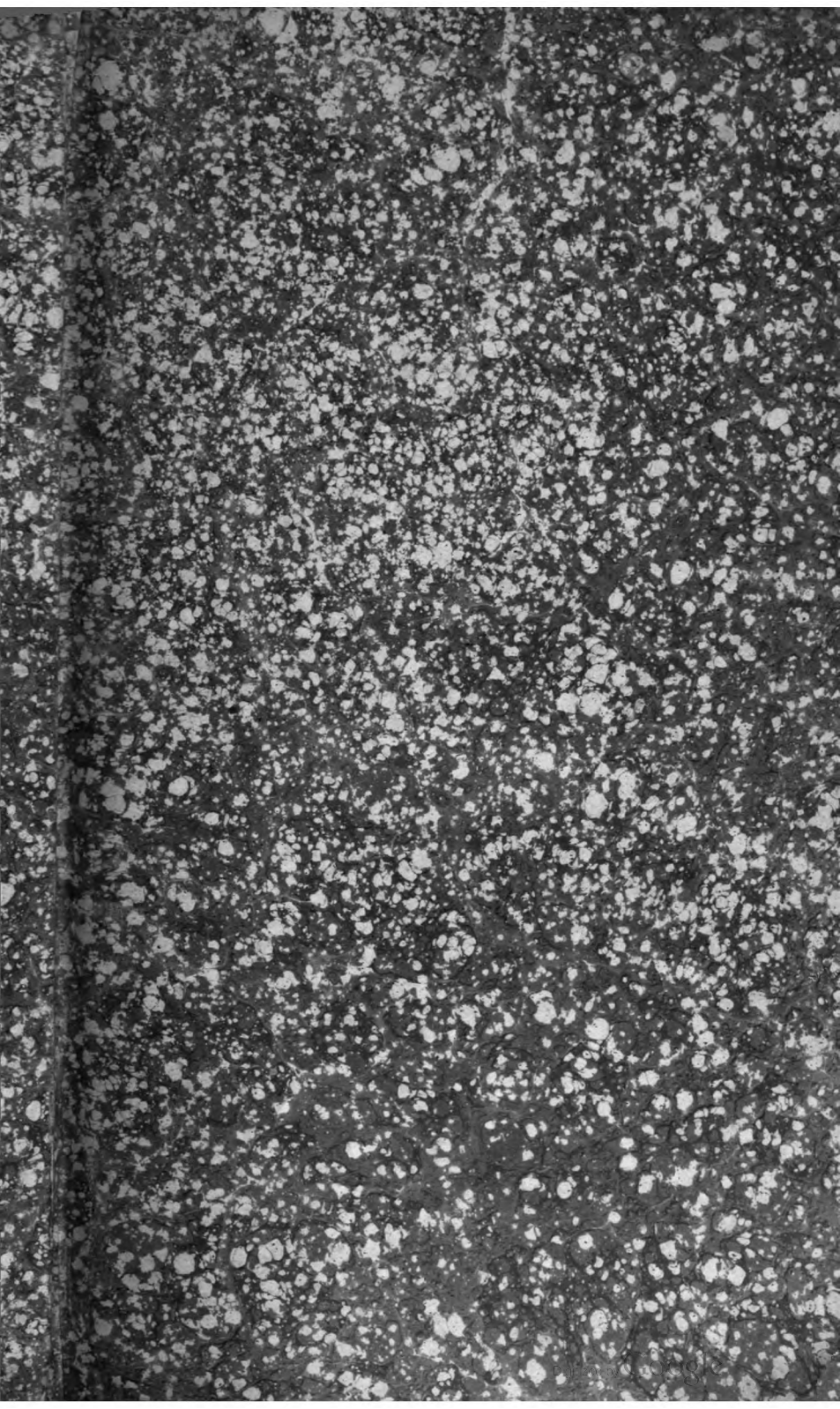
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PROCEEDINGS AND DEBATES

OF THE

CONVENTION

OF THE COMMONWEALTH OF PENNSYLVANIA, *Const. conv.*  
1837-38

TO PROPOSE

AMENDMENTS TO THE CONSTITUTION,

COMMENCED AT HARRISBURG, MAY 2, 1837.

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VOL. XII.

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Reported by JOHN AGG, Stenographer to the Convention.

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

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HARRISBURG:

PRINTED BY PACKER, BARRETT, AND PARKE.

.....  
1839



**PROCEEDINGS AND DEBATES.**

**OF THE**

**CONVENTION HELD AT PHILADELPHIA.**

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**TUESDAY, FEBRUARY 6, 1838.**

Mr. Cox, of Somerset, presented the petition of sundry citizens of the county of Somerset, praying that the constitution may be so amended, as to prohibit the administration of extra judicial oaths :

Which was laid on the table.

Mr. FULLER, of Fayette, submitted the following resolution, viz :

*Resolved*, That the several amendments agreed to by this convention to the constitution, shall be arranged and embodied in such manner as to submit to the electors of this commonwealth a whole constitution as amended, to be by them adopted or rejected at the next general election for members of the legislature.

Mr. FULLER moved that the convention proceed to the second reading and consideration of this resolution.

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

The question was then taken on the motion of Mr. FULLER, and decided in the negative as follows, viz :

**YEAS**—Messrs. Banks, Brown, of Northampton, Cleavinger, Crain, Cummin, Curll, Darrah, Dillinger, Earle, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, High, Houpt, Hyde, Keim, Kennedy, Krebs, Lyons, Magee; Mann, M'Cahen, Miller, Myers, Overfield, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, Weaver, White—40.

**NAYS**—Messrs. Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bedford, Biddle, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Cox, Crawford, Crum, Cunningham, Denny, Dickey, Dickerson, Doran, Fleming, Forward, Fry, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson Jenks, Kerr, Konigmacher, Long, Maclay, Martin, M'Sherry, Merrill, Merkel, Montgomery, Nevin, Payne, Pennypacker, Porter, of Lancaster, Read, Riter, Ritter, Russell, Saeger, Serrill, Snively, Sturdevant, Thomas, Woodward, Porter, of Northampton, *President pro tem.*—58.



Mr. COCHRAN, from the committee to prepare the amendments made in convention on second reading, for a third reading, made the following report :

“ That they find the amendments to the fifth article correctly printed and report the same as they stand on the printed files.”

And, on motion of Mr. COCHRAN,

The said report was laid on the table and ordered to be printed.

#### NINTH ARTICLE.

The convention resumed the second reading of the report of the committee, to whom was referred the ninth article of the constitution.

The seventh section of the said report being under consideration in the words following, viz :

SECT. 7. 'That the printing presses 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. In prosecutions for the publication of papers, investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and, in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

A motion was made by Mr. DORAN,

'To amend the said section by striking therefrom all after the word "liberty," in the sixth line, and inserting in lieu thereof the following, viz : "In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact."

Mr. DORAN said, that in submitting this amendment to the consideration of the convention, he wished it to be distinctly understood, that he did not desire the indulgence of private malice and personal slander through the medium of the press. On the contrary, he would check and resist it by every legal means. Yet, he would say that the press was, in his opinion, a restraint upon bad men and the execution of bad acts; and where the public were interested in the knowledge of those men and those acts, every guard should be thrown around it, and no man should be convicted for a libel where the matter published was true—was published with the purest motives and for the benefit of the community. But this censorial power was all important in relation to public officers, for by it they were compelled to do their duty, and when they failed to do it they were held up as objects of reproach; in fact, with a free press, a magistrate had to choose between his duty and his reputation. So great was the power of the press, that it had in England been emphatically denominated "the

fourth estate," and in every free country it was no less effective; and such was its importance to the cause of liberty, that every friend to a free form of government had defended it, whenever an attempt had been made to trample on it. The members of this convention were not ignorant of the deadly struggle between it and certain arbitrary judges of the former country, which eventuated in the passage of a law by which it was protected from such persons, by the salutary law that in libel cases the jury might determine the law and the fact. But what was the law in Pennsylvania? Why, in short, let your publication be as true as it may, let it be published from the best of motives, let it be a matter with which the people should be acquainted, unless it relates to a public officer or public men, the publisher may be tried, convicted, and punished; yes, and sent to prison, from which he could not be extricated unless he paid the fine and costs—or if too poor to pay them, where he must remain for at least two months before he could be discharged as an insolvent debtor. Was this right? was this just? No man could say that it was, and yet numerous cases had occurred in our criminal courts similar in their severity, and would occur, unless the law was altered. Impostors might now practise the greatest cheats on the community, and any one that would dare to expose them through the press, the only way to warn the public against them, would do it at the risk of a criminal prosecution.

Mr. EARLE said, that he approved in some measure of the object of the proposed amendment of his colleague, (Mr. Doran) but that he (Mr. E.) should like it better, if it was so modified as to allow the jury to judge whether the matters alleged were proper for public information.

He would, therefore, in the hope that his colleague from the county might be induced, on reflection, to accept the modification, move to amend the amendment, by inserting after the word "libel," the words following: "where the jury shall think the matter published proper for publication."

Mr. DORAN said, he thought it would be found that the amendment he had offered embraced the idea of his colleague (Mr. Earle).

Mr. MERRILL, of Union, said that the convention ought to be careful, and to reflect well on what they were doing, before they give their consent to this change in the fundamental law.

This matter, continued Mr. M., is admitted to be within the power of the legislature. They have tried it, and found it to fail. But according to the amendment of the gentleman from the county, (Mr. Doran) the jury is to decide. I ask, if such a principle is carried into operation, whether it will not lead to slander and libel in all cases, where a resort to such weapons might answer the ends, or gratify the malice of individuals. The verdict will be made to depend on the will and caprice of the jury, without any rule of law; it will be placed on the simple ground whether, in the opinion of the jury, the matter alleged may be true, or not. Why should men have even the truth told about them, where it may disparage them, from mere pique, revenge or malice? I believe that there is very little danger of injustice being done according to the state of things which now exists; and if I can imagine a case in which gross injustice would be done, it would be that of publishing a libel against a man where he can

have no remedy. It is a common thing for parties to say, just with a view to affright the jury, that they can prove every thing that has been alleged, when, if brought to the test, they could prove nothing. I know a case of this kind which occurred within my own experience. I offered the truth in justification. The court admitted it; and, when thus put to the test, I could not, to my great chagrin, prove a word of the allegation. Protection of reputation is one of the dearest rights of man; and the government that will not protect it, may do almost what they please with his property or his liberty. Is there not room enough now for all sorts of criticism on private character and reputation? Are we to throw open the door still wider, and to render the security for the reputation of men less than it is at this time? Sir, I trust not.

Mr. WOODWARD said, that he had at first entertained some doubts as to the expediency of adopting the amendment, in the terms in which it had been originally offered; but that since the gentleman from the county of Philadelphia who introduced it (Mr. Doran) had accepted the modification of his colleague, (Mr. Earle) he (Mr. W.) could not possibly vote for it.

Mr. DORAN begged to explain. The gentleman from Luzerne was entirely mistaken. He (Mr. D.) had not accepted the proposed modification; it stood before the convention as an amendment to the amendment.

Mr. WOODWARD resumed:

Then I was under a wrong impression.

I am, however, opposed to both these amendments. The effect of them, if I correctly understand their import, will be, that when a libel case is before a court, two issues are to be made. The first is, whether the matter published be proper for publication or not. If the jury upon trial say that it is proper—then, in that term and at that time—another issue is to be made upon the truth of the matter thus published. How are you to get at the facts, without the preliminary issue having been first argued and discussed? I can not vote for these propositions.

Mr. CHANDLER, of Philadelphia, rose and said:

Mr. President: I am opposed to the amendment of the gentleman from the county of Philadelphia (Mr. Doran). I feel much concerned for the liberty of the press, but I am not less concerned to keep away its licentiousness. It seems to me, however, that we have heretofore got along pretty well under the provisions of the constitution of 1790, and I do not think that any one has suffered, unless by his own conduct, he may have laid himself open to the severest penalties of the law.

I believe that the tendency of the press is to the slander of private character. We all know that in proportion to the number of papers established arises the necessity of something to create attention, especially in these times where parties run so high. It appears to me to be an unwise movement on the part of the convention, to do any thing calculated to break down the guards which are thrown around private reputation, and to uproot the settled feelings of society. That which is denominated a libel is, I suppose, a scandal tending to bring any particular person into odium—into ridicule—into unnecessary disgrace. If the amendment of the gentleman from the county of Philadelphia, means any thing more than what is now in the constitution, it is intended to break down the safety



of society, to open the door to the petty slanderer, and to render every individual in the community open to his attacks. We all know how delicate and sensitive a thing private character is; we all know how easy it is to cast a slander upon it. We know that even physical deformity may be made the means of public scandal, and that persons, in every way worthy of the confidence and respect of their fellow men, may be driven from among them by the ignorant scorn and the curled lip which every where meets them. This amendment, as it seems to me, holds out an invitation to the press to cross over those bounds within which the peace and security of society require it should be circumscribed; although, so far as concerns the press of this city, I am happy to say that we are very little troubled with scandal of this kind, however much other parts of the state may suffer under it. This convention should not sanction any amendment to the constitution, the tendency of which may be to destroy those barriers beyond which a person may screen himself. The very attempt to prove the allegation is a scandal, for it would be supposed that there must be some foundation for the charge, even where a person is entirely innocent. The very attempt to investigate will work an injury to reputation.

So far we have gone on very quietly under this constitution. I wish the editors to tell the truth in public matters, and to leave private scandal to the filthy sewers where it belongs; to those who, having no reputation of their own, cannot set a proper value on the reputation of others. But when a man comes before the public for office, we have a right to canvass his merits, his capacity, and his character; always, however, holding themselves properly responsible for what they may say or do. But we have no right to drag an individual before the public wantonly—to rake up all that he has ever done or said, and thus to hold him up to public scorn and reprobation.

I have said that, in my opinion, none have suffered except some few, who, by their own reckless or mischievous course, may have subjected themselves to the severest inflictions of the law. Any interference on our part will be offering a premium to scandal, by weakening those barriers which have heretofore been found sufficient for the protection of society.

Mr. Scott, of Philadelphia, said he would very briefly express his views of the provision of the existing constitution, as well as of the amendment which it was now proposed to make.

As the constitution now stands, continued Mr. S., by virtue of the seventh section of the bill of rights, whenever a party is prosecuted in your criminal courts for a libel against an individual as a public man, the party prosecuted for the offence may give the truth as a bar against judgment. Whenever, therefore, a prosecution for libel refers to a man's public conduct, to his conduct in public life, to his acts as a public man, to those matters in which the commonwealth has a concern—whenever, I say, the publication is of that character, the accused party may defend himself in court by giving in evidence the truth of the charge made in the publication.

If however, the charge made in the publication be altogether of a

private character—relating to the private life and conduct of the individual concerned—if it seeks to open his private history or to expose his private transactions to public reproach—if, I say, the charge is of that character and prosecution be commenced in your courts of justice against the libellant by the commonwealth, then he can not defend himself by giving the truth of the charge in evidence. If, however the party thus injured sues him in a civil court, in an action for damages, then, under the existing provision of the constitution, he may defend himself by pleading the truth.

Now, as the constitution at present now stands, the convention will observe that where the charge is against a man as a public man and refers to his public conduct, if that which is called a libel be true in fact, it is constitutional and competent for the party to defend himself, either in a suit for damages or by prosecution—thus allowing the fullest scope for inquiring into the conduct of public men. But where it refers to private life, the truth is an answer in damages, but not in a prosecution of the commonwealth. And the reason for the distinction is this. The commonwealth, as we all know, will not permit you to disturb the peace of society by unnecessary inquiries into the private conduct of men, or by means of publications referring to that private conduct. She will not suffer men to be dragged before the bar of public opinion wantonly or unnecessarily, and to have their conduct exposed to the gaze of their fellow-citizens.

What alteration would the amendment proposed by the gentleman from the county of Philadelphia, who is nearest to me, (Mr. Doran) make in relation to the matter? It provides that in all prosecutions or indictments for which, the truth may be given in evidence. And what would be the consequence? Why, under this amendment, if an individual should choose to investigate the most private transactions of a man's life, at any remote period of time—should expose them to public odium in the public prints—should destroy the peace of his family and break down his own reputation and character—although this might have been a matter with which the public had nothing to do; although it might have been an act which had been atoned for by repentance or compensation; still, no matter what its character might have been; the person who dragged all this before the eye of the public would be secured by proving the truth of the allegation. This would be the result of the amendment of the gentleman from the county of Philadelphia, (Mr. Doran.)

In regard to the amendment to the amendment, as proposed by the gentleman from the county of Philadelphia, (Mr. Earle) it seems to me to make the matter even worse than the amendment itself; because the effect would be—although I do not by any means attribute that design to the mover—but the effect would be to break down that protection which a man now derives from the law in a case where the publication refers to political matters.

The amendment to the amendment says “when the jury shall think the matter proper for public information? So that under this amendment even the case of a political publication could be referred to a jury, and if the jury think that political publication improper, the truth might be re-

ceived as a bar. So that this would be drawing the string infinitely tighter than it is now; while the amendment itself would cut loose altogether.

I think that the provision in the constitution of 1790, is a happy medium, and I hope that it will remain unaltered.

Mr. EARLE, then modified the amendment to the amendment so as to read as follows;

“When either the court or the jury shall think the matter published proper for public information.”

Mr. EARLE said. I am opposed to the amendment of my colleague, from the county of Philadelphia, (Mr. Doran) if taken without the modification which I have proposed, because it must be evident that there are private, circumstances alleged against individuals which may be true, and yet which ought not to be published. As, for instance, in relation to a circumstance occurring many years ago, in relation to an individual who since that time has sustained an irreproachable character—which might be published through malice or revenge, and which ought not to be permitted to be published. And my colleague entertains the same opinion, too; because, at the end of his amendment, he says “if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.”

My colleague then admits my principle, and, admitting it, what is the remedy which he proposes? It is worse than the disease. He allows a man who has published an improper thing and goes before a court, to republish it, and to state all the facts again, to the disgrace and injury of the individual to whom he is hostile. I, for one, can not consent that this should be so; and I think my colleague, on a little further reflection, must see that my proposition is the only one which meets this object fully.

I do not concur in the remarks of the gentleman from Luzerne, (Mr. Woodward.) He says, that their will be two issues created. Is this a new thing? Are there not cases of this sort occurring every day—cases in which two issues are to be tried by the same jury—cases in which three, four, or five issues are to be tried by the same jury? But even if there were something in it of rather an uncommon character, what of that? Are there not new things in human government, as in every thing else? What are we here for? Why have the people of Pennsylvania called us together in convention? Is it not that we may provide new things, if those things are in themselves right and proper? Is it not probable that our bill of rights may not have attained to perfection? Is it not possible that we might yet improve on some of its provisions? Ought we not to make its provisions as unexceptionable as it may be in our power to make them?

In the present case, the jury and the court can consult at the same time and if then the jury shall think the matter published proper for public information, it can be given—or if the court think it proper for public information, it can also be given. The only question is, is this a question of law or of fact? If it be a question of fact, it is for the jury. If it is a question of law, it may be proper either for the jury or the court. If the jury are to judge whether the matter is proper for public information, it is just as easy for them to fix it before the information is given.



The decisions as to whether the matter is proper or not for publication, have been arbitrary in different parts of the Union. They have been very inconsistent, and they always will be. They will depend very much on the feeling of the judge. Now, I would secure to the defendant a double claim; and a double opportunity by providing that when either the court or the jury shall think the matter published proper for public information, it should be given. This is in accordance with doctrine maintained by Mr. Jefferson, and is in consonance with the general principles of that political party to which the gentleman from Luzerne (Mr. Woodward) and myself alike belong.

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

So the amendment to the amendment was rejected.

Mr. DORAN said, it did not appear to him that the object of his amendment was properly understood. Looking to the phraseology of the amendment, continued Mr. D., it is not easy to perceive how any misunderstanding can have arisen in regard to its true intent and meaning.

Gentlemen have imagined that I wish to throw open the press as a vehicle for slander. I do not wish any thing of the kind; I am sure that nothing could be further from my intention. And, if gentlemen will examine my proposition, they will find that the very aim and object which it has in view is to prevent the licentiousness of the press.

What is the amendment? It is that in all prosecutions or indictments for libel, the truth may be given in evidence; that the jury shall determine the fact whether the publication has been made with good motives and for justifiable ends. This is the scope of this amendment. And what says the gentleman from the city of Philadelphia, (Mr. Chandler?) He says that by adopting this amendment, you allow every man's private reputation to be attacked from his earliest childhood, and that after he has been thus assailed, you will allow him no remedy by means of a criminal prosecution. Is this so? Take the case of a libel against the private character of a particular individual, for which a libel is commenced against the publisher. What must the publisher shew? In the first place, he must shew that the matter published is true; and, in the next place, that he published it with good motives and for justifiable ends. I say, he must prove to the satisfaction of twelve respectable and intelligent men, that he made the publication from pure motives, and for justifiable ends. What objection can there be to this. I can see none; I can not see what possible injury can result from it. We do not, by the insertion of this new provision in the constitution, say that the public presses of the country shall be thrown open as a medium through which every man may attack another against whom he may have any lurking feeling of ill-will to gratify; but we say that where the public press has attacked the private character of individuals, it shall be in the power of the party accused, to give the truth in evidence—to shew, if he can, that the matter was published from good motives; and to shew, if he can, that it was published for justifiable ends, and for the good of society at large.

I can easily imagine a case where a man's character has been made public, with a view to shew the public his malpractices and his impositions. Suppose, for instance, that a man should come into the city of Philadelphia, should represent himself to be in very forlorn and destitute circumstances—should say that he is an exile—that he comes from Poland, and should thus succeed in eliciting the sympathy and the benevolence of our citizens. And suppose it should be intimated to one of the public presses, that he is an impostor, should the press of our state be so manacled as to prevent the publication of the fact that he is an impostor? I trust that there is not a gentleman in this convention who would say, that the public presses are not to be opened under such circumstances, and to be allowed to show that such a man is an impostor, and that he is not entitled to receive any encouragement or countenance.

Gentlemen speak of the evils resulting from such a provision. I recollect a case which occurred in one of our own courts, where the matter was true and was published for justifiable ends; but because the law prevented the truth from being given in evidence in prosecutions of that character, the defendant was convicted, and fined in a small amount which he could not pay. The result was that he went to the county prison, and remained there sixty days, until he was discharged under the insolvent law.

It is said also, that this provision, if introduced into the constitution, will operate injuriously on the community. How, or in what manner, I am not able to discover. How has it operated in the state of New York? There they have an amendment of this kind. Mine is copied from a similar provision in the bill of rights of that state? And let me ask, is the reputation of an individual more liable to be wantonly assailed and broken down there than here? Certainly not. Reputation may be vindicated there as surely and as signally as it may be vindicated here; and if this amendment is made a part of the constitution of Pennsylvania, there will still remain the same shield, the same security for reputation, and the same redress against those who may wickedly and wantonly assail it, as exists at the present time.

There is, Mr. President, another object which I am desirous to accomplish in offering the amendment. It is this; I wish to take away from the courts, the power to say whether the matter is libellous or not. I wish the jury to be the judges of the law as well as the fact; and I wish that where an individual is indicted for libel, it should not be in the power of the court to say, whether the matter published relates to him in his public capacity, or whether it is proper for publication, or not. But I wish the jury to do this; to say the matter is published from good motives, and for justifiable ends.

I, therefore, respectfully submit this amendment, and I invoke in its behalf, the aid of every true friend to the liberty of the press without its licentiousness.

And the question was then taken.

And on the question,

Will the convention agree to the amendment?

The yeas and nays were required by Mr. DORAN and Mr. KREBS, and are as follow, viz:

**YEAS**—Messrs. Banks, Bedford, Cummin, Doran, Foulkrod, Ingersoll, Keim, Magee, Mann, Martin, M'Cahan, Read, Ritter, Rogers, Sellers, Sterigere, Weaver—17.

**NAYS**—Messrs. Agnew, Ayres, Baldwin, Barclay, Barnollar, Barnitz, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Cox, Craig, Crain, Crawford, Crum, Cunningham, Curll, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Dunlop, Earle, Farrelly, Fleming, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helfenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Jenks, Kennedy, Kerr, Konigsmacher, Krebs, Long, Lyons, Macley, M'Sherry, Merrill, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Pennypacker, Porter, of Lancaster, Purviance, Russell, Saeger, Scheetz, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, White, Woodward, Young, Porter, of Northampton, *President pro tempore*.—94.

So the amendment was rejected.

And the report of the committee so far as relates to the seventh section, was agreed to.

The eighth section being under consideration,

A motion was made by Mr. EARLE,

To postpone the further consideration of the said section for the purpose of inserting the following new section, viz :

“SECTION 8. That it shall be the duty of the legislature to provide adequate and exemplary penalties to be imposed upon all persons, who by mobs, violence and tumult or intimidation, shall interfere with the enjoyment of the right of freedom of speech, of the press, and of public discussion in relation to all questions of public or general interest. That it shall be the duty of the legislature to provide by law for the adequate compensation of all persons or their heirs, relatives or lawful representatives, who shall be injured in person or estate by any mob or riot unless such mob or riot shall have been directly and wilfully instigated, aided or encouraged by the person or persons so injured.”

Mr. INGERSOLL asked for a division of the amendment, so as to end with the first clause.

Mr. EARLE said, that the amendment had been some time before the convention, for he had offered it at an early period of the session. He thought experience had fully proved it to be necessary. We had already adopted in our constitution, a guaranty in relation to freedom of speech and of the press. We had some guaranties against disturbing the peace of public bodies ; but they could only be regarded as mere declarations of right, as they had not been accompanied by the proper legislation and enforcement of law to secure to citizens their rights. He asked if it had not been a matter of notoriety, for many years past, when the people have assembled for the purpose of discussing any subject which, perhaps, might be unpopular with those out of doors—that that they were disturbed by riotous and tumultuous assemblages? He had known that in various parts of this commonwealth as well as in New York and other portions of the Union, where meetings had been called, the objects of which had not met the approval of some, not included in the invitation, and they in consequence, had unwarrantably interfered with a view to

prevent others expressing their opinions and carrying out the objects for which they met.

This had been the case in reference to meetings besides those of a political character. It was also notorious that attempts had been made, by threats and violence, to destroy the liberty of the press. The legislature had provided no adequate remedy for the evil, that he knew of. If there was any law in regard to it, then it was a dead letter, for it was not enforced. He knew of no law under which an individual could be indicted for disturbing a meeting. He had never heard of an indictment of that character, although he had witnessed numbers of gross outrages that ought to be visited with punishment.

The second clause of his amendment proposed to indemnify those who shall be injured in their persons or estates by mobs. This, he regarded as a very proper and necessary provision, and if adopted, would put an end to this kind of lawless violence. It would be found, generally, that mobs originate with, and are headed by, a few individuals—the greater part of the persons present being merely lookers on. Now, by obliging the community to make good all losses sustained, you enlist the feelings of every man of property at least to put down these lawless acts of violence. All that was required in order to suppress these disgraceful proceedings was, a proper interest felt on the part of the community. If any part of the community in any city or township, wish to deprive a citizen of his rights, or his property, because he does not happen to think as they do; or, if they wish to take his life, because he tries to convince them that they are wrong in reference to some measure of public policy, then may it be said that they are fearful of the truth, and unlike Jefferson, who said that “error of opinion may be safely tolerated when truth is left free to combat it.” They will not hearken to the light of reason, but they resort to violence and bloodshed! Such a manifestation of feeling as this is contrary to the principles of christianity, contrary to the principles of democracy, and contrary to the principles of liberty; and the individuals ought to be punished, and the injured parties compensated by the public. He believed this to be the law throughout England. It is also the law of several of our sister cities. And, in the city and county of Philadelphia, this law prevails to a certain extent, viz: to compensate a man for the injury he may have suffered in regard to property. But, in my opinion, the poor man, who is injured in person ought, also, to be compensated. The amendment I have offered will do equal justice.

Mr. E. asked for the yeas and nays on the motion to postpone, and then withdrew the call.

And, the question being taken on the postponement, it was decided in the negative.

Mr. EARLE then moved to amend the section, by adding to the end thereof the following, viz:

“That it shall be the duty of the legislature to provide adequate and exemplary penalties to be imposed on all persons, who by mobs, violence and tumult or intimidation shall interfere with the enjoyment of the right of freedom of speech, of the press, and of public discussion in relation to all questions of public or general interest. That it shall be the duty of the

legislature to provide by law for the adequate compensation of all persons or their heirs, relatives or lawful representatives, who shall be injured in person or estate by any mob or riot, unless such mob or riot shall have been directly and wilfully instigated, aided or encouraged by the person or persons so injured."

Mr. DARRAH, of Berks, asked for the previous question; which was sustained.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. EARLE and Mr. DORAN, and are as follows, viz:

YEAS—Messrs. Banks, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Cline, Crain, Crawford, Crum, Darrah, Donagan, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, High, Houpt, Hyde, Keim, Kerr, Krebs, Lyons, Mann, Miller, Montgomery, Myers, Nevin, Overfield, Read, Riter, Ritter, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Woodward—53.

NAYS—Messrs. Agnew, Ayres, Baldwin, Biddle, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cochran, Cope, Cox, Craig, Cummin, Cunningham, Curll, Denny, Dickey, Dillinger, Doran, Dunlop, Earle, Fleming, Fry, Harris, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Jenks, Kennedy, Konigsmacher, Long, Maclay, Martin, M'Cahen, M'Sherry, Merrill, Merkel, Payne, Pennypacker, Porter, of Lancaster, Purviance, Russell, Serrill, Thomas, Todd, White, Young, Porter, of Northampton, *President pro tem.*—55.

So the question was determined in the negative.

Mr. EARLE asked for a division of the question.

And on the question,

Will the convention agree to the first division, viz:

"That it shall be the duty of the legislature to provide adequate and exemplary penalties to be imposed upon all persons who by mobs, violence and tumult or intimidation shall interfere with the enjoyment of the right of freedom of speech, of the press, and of public discussion in relation to all questions of public or general interest?"

Mr. EARLE and Mr. CRAIG asked for the yeas and nays; which were ordered.

Mr. HIESTER, of Lancaster, said that although it was true this was a subject which might be provided for by legislative enactment, yet he regarded it as of sufficient importance to be incorporated into the organic law.

He fully concurred in the justice of the remarks which had fallen from the gentleman from the county of Philadelphia, (Mr. Earle.) It certainly was a matter of the highest importance that every citizen should be protected in the full and free exercise of his constitutional rights—that he should be allowed to freely speak, write, and print on any subject, he being responsible for the abuse of that liberty. This was the law of the land, and no man had a right to object to it. It was but fair and reasonable. But the right has been (continued Mr. H.) very much abused. To the

credit and honor of Pennsylvania, however, be it said, that mob law is not known within her borders.

But what has been the case in other parts of the United States? Who can shut his eyes to what has transpired there? Look to Massachusetts, to Illinois, to Missouri, and to Mississippi, and reflect, for a moment, on the disgraceful scenes that have taken place in those states. The mad and intolerant spirit of mobism has displayed itself there to a most alarming extent to restrict freedom of speech and of the press. I thought it perfectly reasonable and highly necessary that this provision should be inserted in the constitution. The second branch of the amendment I also think important enough to be incorporated in the fundamental law of the state. It contemplates that the legislature shall provide indemnification for all persons whose property is destroyed by mobs, unless the persons themselves have been the instigators of those mobs.

Nothing can be more reasonable than that the individuals who have been deprived of their property, shall be compensated for it by the community, if redress cannot be obtained elsewhere. This provision will have a good effect for it will induce all orderly citizens to set their faces against these disgraceful acts, and if they did so, it is not likely the disorderly would raise a force to commit them. If it was adopted in all communities, the liberty and property of individuals would be rendered much safer than is now the case. We have recently seen the good effects of this law in Baltimore, not inaply termed mob town—since the legislature of Maryland passed an act providing that the city should compensate the losers of property, by mobs.

I believe that if such a law were to be passed in each state of the Union, we should not hear of so many. It is a serious matter when law and order are set at defiance and overruled by mobs. I trust gentlemen will reflect on the amendment; and although it runs rather into detail—and against which I have heretofore set my face,—I hope the convention will adopt the amendment.

Mr. FLEMING, of Lycoming, remarked that, perhaps, no one had a stronger objection to mobs than himself. He admitted that the rights and liberty of the community were placed in jeopardy if mobs were permitted to rule. But, when the convention were called upon to insert a provision in the constitution for one offence, why not include all other offences? It was easy enough to see that there was a number of other offences against the law and the order of society, which might be equally as well provided for, as for instance, arson, burglary, fraud and perjury, which are regarded by the community as crimes of equal enormity, and tending to destroy the social compact. Yet, nothing was to be done as to these. But, the convention was called upon to enjoin it expressly on the legislature that they shall do what? Why, what had been done ever since the first meeting of a legislature within the commonwealth of Pennsylvania, to prevent breaches of the peace. He would ask gentlemen if there were any breaches of the peace that were not indictable—for which there was not an ample remedy? He maintained that there was no crime committed against which a sufficient remedy was not to be obtained. Then, why, he would inquire, should the convention put in the constitution a

special provision enjoining on the legislature to do what they have already done? What has the legislature to do in this matter? In 1826, the city and county of Philadelphia, provided by an act of assembly, that where a person's property was destroyed by a mob, that they should be compensated. The people of the city and county of Philadelphia had more ample security against breaches of the peace than any part of the commonwealth of Pennsylvania. The provision of the act of assembly, which he read from Purden's Digest, page 738, was in the following words:

"In case any dwelling house or other building or property real or personal, shall be injured or destroyed within the said city and county of Philadelphia, in consequence of any mob or riot therein at an election, or at any other time it shall be lawful for the owner thereof or his agent to apply if in the county to the court of quarter sessions, and if in the city to the mayor's court, who shall thereupon appoint six disinterested persons who shall be sworn or affirmed to ascertain and report the amount of said loss and also whether the said owner had any immediate or active participation in said mob or riot, and on such report being made and the fact that the owner had no such participation being ascertained and the report being confirmed and on examination of law and fact by said court, the said report and confirmation shall be certified to the county commissioners who shall forthwith draw their warrant on the treasury for the amount so awarded which warrant shall be duly paid by the treasurer."

Here was a special case provided for. And now because there had been a riot in Philadelphia, this convention were called upon to alter the fundamental law. He could not suppose that gentlemen would be so silly as to go into a convention in order to incorporate a provision of this kind into the constitution of the state.

Now, there was no difficulty in getting up a feeling of this kind; and whether it originated in any apprehension growing out of the abolition riot he did not know. He would ask gentlemen if they would go so far as to insert a provision to prevent half a dozen men from meeting and getting up a bit of a fight and jolification. Then why insert this provision? Why provide for one case and not for the other? He would ask members to prepare themselves for these various provisions, and to make the constitution a little larger than Purdon's Digest! He ventured to say that when we came to enumerate all the cases provided for—when we came to turn over Blackstone, and to make provision for all the crimes mentioned by him, this convention would not be prepared to adjourn *sine die* this time next year. He hoped that the amendment would not prevail.

Mr. BIDDLE, of Philadelphia, said he had but very few words to say. He believed it to be all-important that our liberties should be preserved, and they could only be preserved by securing the superiority—the supremacy of the law. He was of opinion that these outrageous and violent popular outbreaks which had taken place in various parts of the Union had done more to endanger it, than any thing else that he knew of. If this subject were one intimately connected with the durability of free institutions, was it not one of sufficient importance to claim a place in the

fundamental charter. The crime of treason against the United States was included in it, as it was also in many of the constitutions of the states. He believed that we ran much less risk of danger from treason, than we did from those irregular bursts of passion, which occasionally took place owing to the violence of excited feelings—overthrowing the laws and destroying large amounts of property, and sometimes life itself. He thought that within a year or two occurrences had taken place calculated to awaken a lively sense of the importance of inserting some provision in the constitution to guard us against the introduction of lynch law, as it had been called, which had appeared among us—and in their passions for which individuals alleging that they were actuated by no other than good motives—have risen above the law to redress their own wrongs. He considered this evil more fraught with danger to our country than any other.

Was it, he asked, an unfit place, to select the constitution for the introduction of two great principles—the first, that the parties guilty of creating a disturbance shall be amenable to the law. And, second, the community in which the offence was committed, shall be responsible to the individuals for the loss they have sustained, which was attributable to the want of that unity in maintaining the supremacy of the law.

It was the duty of every good government to protect its citizens, and when citizens are injured for the want of power to maintain the ascendancy of the law, it was a fit occasion for compensation being made for those wrongs.

It had been remarked by the delegate from Lycoming, (Mr. Fleming) that the city and county of Philadelphia had a special advantage over other portions of the Union. He (Mr. B.) would regret that the city and county of Philadelphia should not possess any advantage which other portions should also possess. He thought that such a principle as was proposed, ought to be inserted in the constitution, so that every portion of the commonwealth might enjoy the same protection. He could not coincide with the gentleman from Lycoming, that there was any thing absurd or ridiculous in the proposition. On the contrary it appeared to him to be both just and proper, and he should cheerfully give his vote in favor of it.

Mr. BANKS, of Mifflin, said :

Although I yield to none in this hall, or in this commonwealth, in a desire to do every thing which will promote the sound morals and the good conduct of our citizens,—an object which should be dear to the heart of every well-wisher to our country and to her institutions—much, I say, as I desire to promote this great object, and to see strife and commotion cease to exist in every part of our land—I shall still feel compelled to refuse my assent to the proposition now before the convention.

It seems to me that every man who has reflected at all upon the subject, every man who is anxious that the practice of mobbing, for any cause, at any time, or under any circumstances, should not prevail in our state; every such man, I say, must perceive that it would be improper for the convention to engraft on the constitution any provision in relation to that dreadful practice. While the constitution, as it now exists, to enact



laws for the suppression of mobs, surely there can be no necessity to add to it a provision like that proposed by the gentleman from the county of Philadelphia, (Mr. Earle;) and if there is no necessity, why should we incumber the constitution with any provision on the subject.

Every member of the convention, I am sure, feels a proper solicitude for the preservation of order in our government, and the inculcation of sound morality among our people. And it appears to me that every gentleman who reflects on what we have already passed upon in the bill of rights, in relation to the free communication of thoughts and opinions, must be satisfied that we can gain nothing, so far as order and good government are concerned, by inserting this provision. So long as men conduct themselves towards one another, in regard to their political and religious opinions, and to all other subjects on which they have a right to act for themselves; so long, I say, as they conduct themselves towards each other in such a manner as not to give cause of offence, there will be no danger of mobs or riots.

It is known to the members of this body, that I have, from first to last, been anxious to expunge from that portion of the constitution which relates to public education, the word "poor." I have been anxious to do so, because I did not wish that the action of this convention should hereafter be pointed to as endorsing the word "poor," and thereby casting upon themselves the stigma of being a *poor* convention. And much less do I now desire that, by inserting in the constitution, the word "mobs," it should bring upon itself a stigma as a *mob* convention. I do not wish that the citizens of Pennsylvania, or any portion of them, should hereafter point to the action of this body as in any degree anticipating mobs, fearing mobs, or advocating mobs. None of us, I am sure, desire such a thing. Why then should we not let well alone? Why should we interfere when no necessity calls upon us to do so? If the legislature has the power under the existing constitution, as we know they have, to provide by law against the destruction of life and against the destruction of property, by laws punishing such acts in the most severe manner, why should we send out any constitutional amendment on the subject? They who have read of mobs in other states—they who have read of the dreadful revolution in Paris—those who have conversed with men who have looked upon such sights—who have seen women led on to destruction—who have seen the horrible sight of women, with their hair streaming down their shoulders, taking up the instruments of death and crying to the men to come on, that they were cowards—those, I say, who have gazed upon such sights as these, or read of them, or heard them described with all the energy of truth, must know how little worth a constitutional provision would be when the bad passions of men are thus running riot in the land. Of such a sight I received a description from one of our military officers, (General Fenwick) who was present at the time.

"It seemed," said he, "as if the furies of destruction had been turned loose upon the world, to visit Paris at the commencement of the French revolution of 1793."

And, sir, when it comes to this in this country of ours which we love next to our lives and equally well with all the ties and connexions which

we hold dear upon earth—when, I say, it comes to this, that the state of the public mind is such that our citizens will rise up in mobs—and that the good sense of the majority of the people will not put them down, your constitution and laws will amount to nothing. They will be regarded no more than the feeble voice of the mariner amidst the fierce howlings of the tempest.

But I come back to the position with which I set out. The legislature of Pennsylvania does not stand in need of a constitutional provision to authorize them to enact laws for the preservation of the lives and property of our citizens and for their protection against mobs and riots. Why then should we unnecessarily throw such a provision before the people? I hope it will be rejected.

Mr. CHANDLER, of Philadelphia, said :

The question presented by the amendment of the gentleman from the county of Philadelphia, (Mr. Earle) is so divided, as to admit of a vote in favor of one branch, without a violation of consistency in voting against the other.

I am in favor of inserting in the constitution a provision, making it obligatory upon the legislature of Pennsylvania to provide for the adequate compensation of those who may suffer by the violence of mobs. I see nothing in this which is in any degree inconsistent with our ordinary mode of acting in this body. We have been told by several gentlemen, that it is competent for the legislature to do this, because they have done it already in relation to the city and county of Philadelphia. The action which has been had in relation to these particular parts, shows that it is proper also in all the parts; and yet the legislature have not legislated for all. Was not the legislature competent to provide for the repeal of the charter of the United States Bank, or of any charter? It was so, and yet the convention inserted a provision making it obligatory on that body to insert in every banking charter, a clause for its repeal, if necessary to the interests of the people. Why then should the matter be now presented to us in another light, by the same class of voters who voted in favor of the amendment I have referred to? If the legislature was in danger of being carried away by party feelings in the one case, it is so in the other; and the laws which one legislature has passed in regard to compensation for injuries sustained by mobs, may be repealed by the next.

The security contemplated in this amendment is that which I think every man who pays taxes, who contributes his portion to the support of the government under which he lives, is entitled to receive. If there had been such a provision in the constitution of the state of Massachusetts, we should not have known such scenes as the burning of the Ursuline convent in that state, nor should we have had such a scene as occurred here in the Vauxhall garden.

It is known to all who hear me, that policies of insurance do not cover injuries received by mobs; and while a man is sitting quietly still under his right, and supposes himself free from storm and the ordinary calamities of life, every thing he has upon earth may be swept away in a whirlwind of passion, and he be left without redress and without remedy.

Sir, it is not alone in the city and county of Philadelphia, that mobs may come. They may come in the smaller towns. They also are

liable to them, and have felt their influence. The gentleman from Mifflin, (Mr. Banks) to sustain the position which he assumes in opposition to this amendment, has told us an anecdote of the French revolution. In return, I will relate an anecdote which I have met with somewhere in the course of my reading, and which appears to me to be more applicable to the question before us.

When Tamerlane, having made some great advances into the country, was sitting in his tent, an old woman came to see him, and said that while she was sleeping at night, his army had carried away all that she possessed. "Oh!" answered he, "you ought to have been awake." "Not at all," responded the old woman, "I was sleeping in the confidence that Tamerlane, the ruler of my country, was looking to the protection of my property."

So it is here. We pay for protection; we are entitled to receive it, and the taxes which we pay should enable the community to repay that property which, by the negligence or the inefficiency of the officers of the commonwealth, could not be saved.

As to the first branch of the proposition, I do not care much about it, one way or the other. But, as to this second part, I shall vote for its adoption.

Mr. CRAIG, of Washington county, said that he felt favorable to both branches of the amendment proposed by the gentleman from the county of Philadelphia, (Mr. Earle) and especially favorable to the first branch of it.

It is undoubtedly, continued Mr. C., a matter of great importance that the citizens of the commonwealth should be secured in the peaceful enjoyments of their rights, their liberties, and their property. Of this, there can be no difference of opinion among the members of this body.

It seems to me to be also a matter of importance that the subject should be acted upon by this convention. It has been contended that there is no necessity for our action in the premises, because the legislature has full power; and that there is no reason why we should act in this partial manner in relation to the press, and the right of public discussion. I admit I would rather that the provision should be penal—that it should be made obligatory on the legislature "to provide adequate and exemplary" punishment in all cases where persons are engaged in mobs or riots. And we should provide for the most dangerous cases.

About a month ago, when the subject of corporations was under discussion here, the gentleman from Mifflin (Mr. Banks) did not contend that it was the best to refer such matters entirely to the action of the legislature. At that time we were on the subject of property alone, but we are now discussing a matter of much more importance, because mobs at all times involve the danger of destruction not only to the property of our citizens but to their lives; whereas the danger to be apprehended from the banks are mainly to our property. The question now before us, then, is of much more importance than the other.

This being the case, it is our duty to consider whether the legislature will be likely, at all times and upon all occasions, to pass laws of sufficient force and energy to suppress mobs. How is this point to be ascer-

tained? If we were certain that the legislature would act vigorously upon all these occasions, it would not be necessary for this convention to interfere in any manner by means of constitutional amendments, but I have my serious doubts whether such action on the part of the legislature is to be confidently relied upon at all times. My doubts arise from what we have seen occurring through all our southern country—through the whole slave holding states. There it is in vain to say, that the security of speech and of writing what you please, always holding yourself accountable to the courts of justice, exists at this time. There we have seen that the lynch law (as it is termed) has become the law of the land. It has spread itself until it now covers the space of nearly our whole southern country. Shall we not take warning from these signs? Is it not our bounden duty to do so? and, if so, can we answer to our consciences for its neglect? Is there no danger, with such an example before us, coming even to our very borders—is there, I ask, no danger that a similar system may, ere any great lapse of time, be introduced among us also? Sir, there is danger, and it is some years ago since we first saw the indications of its approach—against the so-called abolitionists of Pennsylvania. We have seen a strong disposition manifested to mob; nay, sir, we have seen men of respectable characters and position in life, encourage the practice of mobbing against those who think proper to express their opinions freely on the subject of negro-slavery. With such indications before us, then, shall we fold our arms in apathy, and look passively on until it is too late to act to any effectual purpose? Coming thus near to us, approaching us rapidly as this dangerous and destructive doctrine now is, is it not right that we should put something in the constitution, so that when your legislature shrinks back from their duty, the judges of your courts may plant themselves upon the ramparts—the broken fragments of your constitution, and defend the man who has been persecuted—who has been the victim of popular violence—whose property has been destroyed, and whose life has been threatened, if not actually taken? Is it not known to all who have paid any regard to the course of events for some years past, that a man scarcely dare sit on the bench of the courts of our southern country, who will pronounce judgment against the lynchers? Why may not such a spirit overtake us in Pennsylvania? Sir, it may; it is greatly to be feared that it will, unless timely prevented.

Let us, then, avert the danger by inserting this clause in the constitution, and thus secure ourselves against it before it comes.

Mr. EARLE said, that the arguments which had been urged here in opposition to his amendment, would be applicable to a great part of the constitution. What are they, continued Mr. E.?

The gentleman from Lycoming (Mr. Fleming) has told us that we have already adequate legislation on the subject. This is a mistake. Two individuals may go to a public meeting to disturb it as much as they please,—unless it be in meetings of a religious character; and on that head there has been legislation,—and I know of no law to correct them. I have seen no instance of it. It does not constitute a riot, because there are not three persons. There is no proper legislation in relation to mobs.

But it is said that the legislature can do this. Certainly they can. Is this any argument? Cannot the legislature do a great many other things

that we have been doing? Could not the legislature do what we have constrained them to do in relation to banks? Could not the legislature provide, as has been provided in the constitution, that the courts shall be left open? Could not they provide for trial by jury? Could not they provide that the citizens "shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures?" Could not they provide "that the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law?" Could not the legislature do all these things? The whole of the ninth article of the constitution—the Bill of Rights, as it is termed—is filled with that which the legislature could do, even if there were no constitutional provision in regard to it. Why then are these constitutional provisions inserted? Because, as the gentleman from Washington (Mr. Craig) has very justly observed, there is danger that the legislature will not at all times do their duty—that they will not act with that prompt energy and decision which is required at their hands. Experience has shown us that there is good ground for such apprehensions; that there is danger that the legislature will fail in many particulars that are set forth in the Bill of Rights, and therefore it was that our fathers thought it prudent that they should be bound down to the performance of their duties in those particulars, by means of constitutional provisions. The only question for us is, then, does such danger exist? What has been our own experience? Are we to learn no wisdom from that? Have we not seen a judge in the state of Missouri (Judge Lawless) recently charging a jury of that state, that where a majority of the citizens take a man's life without law, they must not be indicted—that there must be no punishment for such offences? This case must be fresh in the recollection of every man who hears me. And shall this be our legislation in the state of Pennsylvania, or shall it not?

But it is said that the legislature will certainly do its duty, and the action of the convention in regard to this subject is deprecated on that account. Sir, will the legislature do their duty? Is it true that they will at all times and on all occasions legislate boldly and efficiently? We know that they have not done so heretofore. We know that the legislatures of other states of the Union have not done so. It is in vain to attempt to disguise the truth of this matter. There is danger, actual and positive danger, that the legislature will not do their duty, because they are sometimes carried away by excitement, by party feeling, or are driven from their purposes by the fear of the consequence that may result to themselves. We know that particular cases have arisen, and will hereafter arise, in which that body would not do its duty unless compelled thereto by an absolute constitutional provision. But even if we could assure ourselves—as we can not—that the legislature would always perform their duties fearlessly, in the absence of all compulsory provision in the constitution—still we should insert such a provision, because it cannot do any harm, while it may be productive of much good.

A division of the question was then called for by Mr. EARLE.

And on the question,

Will the convention agree to the first division, viz: "That it shall be

the duty of the legislature to provide adequate and exemplary penalties to be imposed upon all persons who by mobs, violence and tumult or intimidation shall interfere with the enjoyment of the right of freedom of speech, of the press, and of public discussion in relation to all questions of public or general interest?"

The yeas and nays were required by Mr. EARLE and Mr. CRAIG, and are as follow, viz :

**YEAS**—Messrs. Agnew, Ayres, Baldwin, Barndollar, Biddle, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cox, Craig, Cummin, Denny, Dickey, Dickerson, Dillinger, Doran, Earle, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Ingersoll, Jenks, Keim, Kerr, Konigsmacher, Long, Maclay, M'Sherry, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Russell, Seager, Serrill, Sill, Snively, Thomas, Todd, White—47.

**NAYS**—Messrs. Banks, Barnitz, Bedford, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cleavinger, Crain, Crawford, Crum, Curll, Darrah, Donagan, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Hopkinson, Hout, Hyde, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Miller, Myers, Overfield, Payne, Purviance, Read, Ritter, Ritter, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Woodward, Young, Porter, of Northampton, *President pro tem.*—58.

So the first branch of the amendment was rejected.

The second division of the said amendment being under consideration, the same was modified by striking therefrom the word "relatives," as follows, viz : "That it shall be the duty of the legislature to provide by law for the adequate compensation of all persons or their heirs or lawful representatives, who shall be injured in person or estate by any mob or riot, unless such mob or riot shall have been directly and wilfully instigated, aided or encouraged by the persons so injured."

Mr. FULLER, of Fayette, said that he was opposed to the second branch of the amendment, as he had been to the first. If I did not know, continued Mr. F., that the legislature had abundant power to do all that is requisite to be done, I would cheerfully give my support to the proposition of the gentleman from the county of Philadelphia, (Mr. Earle.) The gentleman himself argues that the legislature is possessed of power to act. What then is the objection which he urges against leaving the matter to the action of the legislature? It is this: that the legislature will not discharge its duty—that it has not done so heretofore—that it will not provide the necessary legislation. Now, on this course of reasoning, it seems to me that the gentleman from the county of Philadelphia must distrust the people of Pennsylvania as well as the legislature. Nothing will remedy the evil which he deprecates, and which, I am sure, every member of this body does most cordially deprecate—save public opinion; and public opinion, it is to be presumed, has governed the legislature in regard to this subject, so far as concerns the city and county of Philadelphia, for which, as has been said, a special provision has been made by the legislature. That provision arose out of a riot which occurred on a certain election day; application for such a provision was made to the legislature, and at the next session the bill was passed. Up to this time, it has not been necessary to pass a similar act in reference to other parts of the state: but the legislature has the power to do so, and to make the

citizens of every portion of the commonwealth responsible for damages sustained in this way. That the legislature will do so whenever the necessity for such a measure shall arise I can see no reason to doubt; for we may look to what they actually have done in regard to the city and county of Philadelphia, as an earnest of what they will do in every other part of the state, if the necessity should arise.

Why, then, should the gentleman from the county of Philadelphia urge the adoption of his amendment at this late hour in our session? And, if he felt such great anxiety about it, why did he not bring it before the convention at an earlier period? I have no doubt that he has other amendments also in store for us. And can any gentleman believe that there will be any amendments made to the ninth article of the constitution? Does not every gentleman in his conscience believe that it is labor in vain to attempt to engraft any amendment upon it? We all believe so. And that the gentleman from the county of Philadelphia should, under such circumstances, persist in introducing these unavailing propositions, only, as it seems to me, that he may annoy our feelings with long speeches, is too much for our patience to endure.

Mr. EARLE rose, and said. I deny the right of the gentleman from the county of Fayette, (Mr. Fuller) to call me to task for my conduct in this body, or for doing that which my sense of duty dictates. I deny his right to assert that I offer any amendments here, for the purpose of annoying the convention. I deny his right to make such an assertion, and I say that it is not true.

Mr. Earle was thereupon called to order by the PRESIDENT, (Mr. Porter, pro tem) for charging Mr. Fuller with having asserted what was untrue, and was ordered to take his seat.

A motion was made by Mr. MERRILL,

That the delegate be permitted to proceed.

And on the question,

Will the convention agree to the motion?

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

**YEAS**—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Barnitz, Biddle, Bonham, Brown, of Lancaster. Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cline, Cochran, Cox, Craig, Crain, Cummin, Cunningham, Curll, Denny, Dickey, Dickerson, Dillinger, Donagan, Doran, Earle, Fry, Fuller, Gamble, Helfenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Jenks, Konigsmacher, Long, Lyons, Maclay, Martin, M'Cahen, M'Sherry, Merkel, Montgomery, Payne, Porter, of Lancaster, Read, Riter, Rogers, Russell, Serrill, Sill, Thomas, White, Young—59.

**NAYS**—Messrs. Bedford, Bigelow, Brown, of Northampton, Cleavinger, Crawford, Crum, Darrah, Fleming, Foulkrod, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayburst, Hays, High, Houpt Hyde, Kennedy, Krebs, Magee, Mann, Miller, Overfield, Pennypacker, Ritter, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Woodward, Porter, of Northampton, *President pro tem*—42.

So the question was determined in the affirmative, and leave was accordingly granted.

Mr. EARLE, thereupon resumed.

I think that the gentleman from the county of Fayette, (Mr Fuller) was clearly out of order. Although the Chairman did not see fit to call him to order. I think that his insinuations were incorrect, improper and indecorous.

The CHAIR said that the gentleman from the county of Philadelphia, must confine himself to the question before the convention.

Mr. EARLE resumed. I must say, that the statements of the gentleman from Fayette, were not consistent with the fact.

The CHAIR again called Mr. Earle to order.

Mr. HIESTER rose to a point of order. The gentleman from Fayette, (Mr. Fuller) had assailed the motives of the gentleman from the county of Philadelphia, (Mr. Earle) and had not been called to order by the Chair, for so doing. It was clearly the right of the gentleman to vindicate himself.

The CHAIR said, that the language made use of by the gentleman from Fayette, (Mr. Fuller) did not appear to the Chair at the time to be out of order; if it had so appeared, the Chair would have interposed. Nor had the gentleman from Fayette, been called to order by any other member of the convention.

After some desultory conversation on the point of order;

Mr. FULLER rose in explanation. He denied that he had assailed the motives of the gentleman from the county of Philadelphia, by stating that that gentleman introduced propositions with a view to harrass the convention.

What I intended to say, continued Mr. F., and what I believe I did say, was to this effect:—that if any gentleman would bring in a proposition, having evidence that the convention would not adopt it, it must appear as if it was introduced to annoy the feelings of the members.

Mr. EARLE resumed.

A very brief reference to the past will show that the statement made by the gentleman from Fayette, as to the introduction of the amendment before the convention is not correct in point of fact. On the sixth of May, at the very commencement of the session of this body, I offered the following proposition;

*“Resolved, That the Constitution be so amended as to require that the legislature shall provide by law, adequate and exemplary penalties to be imposed upon all those who shall by mobs, violence, or otherwise interfere with the right of freedom of speech, of the press and of public discussion, in relation to all questions of public or general interest; also, that the legislature shall provide by law, for the compensation of all persons or their heirs, relatives or representatives who shall be injured in person or estate, in any mob or riot consisting of more than \_\_\_\_\_ persons, unless such mob shall have been directly instigated, aided or encouraged by the person or persons so injured.”*

This resolution, continued Mr. E. was laid on the table at that time. If my memory does not deceive me, I subsequently brought it up as an amendment to the first article of the constitution, when on first reading in committee of the whole, and the very gentleman who officiates at this time (Mr. Porter, of Northampton) said, that the proper place for its introduction would be the bill of rights. There was not, moreover, a very full attendance of members at that time, and I had strong hopes that the



amendment might be adopted when a greater number of delegates were present.

For these reasons, I deferred the introduction of it until such time as the ninth article should be up. It is in the recollection of every gentleman who hears me, that the ninth article of the constitution, never was taken up in committee of the whole, and this is the only chance which I have had to renew the proposition. All, therefore, that the gentleman from Fayette, has said, is incorrect, and I could not have had any improper motive in what I have done.

The gentleman tells us, in a voice of prophecy, that the amendment will not be adopted. By what process does he undertake to pronounce beforehand, whether it will be agreed to or not? If he is thus capable of telling us in advance what propositions will be adopted and what rejected, we might as well, on the first day of May, have adopted every thing which he might have said the convention would adopt, and rejected every thing which he might have said the convention would reject, and thus have saved the heavy labor through which it has been our lot to pass;—and so we might have adjourned the day after we first met. I have yet hopes that the amendment may be adopted. I regret to have troubled the convention so long, and should not have done so, if my motives had not been assailed this morning, without any attempt at interposition on the part of the Chair.

And on the question,

Will the convention agreed to the second division as modified?

The yeas and nay were required by Mr. HIESTER and Mr. EARLE, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Biddle, Brown, of Lancaster, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Cline, Cochran, Cope, Cox, Craig, Denny, Dickey, Dickerson, Doran, Earle, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Jenks, Konigsmacher, Long, Maclay, M'Sherry, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Russell, Saeger, Serrill, Sill, Thomas, White—39.

NAYS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clarke, of Indiana, Cleavinger, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dillinger, Donagan, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helfenstein, High, Hopkinson, Hout, Hyde, Ingersoll, Kennedy, Krebs, Lyons, Magee, Mann, Martini, M'Cahen, Miller, Myers, Overfield, Payne, Purviance, Read, Ritter, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Woodward, Porter, of Northampton, *President pro tem*—63.

So the question was determined in the negative.

And the report of the committee so far as relates to the eighth section, was agreed to.

The convention next proceeded to the consideration of the following section:

SECT. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information, a speedy trial by an impartial jury of the vicinage: That he cannot be compelled to give evidence against him-

self, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

Mr. BROWN, of Philadelphia county, moved to amend by inserting in the first line after the word "criminal," the words "and civil."

Mr. B. said, my object is, that any person shall be heard whether in criminal or civil prosecutions.

Mr. BROWN, withdrew his amendment.

No amendment having been made to the ninth section, the report of the committee thereon was agreed to.

The convention then proceeded to the consideration of the following section :

**SECT. 10.** That 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 and misdemeanor in office. No person shall for the same offence be twice put in jeopardy of life or limb ; nor shall any man's property be taken, or applied to public use, without the consent of his representatives, and without just compensation being made.

Mr. GAMBLE, of Lycoming, moved to amend by inserting in the eighth line, after the word "being," the word "first," and by adding after the word "made," the words "or secured."

Mr. STURDEVANT, of Luzerne, asked for the yeas and nays.

Mr. DICKEY, of Beaver, said that the amendment might be attended with a great deal of difficulty, and that there was no necessity for it. The amendment offered by the gentleman from Luzerne, (Mr. Woodward) the other day to the seventh article had secured the payment of damages. It would be inconvenient before constructing works to pay the damages. The compensation could not first be made. In justice to the proprietary, the damages must first be assessed. And, who, he asked, could doubt that the state of Pennsylvania would pay damages ? This amendment would often prevent men from obtaining a proper compensation.

Mr. BANKS, of Mifflin, said every one who examined the amendment must see the propriety of what had fallen from the gentleman from Beaver. There existed no necessity for inserting it, as a section had been added to the seventh article which would effect the objects that the gentleman from Lycoming had in view. Suppose the exigences of the state, to require that the militia be called out, must every man's horse be paid for in advance ? He hoped the gentleman, would not press his amendment.

Mr. CLINE, of Bedford, thought the amendment might have a tendency to impede the public improvements, and therefore he would vote against the amendment.

Mr. FULLER, of Fayette, said he thought that the delegate from Lycoming would see the necessity of withdrawing his amendment.

Mr. GAMBLE, then withdrew the amendment.

Mr. PURVIANCE, of Butler, moved to amend by inserting after the word

"nor" in the sixth line, the words "shall any human being be arrested or imprisoned, or be deprived of life, liberty, or estate, but by the judgment of his peers and the law of the land."

Mr. INGERSOLL, of Philadelphia county, suggested that the gentleman had better insert the words "black peers."

Mr. PURVIANCE said he could not yield to the suggestion. Every man whether black or white was entitled to trial by jury—ought to be tried by a jury of his peers.

Mr. HIESTER, said that he hoped the gentleman from Butler, would withdraw his amendment. It was only yesterday that the second attempt had been made to establish this principle, and it was a total failure. Twice, then had we been fairly beaten. He for one, was ready to submit to the will of the majority; and as it was evidently against the adoption of the principle proposed, he thought that the gentleman had better withdraw his amendment. If, however, the gentleman insisted on pressing it to a vote, he (Mr. H.) would give it his support.

Mr. STERIGERE, of Montgomery, said that in his opinion the amendment would create some confusion in the arrangement if adopted. According to the wording of it, it would seem that a man was first to be tried by jury before being arrested.

Mr. AGNEW, of Beaver, wished the delegate from Butler, would modify his amendment so as to read as did the modified amendment of the gentleman from the city of Philadelphia, (Mr. Scott.) He could not have supported the first part of it because he had no desire to put any thing in our constitution that would be likely to conflict with the laws and the constitution of the United States. But he would have given his vote for the second branch of the amendment. He was decidedly of the opinion that when life or liberty was at stake, the individual ought to have a trial by jury.

Every man should have that right. Was it possible, he asked, that a man was to be dragged into bondage, without being allowed an opportunity of showing that he has a right to the liberty he was enjoying, when arrested? He (Mr. A.) was unwilling to infringe that compact called the constitution of the United States. If slavery was recognized by that instrument—let it be so. But we should not, in the commonwealth of Pennsylvania, recognize slavery. We have a right to say, and should assert that right, that trial by jury shall be granted to every man, no matter what may be the colour of his skin, whatever the constitution of the United States may say.

Mr. DICKEY, of Beaver, agreed with his colleague that the question was settled yesterday under the call of the previous question, and some who went off, no doubt, did not dare to record their names against the sovereign power of the state of Pennsylvania to control her own judicature, saying that no justice of the peace or judge—as described by the President, hewn out of a block of wood—should pass on the life and liberty of a human being. If he believed the act of congress of 1793 to be the paramount law of the land, he should vote to put into the constitution a clause prohibiting the legislature of Pennsylvania from interfering to protect the liberty of the coloured man. He hoped the day would come when,

in the legislative hall, those gentlemen who now oppose this amendment, would think it right to extend the right of trial by jury to all human beings; and if this convention think it is not in their power to do so, they ought to say so in the constitution. According to the doctrines taught on this floor, we must go back to the musty records of other times, and take up Lyttleton and Sir William Blackstone for our guides. He would prefer the common sense views of the young man from Butler and his young friend and colleague. If those who hold different opinions were honest, we should put into the constitution a provision to prevent any violation of the constitution of the United States, by the legislature of the state, because the legislature of 1826-7 did pass an act which was directly in the teeth of the constitution of the United States and the law of congress. If gentlemen pronounce the act of congress the paramount law of the land, then the act of assembly of 1826 was unconstitutional. If it was proper for the act of 1826 to go so far as it did in saying that a justice of the peace could not act without a judge; then another legislature could go still further. It was proper that the principle should be now settled. Would any gentleman say the time will not come when the principle will require to be settled. He held a different opinion, and he hoped one or the other of these principles would be inserted, in order that the legislature may hereafter have no difficulty. The gentlemen who voted yesterday may not be willing to have their names recorded to-day on this question. In the discussion which then took place, he thought there was great irrelevance. The gentleman from the county of Philadelphia (Mr. Ingersoll) was unnecessarily severe on a certain class of our citizens. He called abolitionists traitors to their country.

[Mr. INGERSOLL—I stand by it.]

I do not know them all (said Mr. DICKEY,) but I know many who, in regard to their character for patriotism would bear a comparison with the gentleman from the county, and yet who think slavery a damning sin—a blot on our escutcheon. They acted under the influence of this opinion, within the pale of their constitutional rights. They think that congress has the power to abolish slavery in the District of Columbia, and I think with them.

Mr. PURVIANCE modified his amendment so as to insert after the word "limb" in the sixth line, the following words, viz:—"Nor shall the trial by jury be denied by any judicial officer or tribunal of this commonwealth to persons who may be claimed as fugitives from labor, and who shall assert their right to freedom."

Mr. PURVIANCE said that so far as regards the arrest of citizens of this state, he believed the act of congress was unconstitutional. What are the provisions of the act? They authorize the arrest of a citizen without process of law. By the constitution no person can be arrested but by process of law. This provision applies as well to white citizens as to blacks, and under it white citizens may be arrested without a warrant. It is but a short time since that the question was raised by the gentleman from Allegheny that the taking evidence against a judge, when he was absent, was a crime entirely subversive of justice. What is this better than that case? Here is a man arrested and imprisoned on *ex parte* evi-

dence, which would perhaps be rejected by a judge, and on this evidence the liberty and life of the individual must depend. The man who is rendered infamous by the commission of a crime is entitled to his trial, while a slave is to be imprisoned and judged without the process of trial. He protested against this course of proceeding. The provision he now offered was that, on the assertion of his freedom by the person accused, he shall have the right of trial by jury. The judge shall then issue his *venire*. What is there in this to conflict with the constitution. The constitution only provides that the owner shall have a claim on his property. Well we say that on the mere claim the servant shall not be given up. There are various kinds of claims—good as well as bad. Some judicial tribunal of the country ought to prescribe what shall be the tribunal to pass on this claim, and of whom it shall be composed. He maintained that this was the right of the sovereign states themselves, and he presumed there was no Pennsylvanian who would dispute the position which he had taken.

Mr. WOODWARD here explained.

Mr. PURVIANCE expressed his satisfaction that the gentleman from Luzerne had explained away the remark which had excited in his (Mr. P's.) bosom feelings of some indignation.

A motion was made by Mr. STERIGERE,

That the convention do now adjourn.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. INGERSOLL and nineteen others, and are as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Biddle, Brown, of Lancaster, Chambers, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Craig, Crain, Denny, Dickey, Dillinger, Earle, Fry, Hays, Henderson, of Allegheny, Hiester, Houpt, Jenks, Kerr, Koningmacher, Long, Maclay, M'Sherry, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Russell, Scott, Serrill, Sterigere—37.

NAYS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Philadelphia, Clarke, of Indiana, Cleavinger, Crawford, Crum, Cummin, Curll, Darrah, Donegan, Doran, Fleming, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hayhurst, Helffenstein, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Mann, Martin, M'Cahen, Merkel, Miller, Myers, Overfield, Payne, Riter, Ritter, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Woodward, Porter, of Northampton—*President pro tem.*—52.

So the convention refused to adjourn.

Mr. PURVIANCE resumed.

Mr. President—I was proceeding to show that this act of congress, so far at least as relates to some of its provisions, is unconstitutional, because it is a provision of the constitution of the United States, that no man shall be arrested but by due process of law. I do contend that until the question has been determined beyond all doubt, that the fugitive is a slave, and, therefore, that he is subject to arrest, the provision of this act is in contravention to the provision of the constitution of the United States.

Take, for instance, the case of a white apprentice arrested by his master without process of law—suppose his master even touching him

upon the shoulder, as an officer would do with process and what would become of the provision in the constitution of the United States, which declares that no person "shall be deprived of life, liberty or property, without due process of law." There is also in the constitution of your own state, a provision which declares that no man shall be deprived of his life, liberty or property, but by due process of law. And I ask gentlemen who are about to vote on this proposition to say in what manner they dispose of the provision in the constitution of the United States, when they declare that a master from an adjoining state may arrest a person claimed by him, or any other man, without due process of law? I say that the provision of the act of congress is, to this extent, in conflict with the provision in the constitution of the United States, and that to this extent it is unconstitutional.

I will beg leave to refer gentlemen for a single moment to a paper which I hold in my hand and which has been laid on the table of all the members of the convention, under the title of "facts for the people." This is the same paper which has been animadverted upon so severely by the gentleman from Luzerne, (Mr. Woodward) in some remarks made by him very recently in relation to the question now before us. I must call the attention of that gentleman to a very prominent fact, to which for some cause or other he omitted to advert—that is to say, that in the state of New York—the empire state—from whence came the present president of the United States, and Mr. Butler, the present attorney general of the United States—it has been declared, by Mr. Butler, that the provisions of the act of congress of 1793, are unconstitutional; that is to say, he has declared that a fugitive slave is entitled to demand a trial by jury. What is this but to declare in the strongest terms possible that the act of congress is unconstitutional? I refer gentlemen to the opinion of Mr. Butler, and I ask whether this is not one of the *facts* which are deserving of attention from us.

I read from the paper before us the following extract :—

"The position taken by New York is the most prominent. The provisions of her laws upon the subject are to be found in the Revised Statutes of that state—(part iii., chapter 9, sections 6 to 20 inclusive.) These provisions assume, as a right in the state government, the power to regulate the whole process and proceedings, by which persons claimed as fugitive slaves shall be delivered up and the claim substantiated—and many of them are in direct contradiction of the power of congress.

"They are, substantially, that such fugitives shall be arrested only upon *habeas corpus*, founded in the first instance upon proof; and upon the return, a trial is to be had before the judge, who is, however, first to give reasonable time to both parties to produce their proofs.

"If, on the final hearing, the claim of the person on whose suggestion the writ was issued, and the slavery of the supposed fugitive are substantiated, then judgment of return is to be rendered—if otherwise, the claimant is to pay one hundred dollars penalty, besides damages and costs. And the supposed fugitive has a right, if he prefers it, to have his writ *de homine replegiando*, and his trial by jury under it, notwithstanding

ing the *habeas corpus*, and all magistrates are forbidden to grant process or certificate, except as thus provided, under a penalty of five hundred dollars. The fact that these provisions were recommended by John Duer, Benjamin F. Butler,—the attorney general of the United States—and John C. Spencer, who were the committee of revision, certainly entitle them to respect, if they do not invest them with any thing like authority.”

This, continued Mr. P., is the opinion of the attorney general of the United States.

But gentlemen say that this act of congress is constitutional, because it is only carrying out the principle embraced in the clause of the constitution which has reference to fugitive slaves. Now, I say that without the consent of the states it is a dead letter and nugatory in its effect. Of what effect was the act of congress locating the Cumberland road? What power had congress over the Cumberland road, except by the consent of the states through which that road was to pass? And was not that a constitutional provision before congress for years? Did not the advocates of state rights contend that congress had no power under the constitution of the United States, to invade the territory of a sovereign state? and here the constitution declares that upon a claim of property, that property shall be delivered up, but it has no right to say in what manner the claim shall be adjudged. The power belongs to the sovereign state, and my amendment states that the judge before whom the person claimed as a fugitive may be brought shall not deny the trial by jury, if a demand to that effect shall be made.

Mr. President, there are some other points to which it was my desire briefly to have adverted. But as I perceive that there is scarcely a quorum present, I will not detain the convention further.

Mr. Scott said that he had already given his vote upon this subject, on an amendment which had heretofore been offered by his colleague from the city of Philadelphia (Mr. Biddle) to the same effect as that now before the convention; and that being again called up to record his name on the proposition of the gentleman from Butler, (Mr. Purviance) he felt desirous to assign his reasons for the vote he had already given, as well as for that which he was now about to give.

I am the more anxious to do this, continued Mr. S., because I think that professional men are especially bound to declare the motives which induce them to give a vote which is in opposition to the sentiments of so large a portion of the members of this body. Anxious as I am, however, to give this explanation, I feel unwilling to enter upon it at a time when not more than one half of the members of the convention are in their places. If my friends will indulge me, by allowing me to defer stating my views until the afternoon, when we may expect a much more full attendance of the members, I shall feel obliged, and will promise them that I will not unnecessarily consume a moment of their time. I move that the convention do now adjourn.

And, the question having been taken, the motion was rejected ayes 26, noes not counted.

So the convention refused to adjourn.

Mr. Scott resumed.

I am sorry to trespass on the patience of the convention at such a time, and under circumstances so unfavorable.

The principle contained in the amendment of the gentleman from Butler (Mr. Purviance) is, I believe, one which will meet with the cordial assent, in his heart, of every member of this body. I do not believe that amongst any of the several classes of men who compose this body, there can be found a solitary individual who would not cheerfully give his vote in favor of a proposition the object of which is to secure the right of trial by jury to every individual whose freedom is at stake on the issue of the question to be settled. I do conscientiously believe of all the members of this convention, without exception or qualification, that where they see a human being struggling for the preservation of his freedom—where they see a human being struggling for that most precious of all things on earth—his personal liberty—if they felt themselves at liberty to consult the dictates of their own hearts—they would say that the benefit of trial by jury should be extended to him. I must repeat, for the third and last time, that I do not believe there exists in this body one single individual who can object in his heart, or does object in his intelligence to the establishment of this principle here, and every where.

But there are amongst our number many gentlemen who think that they find an obstacle against giving a vote for this principle in the provisions of the constitution of the United States. Allow me here to say, that, carrying out that argument to the fullest extent, it is confessed by every gentleman who has spoken on this question, to be a debateable point whether the constitution of the United States and the laws under it, do or not render it unwise and improper to adopt this principle in the constitution of your state. No gentleman has yet pretended to say that the constitutionality of the act of Congress, passed the 12th of February, 1793, has been put beyond all dispute. On the contrary, all have admitted that it has been disputed; all have admitted that the constitutionality of the act has been denied, and that able judicial opinions have been given on both sides of the question.

Where then do we stand? If it shall hereafter be settled that the act of 1793 is a constitutional act—if it shall hereafter be settled by the supreme court of the United States that the act does not in any degree teach upon the constitutional provision, what evil will have resulted to the commonwealth of Pennsylvania from the adoption of an amendment embodying a principle adverse to that act of congress. What evil, I ask, will have resulted to the commonwealth, or to the United States, from our adoption of a principle adverse to the act of congress, even supposing the act to be sound in itself.

It has been said by gentlemen on the other side, and truly said, that the constitution of the United States and the laws made under it, are the supreme law of the land, and should be respected as such. No man yields a more willing assent to the truth of that position than myself.

The CHAIR here interposed, and said he felt it to be his duty to announce to the convention the fact that a quorum of members was not present.



Mr. FLEMING moved that the convention do now adjourn; on which motion there was no quorum voting.

Mr. STEIRGERE hoped that, in such a state of things, the President would adjourn the convention.

After several ineffectual motions of various kinds,

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

## TUESDAY AFTERNOON, FEBRUARY 6, 1838.

### NINTH ARTICLE.

The convention resumed the second reading of the report of the committee to whom was referred the ninth article of the constitution.

The pending question being on the motion of Mr. PURVIANCE,

To amend the tenth section thereof by inserting after the word 'limb,' in the sixth line the following words, viz:

"Nor shall the trial by jury be denied by any judicial officer or tribunal of this commonwealth, to persons who may be claimed as fugitives from labor, and who shall assert their right to freedom."

Mr. SCOTT resumed:

When the convention adjourned this morning, I was saying that, if the constitutionality of the act of congress of 1793 was, in the least degree, a matter of doubt, no injury could possibly result from the adoption of this amendment in the constitution of Pennsylvania. And the reason why no injury could result, was this:—that if the highest tribunal of our land, should hereafter decide that the act of 1793 is a constitutional act, then our amendment would simply and quietly fall to the ground, and would become entirely inoperative and dead. And here is the advantage that results from the acknowledgment that there is a supreme law in the land, paramount over all. Cases do often occur in which state legislation interferes and conflicts with the constitution of the United States. And what in such a case is to be done? The judicial tribunals satisfy themselves with deciding and declaring that your legislation is inoperative. If, therefore, it should hereafter turn out upon the judgment of the highest tribunal—an event which has not yet come to pass—that the act of 1793 is, in all its parts, constitutional, and, consequently, that this provision adopted in the constitution of Pennsylvania would be in opposition to it, no harm, as I have said, could be done, because our provision would become at once inoperative; and that would be all.

But, Mr. President, let us take the opposite view of the case. Suppose that when this constitution comes to be passed upon by the supreme court of the United States, they should say that the act of congress of 1793 *did* trench upon the constitutional provision. Where should we be then? We should find ourselves with a provision in our own constitution, which would not stand in opposition to the constitution of the United States—a provision which would be consistent with the principles of freedom, and, *ergo*, the advocates of liberty, wherever those principles were known. In the one alternative, the adoption of the amendment can do no injury; in the other, its adoption would be attended with the greatest possible benefits.

One word about the act of 1793. It was passed by congress within a very few years after the adoption of the constitution of the United States, and that circumstance is urged by those gentlemen who advocate the entire consistency of the act with the constitution, as a proof that it is in accordance with the spirit of that constitution. They say that the constitution of the United States having been itself only four or five years in existence, it was probably better understood, at that time, than it is at the present; and that, therefore, the legislation of that day must be considered as being in accordance with that constitution.

Every man who understands the history of this country knows, that, at certain periods, every thing in the United States has had a tendency to concentration, and to the establishment of a great central power; and he knows also, that there have been other periods in the history of the country, when the tendency of every thing was towards carrying out the extreme doctrine of state rights; and I must here be permitted to say, that the year 1793 was a period when the tendency of every thing was to concentration. You had just come out of the old confederacy—which, as we all know, was but a rope of sand—and we had framed a constitution, the object of which was to cement the confederacy, and to form it into a strong national government. And the feeling of concentration existed in the minds of a number of the framers of the constitution, to an extent which has not since been known. At that time of day, there was a strong disposition manifested to extend the power of congress beyond the natural prerogative which had been bestowed upon that body by the constitution of the United States. This is not the doctrine of this day, and it ought not to be held to be so; still less ought any matter to be voted for in this body, by gentlemen who maintain the principle that the states have a claim to a separate existence, although subordinate to the general government. It is a very singular circumstance, and one which is worthy of consideration here, that although, in the year 1793, congress did pass this act, yet, in the year 1801, they passed another act of an important character, and which, I think has not been referred to in the course of this debate.

In the year 1801, when the congress of the United States was legislating for the District of Columbia, over which they have absolute control,—separate legislative power of a municipal character—they passed an act to which I will call the attention of this body, for the purpose of showing what, as early as the year 1801, the congress of the United States thought was the proper mode of carrying out the constitutional provision in rela-

tion to fugitives from labor. The professional men of this body will find the law in the third volume of Story's edition of the laws of the United States, page 2092 and 3. It is an act entitled "an act supplementary to an act concerning the District of Columbia." The language of it is this :

"Sect. 6. That in all cases where the constitution or laws of the United States provide that criminals and fugitives from justice, or persons held to labor in any state, escaping into another state, shall be delivered up, the chief justice of the said district shall be, and he is hereby empowered and required, to cause to be apprehended and delivered up such criminal, fugitive from justice, or person fleeing from service, as the case may be, who shall be found within the District, in the same manner and under the same regulations as the executive authorities of the several states are required to do the same; and all executive and judicial officers are hereby required to obey all lawful precepts, or other process issued for that purpose, and to be aiding and assisting in such delivery." [Act of March 3, 1801.]

Now, (continued Mr. S.) I say that this is a very remarkable act of congress. In the year 1801, when congress was pointing out to the District of Columbia—their own little municipal spot—the mode in which, in that district, a fugitive from labor should be arrested, they say it shall be done under the warrant of the chief justice of the district, in the same manner as is done, or ought to be done, in the states of the Union, by the chief executive officers in the case of fugitives from justice. From this act I draw two conclusions :

In the first place, I draw the conclusion, that it shows clearly that the persons who passed it, believed that the act of delivery ought to be an executive act, in the case not only of fugitives from justice, but also of fugitives from labor. And if that conclusion is not conceded, I draw, at all events, another; that is to say, that the congress of the United States entertained the opinion that, in the District of Columbia, the power of delivering up a fugitive from labor was a power which ought to be extended only to the highest judicial authorities in that district. It is to be borne in mind that, in that district as in the states of the Union, they have magistrates—that they have justices of the peace—that they have inferior judicial tribunals—that they have inferior judicial officers; and yet, in the year 1801, the act of congress refused to entrust the fate of a fugitive from labor to any other than the highest judicial authority to be found in the District of Columbia. This is a commentary, strong and powerful, on the legislation of the year 1793. I do not know but what it may have been possible—and I ask my friends on the other side to think of this point—I say I do not know but what it may have been possible—that the great political changes which took place throughout the land about the year 1801, may have infused a different spirit into the members of congress of that day. And if this suggestion be correct, it must commend itself to my friends on the other side, and ought to attract their votes in favor of the amendment of the gentleman from Butler. I submit it to them as a matter worthy of their consideration, that they may find, in the great political changes which characterised the year alluded to, a reason why the legislature of that day, in passing this act, declared that the freedom of a person claimed as a fugi-

tive from labor, should not be entrusted to the keeping of any officer under the chief judicial officer of the District of Columbia.

Look to the act of 1793. Examine its provisions. What are they? It is an extraordinary act—very extraordinary; and before I refer to it, allow me to refer my professional friends in this body to the opinion of Judge Tucker, of Virginia, and which, I believe, has not been quoted by any other gentleman in the course of the argument. It is to be found at page 369, in the appendix to the 1st volume of Tucker's Blackstone. It says:

“It may seem very extraordinary, that a people jealous of their liberty, and not insensible of the allurements of power, should have entrusted the federal government with such extensive authority as this article conveys: controlling not only the acts of their ordinary legislatures, but their very constitutions, also.”

Now, in the act of 1793, (continued Mr. S.) the congress of the United States have undertaken to say, that it shall be the duty of our magistrates—their positive and bounden duty—to entertain jurisdiction over the claim for a fugitive from labor—that they shall pass upon it—and that it shall be their duty, if satisfactory proof is given, to issue the certificate which is to remand that fugitive to slavery.

Let me call the attention of the convention to another matter. This is only one section of the act. The first section of the act undertakes to impose, by congressional legislation, a duty positively and absolutely upon the executive magistrates of the several commonwealths of this Union. The provision is as follows:

“That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any state or territory as aforesaid, charging the person so demanded of having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, *it shall be the duty* of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear.”

It is thus to be observed (continued Mr. S.) that congress here undertakes, by legislation, to prescribe what shall be the duty of the governor of Pennsylvania. If, then, congress has the power to prescribe what shall be the duty of the governor, I ask you whether congress does not possess the power also, to inflict punishment upon the governor if he does not perform the duty thus prescribed for him. Does not the one result as a necessary consequence of the other? Will any professional man in this body answer me the question: If the constitution of the United States gives to congress the power to pass a law prescribing a duty to the governor of a sovereign state, does it not follow that the same constitution

puts it in the power of congress to inflict a punishment, in case the governor does not perform that duty? Where is the difference? Can it be that a legislative body can have the power of prescribing a duty, and not the power to enforce its performance. Then, sir, the congress of the United States has positively undertaken, in this act of 1793, to prescribe the duty of your executive authority.

Let us suppose a case.

Suppose, that in pursuance of the powers which that body is presumed by the arguments of gentlemen on the other side of the question to possess, congress should say, that if the executive of the commonwealth of Pennsylvania did not do his duty in the manner prescribed by their legislation, he should be fined, and should be imprisoned at hard labor for the term of five years. Is this within the constitutional power of that body? I put it to the professional men of this convention, as a position not to be controverted, that where ever the right to prescribe a duty exists, the right to punish for a refusal or neglect to perform that duty, follows as an actual consequence. I deny the separation of the two powers. I defy the intelligence or ingenuity of men to point out the separation between the two, or to show that the one is not the necessary consequence of the other. I put this as a position that is not capable of being controverted, that to the same legislature which is given the power to prescribe a duty, belongs also the power to enforce its performance by penal enactment. Then, I say, that in the act of 1793, unless gentlemen are willing to go with me to the fullest extent to which I have carried the matter out, the congress of the United States have assumed a power not conferred upon them by the constitution.

While upon this part of the subject, I have one remark to make, which is called forth by the observations of gentlemen who have preceded me.

We are told that it is not becoming in us to repudiate the decisions of able and learned men scattered over different sections of the Union. It has been demonstrated that the opinions given on this subject have differed much from each other. But even if it were not so, I do not subscribe to the position here assumed. I hold that the men who have been selected by the commonwealth of Pennsylvania, and sent here to frame her laws—to create and erect the foundations of her society—are to be estimated theoretically at least, whatever they may be in practice, just as competent to form a sound opinion of the constitution of the United States, as those gentlemen whose duty it is, from the judicial benches, to expound that constitution.

No man has any business here who is not capable of reflecting upon the subject, and of forming an opinion worthy of himself and of the country which has reposed this great confidence in him. The opinions, therefore, which I have here advanced, are expressed upon my own responsibility, and as one sent here by the people to build up the foundations of their commonwealth.

Well then, sir, we come to the question:—Has the state of Pennsylvania regarded this act of congress as being so far the supreme law of the land, that her legislature has not been willing to legislate against it? The act of 1793 says, that every magistrate of a city, county, or district, to

whom a claim shall be presented against a fugitive from labor, *shall* entertain that claim and take cognizance of it. Has this been recognized by the state of Pennsylvania as the supreme law of the land?

In the year 1820, the state of Pennsylvania said, by a law of her legislature, that our magistrates should not entertain jurisdiction of such a claim, and that if they did entertain jurisdiction over it, they should be regarded as guilty of a misdemeanor in office, and that they should abide by the consequences. What change had come over the spirit of Pennsylvania since the year 1817? I ask the gentlemen on the other side, what change has come over the spirit of Pennsylvania since the year 1817? An act which was then good Pennsylvania constitutional law—shall not this convention dare to touch it? In the year 1820, your legislature said that your magistrates should not entertain jurisdiction in these cases; that your inferior magistrates alone should not be vested with the outrageous authority of passing upon the freedom of a fellow being. This, I say, was in the year 1820. The act is to be found in the last edition but one of Purdon's Digest. This law continued upon the statute book until the year 1826; and in that year was passed the law which has been referred to more than once in the course of this debate.

Well, sir, and what did your legislature do in the year 1826? They re-affirmed the law with one slight alteration. What was that? The act of 1820 prohibited the magistrates from even issuing their warrant for the arrest of a fugitive from labor. The act of 1826 allows them to issue the warrant, but compels them to make it returnable before the judge of a court. But still the act of 1826 allows them no jurisdiction or judgment, and is in direct and open hostility to the act of congress of 1793.

Now, I ask gentlemen to point out to me where, from the year 1820 to the year 1838, has the constitutionality of these Pennsylvania laws been denied? By whom have they been denied, and in what instance? Let gentlemen point me to it, if they can. Where is the magistrate to be found who has been pursued under the law of congress, for the disobedience of that law? Where is the magistrate to be found who has been punished by the state of Pennsylvania? Where is the magistrate to be found who has been impeached by the state of Pennsylvania, for disobedience of that act? And yet there is scarcely a magistrate in the state who has not refused to obey that law? Has congress legislated upon the subject further? Not at all. Have you had complaints on the floor of congress? None. No, sir, none;—the constitutionality of your own laws of 1820 and of 1826, has remained unattacked from that time to this; and yet they are, as I have said, in direct and open contravention of the act of 1793, which act is now presented to this body as an obstacle standing in the way of the adoption, on the part of this convention, of a principle to which, as I believe, the heart of no human being on this floor can object.

Having made these remarks in reference to the legislature of Pennsylvania on this subject, I will now ask my professional friends to show me, in what part of the constitution of the United States they can find power given to congress to pass the act of 1793? I ask them to turn to the clause which confers this power. We all know that the powers of the legislature of the United States are prescribed and defined, and that they

are to be found in the article which treats of the legislature. What are those powers? I read from the eighth section of the first article:

“The congress shall have power—

1. To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the United States, &c.
2. To borrow money on the credit of the United States.
3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.
4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.
6. To provide for the punishment of counterfeiting the securities and current coin of the United States.
7. To establish post-offices and post roads.
8. To promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.
9. To constitute tribunals inferior to the supreme court; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations.
10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.
11. To raise and support armies; but no appropriation of money to that use shall be made for a longer term than two years.
12. To provide and maintain a navy.
13. To make rules for the government and the regulation of the land and naval forces.
14. To provide for calling forth the militia to execute the laws of the nation, suppress insurrections, and repel invasions.
15. To provide for organizing, arming, and disciplining the militia, &c.
16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts,” &c.

And then, continued Mr. S., there is another clause to which I will refer immediately. But let me be permitted, before I do so, to ask my professional friends where, in all the powers that I have enumerated, they find authority for congress to pass the act of 1793? They do not pretend that it is any where to be found among these. But the gentlemen

go a little further and think they find authority for it in the next succeeding clause to those which I have read, and which is in the following words:—

“17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or offices thereof.”

Now, I ask gentlemen, whether in that clause of the constitution of the United States which relates to a fugitive from labor, they find any such power as is claimed, vested in congress. The section of the constitution which relates to this particular class of individuals gives no power. It does, indeed, assert a principle, but, I repeat, it gives no power. It is in the following words:—

“No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.”

There, continued Mr. S., is the assertion of the principle, but there is no donation of the power. Where the framers of the constitution intended to give a power, they understood how to do it; and in the very first section of the article from which is taken the last clause I have read, viz: article four, we find the following provision:

“Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state;” and then the manner is prescribed in which this provision is to be carried out;—“And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.” Here we have not only the principle asserted, but we see the donation of the power to the congress of the United States to carry out that provision.

In about twenty lines further, where we come to the clause which relates to fugitives from labor, and which I have just read, did not the framers of the constitution understand at that time, that if they intended that congress should possess the power to legislate, they must also make a donation to congress of the power to carry out the provision, as they had done in the first section of the same article? If they had intended that the power should be conferred, they would have made a positive donation of it by also saying, in the same way as they had done in the first section, “the congress should have power by general laws, to prescribe the manner in which fugitives from justice shall be delivered up.” The very fact that they have given the power in the one section and have neglected to give it in the other, is conclusive authority to my mind, that they did not intend that there should be any legislation by congress on the subject; and that they intended this provision in reference to fugitive slaves to be like many other matters which are embraced in the constitution, nothing more than the mere assertion of a principle which ought to govern the legislation of the several states of the Union, if those states conducted themselves with good faith towards the general government.

If gentlemen will take the trouble to cast their eye over the amendments



to the constitution of the United States—to that which is termed the bill of rights—they will find many principles there asserted, merely as principles, which are not capable of being developed or enforced by the legislative action of the congress of the United States, for the enforcement of which the constitution has made no donation of power—but which remain there as solitary principles, to be carried out and enforced by the several states of the Union when they come to legislate on analogous subjects.

If then, Mr. President, the positions which I have here laid down are correct in point of fact, it is at all events doubtful, more than doubtful, as I believe, whether the act of the twelfth of February, 1793, is in accordance with the constitution of the United States—whether it is not stretching the power of congress beyond any specific donation of power to be found in that instrument. If this is so, how does the case stand? It is simply thus;—that this provision in the constitution of the United States in reference to fugitives from labor, stands there as a principle which ought to be your guide in your state legislation. And that is all. It stands there as a principle with which you cannot come in conflict by means of your state legislation, without at the same time violating your good faith towards the confederacy. But you are left, nevertheless, with full power to legislate, and to form a constitution in accordance with the principle there laid down.

We come then to the question, does the amendment now before the convention conflict with that principle? Does the principle that your judicial officers shall call together a jury to pass upon the freedom of a man who is claimed as a slave, does that, I ask, conflict with the provision in the constitution of the United States? for that is the question with which we are dealing at this time. I agree that such a principle comes in conflict with the act of congress of 1793, and I have shown that we have conflicted with it, and that too, without being reproached for it, even since the year 1820; and I will yet show that our legislation ought to conflict with it.

But will such a provision, if inserted in the constitution of Pennsylvania, conflict with the provision in the constitution of the United States, for, as I have already said, that is the great question for us to consider. I say it will not.

“No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor.”

This is the first clause of the provision. Now, you cannot pass a law, which will discharge such a person from service or labor. But it is not a question of discharge which is in dispute here, when a claim is made to a white or black man or a mulatto man—and I should say, woman;—for I think not twelve months have yet passed since the grasp of the claimant's hand was laid upon the person of a fair and beautiful white woman, in one of the middle or southern states—white so far as the eye could tell, but asserted by the claimant to have, Heaven knows what small mixture of African blood in her veins—and she was destined to be torn from her family and friends on the claim of being held as a slave. This, then, is not a question of discharge, but it is a question whether he is a fugitive from labor or not.

He is presumed to be free. We are bound to regard him as free until it is proved to the contrary. And, the first question is a question of fact. Is he a fugitive from labor? Is he that Charles or William, or any thing else, who did belong ten years ago, to a gentleman residing in Louisiana, or Mississippi, and who has since died? That is the question. A man comes here and lays his hand on a citizen, or a free man, or a human being, one of God's creatures—I will not quarrel about terms—and says to him "you are a slave, ten years ago you resided in the state of Mississippi. You ran away; I know you; you are the same man, and I demand that you return with me." The first question to be ascertained "is he that man?" The claimant's demand does not necessarily constitute the truth. He must produce some evidence in support of it. All that I ask is, that our judicial officers, before they pass upon the question of fact which lies at the bottom of the whole investigation, shall have the aid of twelve men. Let them have that which you would demand for your own class.

All that I ask is, that our legislation here may be such as will secure the rights and liberties of every human being. The first clause of the article was merely prohibitory in his (Mr. S's.) opinion. The question arising might possibly be as to whether or not the fugitive claimed was, or was not of African blood—whether he was not a white man, though of very dark skin, as he might contend he was? The question he (Mr. S.) regarded as of the highest importance. He hoped therefore, that the amendment would prevail.

Mr. DARRAH, of Berks, asked for the immediate question which was sustained.

The question then recurred on agreeing to the amendment.

The yeas and nays were required by Mr. MANN and Mr. PURVIANCE, and are as follow, viz :

YEAS—Messrs. Agnew, Ayres, Baldwin, Barnitz, Biddle, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Craig, Cunningham, Denny, Dickey, Earle, Farrelly, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Jenks, Kerr, Konigsmacher, Long, Maclay, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purvance, Seager, Scott, Serrill, Thomas, Young—36.

NAYS—Messrs. Banks, Barclay, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clarke of Indiana, Cleavinger, Cline, Crain, Crawford, Crum, Cummin, Curl, Darrah, Dickerson, Dillinger, Donagan, Doran, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Sherry, Merrill, Miller, Myers, Nevin, Overfield, Payne, Read, Riter, Ritter, Rogers, Russel, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snivley, Sterigere, Stickel, Sturdevant, Taggart, White, Woodward, Porter, of Northampton, *President pro tem.*—72.

So the question was determined in the negative.

And the report of the committee so far as relates to the tenth section, was agreed to.

The convention then proceeded to the consideration of the following section :

SECT. 11. That all courts shall be open, and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by

the due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the commonwealth in such manner, in such courts, and in such cases, as the legislature may by law direct.

Mr. BROWN, of Philadelphia county, moved to amend the section by inserting after the word "law," in the third line, the words "and have a right to be heard by himself and his counsel."

Mr. B. said he had proposed this amendment in order that every citizen shall have a right to be heard, if he choose, by himself and his counsel. It had been said that the legislature could make such a provision. He, however, did not think proper to leave it to the legislature. He would rather have the provision in the constitution.

The question being taken on the amendment it was negatived.

And the report of the committee, so as far relates to the eleventh section was agreed to.

The convention next took up for consideration, the amended section:

SECT. 12. That no power of suspending laws shall be exercised, unless by the legislature, or its authority.

Mr. EARLE, of Philadelphia county, moved to amend the said section by adding to the end thereof the following, viz :

"No corporation with banking privileges shall be established by special act of assembly, without requiring from such corporation adequate security for the redemption of such notes as it may be authorized to issue."

Mr. E. said that this provision would not prevent the legislature from passing general banking laws. The object of it was to prevent the granting to individuals of special and exclusive privileges. It was intended to secure the public against loss. The provision was analogous to the one already adopted by the convention in regard to turnpikes and rail roads. The necessity for the restrictions proposed by his amendment he thought would be apparent to those gentlemen who looked to our own banks and to what was going on in Massachusetts in reference to the Lumberman's bank and other banks ; and also, to the character of several of the banking institutions in the state of New Jersey. The public ought to have some security. Look at the banks generally in the city of New York, such security was there to the public that it was almost impossible for them to lose one cent by those corporations.

He would admit, however, that the New York safety fund system was wrong as to the mode of security, because it was left to the legislature to say what kind of security should be taken. They may take real estate, or bank mortgages. They may say that the bank shall issue only a certain quantity of paper, and they may require personal security. In fact the legislature was at liberty to act in any manner they think proper. Now, his (Mr. E's.) amendment was not liable to these objections, it only required that the legislature shall secure the public against loss in granting banking privileges. Mr. E. asked for the yeas and nays, which were ordered.

And, the question being on agreeing to the amendment, it was decided in the negative.—yeas 45—nays 59.

**YEAS**—Messrs. Banks, Bedford, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Crawford, Cummin, Curll, Darrah, Dillinger, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Hastings, Hayhurst, High, Keim, Krebs, Magee, Mann, Martin, M'Cahen, Miller, Myers, Overfield, Payne, Read, Ritter, Ritter, Rogers, Scheetz, Sellers, Shellito, Smyth, of Centre, Steckel, Taggart, Weaver, Woodward—45.

**NAYS**—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Biddle, Chambers, Chandler, of Philadelphia, Clarke, of Beaver, Clarke, of Dauphin, Cleavenger, Cline, Cochran, Cope, Cox, Craig, Crain, Crum, Cunningham, Denny, Dickey, Dickerson, Farrelly, Gearhart, Haris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Hout, Hyde, Ingersoll, Jenks, Kennedy, Kerr, Konigsmacher, Long, Lyons, M'Sherry, Merrill, Merkel, Montgomery, Nevin, Penny-packer, Porter, of Lancaster, Purvincae, Russell, Saeger, Scott, Seltzer, Serrill, Sterigere, Sturdevant, Thomas, White, Young, Porter, of Northampton, *President pro tem*—59.

A motion was made by Mr. DORAN,

To amend the said section by adding to the end thereof the following viz :

“ And no lottery shall hereafter be authorized in this state, and the legislature shall pass laws to prevent the sale of all lottery tickets within this commonwealth.”

The CHAIR, (Mr. Porter, of Northampton, *pro tem*) said he would remind the gentleman from the county of Philadelphia, (Mr. Doran) that this amendment was in effect a part of the report of the committee contained in document No. 31.

Mr. DORAN said, that he was aware of that fact, but he thought there could not be a better time than the present to determine this question.

He had offered the amendment under the full assurance that the convention would insert this provision, or one similar to it, in the constitution. The sentiments of a large majority of the members were known to be friendly to the principles of it, and therefore it would be a waste of time to say any thing in support of it: in truth, the evils of lotteries had been so fully and so powerfully realized, that the community might be said to be now unanimous in demanding their entire and lasting suppression.

Numerous petitions of the most respectable kind, praying for such an amendment in the constitution, had been presented to this body; and a committee had made a favorable report on the subject; and it was due to those petitioners, as well as to the people, that the action of the convention should be immediate and decisive. Although perhaps a little out of place, he had brought it up as a proposed addition to the twelfth section, and called for the yeas and nays, that the public might know who were still disposed to countenance a spirit of gambling so enticing and delusive and which had proved to be most injurious to the morals of the citizen.

A motion was then made by Mr. WOODWARD,

To postpone the further consideration of the amendment and the section, together with the report of the committee to whom was referred the ninth article of the constitution, indefinitely.

Mr. BANKS, of Missin, said, he much regretted that the gentleman from Luzerne, (Mr. Woodward) should have thought proper to submit this motion at the present crisis.

If it is necessary at all, continued Mr. B., for this convention to give evidence to the world that they disprove of the practice of speculation in lotteries, it should be done at once; and if the motion of the gentleman from Luzerne, should be agreed to, it is certain that nothing of this kind can be done at all. I, for one, am anxious to show by my action here, that I entirely disapprove of this demoralizing traffic.

Mr. DENNY, of Allegheny, said that he hoped the gentleman from Luzerne, might be induced to withdraw his motion. It must be obvious to that gentlemen, continued Mr. D., that the object he has in view in desiring to pass over this article will not be accomplished, because, if his motion should succeed, the members of the convention will not thereby be prevented from proposing new additional sections. If it should turn out that the consideration of the whole article is postponed indefinitely, I shall feel it to be my duty to propose a new article to be numbered ten. We shall save time, however, by proposing our amendments as new or additional sections to the ninth article. It will be better that the gentleman should suffer us to go along without further interruption. He may rely upon it that it will be an economy of time so to do.

Mr. HIESTER said, that he should vote against the motion of the gentleman from Luzerne, for two reasons. The first was, because he wished an opportunity of giving his vote on the subject of lotteries and the sale of lottery tickets; and in the next place, he was desirous to introduce a proposition providing for the limitation of the state debt to the sum of thirty millions of dollars. He trusted that the gentleman from Luzerne, would suffer the convention to proceed with the consideration of the ninth article, and that, with that view, he would withdraw his motion. He (Mr. H.) had, however, no objections to the immediate question being put as often as the gentleman might desire it, if they would only give to the members of the convention an opportunity of voting.

Mr. WOODWARD said—I had not designed, Mr. President, to say a single word in support of the motion I have made; but I beg leave to state, in reply to the remarks which have fallen from the gentleman from Allegheny, (Mr. Denny) that the simple object I have in view, is to enable this convention to adjourn, with respect to itself and satisfaction to the people, on the twenty-second day of February—that being the day on which we have, for the second time, fixed to adjourn. For my own part, I never can vote to change it. I am not so much in love with the ridiculous, nor so anxious to divest ourselves of the little reputation we have left, as to give my sanction to a still more remote day of adjournment. Well, sir, in looking over what yet remains to be done, I confess I feel some anxiety as to the result. We have to go through the third reading of the amendments of the old constitution; we have a discussion to come in reference to the new article for future amendments: we have the settlement of the schedule and all the difficult questions which are involved in it; we have also to provide for the mode in which the amendments we have made shall be submitted to the people. We have also these, as

well as other things to dispose of, and I feel satisfied that we shall not be able, with reasonable and due diligence to do more than compass these various objects by the day which has been fixed for our final separation.

What has been the course of the convention since the ninth article of the constitution was first taken up for consideration? We have not yet introduced into it a single amendment, although new propositions are springing up here like Hydra's heads, and propositions too, I am compelled to say, some of which are of a frivolous, and trifling character. I speak this without intending disrespect to the feelings of any gentleman in this body; such however, is the fact. The yeas and nays are called upon all these proposed amendments, and thus we are idly frittering away the brief time that is yet allowed us "to strut upon this stage."

I, for one, Mr. President, am alarmed at this state of things, and when I reflect that we cannot again change the day of our adjournment without rendering ourselves ridiculous in the eyes of the people, not only of this commonwealth, but of the world, it seems to me that every member of this convention ought to put his shoulder to the wheel, with a resolute determination to bring our labors to a satisfactory close by the day appointed.

In submitting this motion, I here declare in my place that I have been governed only by an honest desire to come to a final conclusion. It is known to me that there are yet many gentlemen who have propositions to offer. I, too, have my ideas, my theories, my dreams as to what the government of Pennsylvania should be, and which, if possible, I should be happy to realise. But because these are favorite projects with me, upon which in my own mind I can dwell with delight, does it follow that this body is to sit here three or four weeks longer, that they may discuss and give their votes upon them? If we are to sit out the dreams—to discuss the constitution—to analyze the theories of every member of this convention, it is impossible to say how long we may yet be compelled to remain together. For my own part, I would not venture to hazard a computation.

These are considerations which weigh much with me, and desirous as I feel that gentlemen should enjoy a fair opportunity of submitting their suggestions to the convention, still I can not disregard these considerations. I have submitted the motion which is now pending, upon very full reflection, and because I believed that it was my duty to submit it. I would cheerfully have voted in favor of it some time since, if any other gentleman had brought it forward. I should have preferred that it had been so, but I cannot now withdraw it. If, upon the twenty-second day of February, we shall find that our time is expired, and that members of the convention have returned home by scores, with the constitution still unamended, let the yeas and nays show where the responsibility lies. I repeat that I can not withdraw the motion.

Mr. DICKEY said, that he was in favor of the motion for indefinite postponement, because he felt anxious that the labors of the convention should terminate certainly on the 22d day of February. I am anxious, continued Mr. D., that some further declaration of rights should be

made, but I would not like to see this ninth article amended in a precipitate or careless manner, or under the action of a convention whose members are so impatient to get home. That many of them are so, we have had abundant evidence within the last few days. I believe that our proceedings since we took up this article, are indicative of a settled determination on the part of a majority of the convention not to make any changes in it. I am of opinion also that the legislature will act efficiently upon the subject of lotteries, now immediately before us, and that no provision which we could place in the constitution in relation to it, would be effectual. I shall, therefore, vote in favor of the motion of the gentleman from Luzerne. I am fearful that we shall have little enough time betwixt this and the twenty-second of February, to dispose of the many other matters which imperatively require our action.

Mr. DENNY rose to inquire of the Chair whether the motion of the gentleman from Luzerne could, under the rules of the convention, be amended? If so, he would move to amend the motion by adding to the end thereof the words "for the purpose of proceeding to the consideration of Report No. 25."

The CHAIR decided that the motion for indefinite postponement was not amendable.

From this decision Mr. DENNY appealed.

A long debate followed on the point of order, in which Messrs. DENNY, M'SHERRY, SMYTH, of Centre, MANN and DICKEY participated.

When Mr. DENNY withdrew his appeal.

And the question then recurred on the motion of Mr. WOODWARD,

To postpone the further consideration of the amendment and the section, together with the report of the committee to whom was referred the ninth article, indefinitely.

Mr. EARLE said that he regretted that this motion should have been made, as he believed that the convention could get through with the ninth article to-morrow by eight or nine in the evening; or, at all events, by protracting their session, if necessary, to a somewhat later hour than that. I, for one, continued Mr. E., am not willing that, after having passed through the article so far, we should leave the rest in this hasty manner. I do not believe that there are a great number of amendments to be offered, nor do I concur in the observation which fell from the gentleman from Luzerne (Mr. Woodward) as to the frivolous or trifling character of any of them. If, however, it should be found that we can not get through with the entire article by to-morrow night, I will then be willing to vote for its indefinite postponement. But, in the present condition of things, I shall feel myself bound to resist that motion.

Mr. SHELLITO, of Crawford, said the convention would bear him witness that he did not often trespass upon the attention of the convention, and least of all would he do so now when they had so little time before them, and so many matters of importance which must be attended to in it. But he rose to protest against the hint thrown out by the gentleman

from the county of Philadelphia, (Mr. Earle) that the convention should sit all to-morrow night. Yes, said Mr. S., sit all night, and then come to the old thing again. I am opposed to any thing of the kind, and so, I hope, are a majority of the members. Let us agree to the motion of the gentleman from Luzerne, and if it should turn out that we get through comfortably with our other business, we can then again resume the consideration of the ninth article of the constitution.

And the question was then taken.

And on the question,

Will the convention agree to the motion ?

The yeas and nays were required by Mr. WOODWARD and Mr. DORAN, and are as follow, viz :

YEAS—Messrs. Agnew, Barclay, Barnitz, Bedford, Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cope, Crawford, Crum, Darrah, Dickey, Dickerson, Dillinger, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Hays, High, Houpt, Hyde, Kennedy, Kerr, Krebs, Long, Lyons, Maclay, Magee, Merkel, Miller, Myers, Nevin, Overfield, Pennypacker, Porter, of Lancaster, Riter, Ritter, Saeger, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Woodward, Porter, of Northampton, *President pro tem.*—61.

NAYS—Messrs. Ayres, Banks, Barndollar, Butler, Chambers, Clarke, of Indiana, Cline, Cochran, Cox, Craig, Crain, Cummin, Curll, Denny, Donagan, Doran, Earle, Farrelly, Fleming, Fry, Hastings, Henderson, of Allegheny, Henderson, of Dauphin, Hiestor, Hopkinson, Ingersoll, Jenks, Keim, Konigmacher, Mann, Martin, M'Cahen, M'Sherry, Merrill, Montgomery, Payne, Read, Russell, Scheetz, Serrill, Sterigore, Thomas, Weaver, White, Young—45.

So the further consideration of the amendment and the section, together with the report of the committee to whom was referred the ninth article, was indefinitely postponed.

Agreeably to order,

The report of the committee to whom was referred the resolution concerning the expediency of providing a mode by which future amendments to the constitution may be made, at the desire and by the act of the people, was read the second time as follows, viz :

#### ARTICLE TENTH.

Any amendment or amendments to this constitution may be proposed in the senate or assembly, and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the secretary of the commonwealth shall cause the same to be published as soon as practicable, in at least one newspaper in every county in which a newspaper shall be published, and if in the legislature next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, the secretary of the commonwealth shall cause the same again to be published in manner aforesaid, and such proposed



amendment or amendments shall be submitted to the people at such time and manner, at least three months distant, as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this state who shall vote thereon, such amendment or amendments shall become a part of the constitution.

Mr. FULLER, of Fayette, said that he was in favor of the provision of this article, with one single exception. It proposes, continued Mr. F., that any amendments which may be made under it, shall be submitted to the people. Of course, it is proper that they should be; but I would suggest to the gentleman who reported the article, the propriety of modifying it so that only one amendment should be submitted by the legislature to the people at one and the same time. Otherwise, I think great inconvenience may result. There may two or more amendments be submitted at the same time, one of which may be acceptable to the people, and the other not so. In such an event, an opportunity ought to be given to them to take the one and reject the other. This can not be done under the article as it now stands.

But there is another reason, it seems to me, why such a modification would be desirable. It is this:—if only a single amendment is put before the people at one time, for their adoption or rejection, their attention would be more particularly drawn to it, and they would be the better able to vote understandingly upon it. Such a mode would also have the effect of preventing too many amendments being made. I do hope that the gentleman who is at the head of the committee who reported this article, may be induced to make the modification I have suggested.

The said report being under consideration,

A motion was made by Mr. DENNY,

To postpone the further consideration of the same, for the purpose of inserting the following new section, viz :

“SECTION 1. No secret society using or administering unauthorized oaths or obligations in the nature of oaths, and using secret signs, tokens or passwords, operating by affiliated branches or kindred societies, shall hereafter be formed within this commonwealth, without express authority of law.”

Mr. DENNY said, I have offered this amendment, Mr. President, at the present time, but not with the intention of troubling the convention with any extended remarks upon it. I know how impatient we all are. I know how brief a space of time is allotted to us to remain here. I lament that such of the members of this convention as feel a deep interest in the fate of this proposition, have not had an earlier opportunity of calling it up for consideration. Although the subject is one with which, it is to be presumed, all who hear me are familiar, although much has been said in the newspapers upon it in the course of the last few years, and although it has, for the same period of time, mingled more or less in almost all the political elections in our state; yet much more might be said upon it here, and many strong and powerful arguments might be urged, to induce the members of this body to adopt the proposition before

them. I have felt it my duty to submit it, not so much because as an individual I am in favor of it, or because a large portion of citizens out of this convention are so; but more especially because, in so doing, I am but complying with the wishes of a highly respectable convention which met at Harrisburg, in the month of May last, and who sent their resolutions and memorials to this body, praying the adoption of such an amendment to the constitution. When we reflect, however, that there are from seventy to ninety thousand freemen in this state who have called for some provision of this kind, I might be excused for saying something in support of it. But I feel the value of our time, and have no desire to have any part or lot in bringing upon this convention the ridicule, which the gentleman from Luzerne (Mr. Woodward) predicts is in store for us, if our session is prolonged beyond the twenty-second day of February. I shall, therefore, submit the amendment without further commentary.

A motion was made by Mr. M'CAHEN to amend the amendment, by adding to the end thereof the words "excepting the societies for the deaf and dumb."

Mr. DORAN suggested to his colleague from the county of Philadelphia, (Mr. M'Cahen) to extend his amendment so as to insert after the word "secret," in the first line of the amendment of Mr. Denny, the words "or anti-masonic."

Mr. M'CAHEN preferred to have the vote taken on the amendment as he had offered it, which he hoped would be adopted. It would indeed be a very hard case, if those who were deaf and dumb, and were, therefore, compelled to use "signs," should be deprived of their right as citizens.

Mr. DENNY said, that there was no member of the convention so blind as not to see what was the object of the gentleman from the county of Philadelphia, (Mr. M'Cahen.) For aught that I know, it may be a part of his vocation here to attempt to throw ridicule upon propositions, the nature and character of which, probably, his intelligence may not enable him to comprehend. If it be his object, as it manifestly is, to cast ridicule upon that which is demanded at the hands of this convention by hundreds and thousands of citizens as respectable as he is, in every point of view in which the characters of men are to be regarded; I can only feel compassion for the bad taste he displays in selecting this as a fit theatre for his jest and mockery. I could scarcely, however, have expected any thing better from him, when I look to the votes he has given recently upon several questions which have been decided here—to his vote on the right of suffrage—to his vote on the trial by jury. What are we to expect, when we witnessed to-day a retrograde movement in the great cause of human rights? What are we to expect when we have witnessed here the downward progress of human liberty? when freemen are to be deprived of the right of suffrage, and freemen are to be deprived of the right of trial by jury?

But, Mr. President, it is not my wish to go into a discussion. I know that we are all reluctant to interfere with habits or principles, and it might be a hopeless task to attempt to correct any of those principles or

habits which distinguish the gentleman from the county of Philadelphia. I regret, for the sake of his humanity, if on no other consideration, that he has thought to drag into this discussion, in a manner calculated to bring them into ridicule, an unfortunate class of human beings on whom the hand of the Almighty has been so heavily laid, and who are entitled to the deep and abiding sympathy of every man who has a heart to feel, as a man ought to feel, for the sorrows and the sufferings of his fellow-creatures. In relation to the "signs" to which he has alluded, we know that they are all open and public. But the signs to which my proposition refers are of a very different character—they are secret signs, unknown to the public, and known only to individuals, and have been the cause of much mischief in this community.

I shall now leave this matter in the hands of the convention. I regret that I have felt myself called upon to say so much. This is not the first time that attempts have been made by frivolous or unthinking persons to bring this subject into ridicule. It is a satisfaction to me to reflect that all such attempts have been condemned and I trust that they may meet with a similar fate in this body.

Mr. HIESTER said, he did not rise to make an argument, but simply to express the regret which he felt at seeing a question of such a serious character, treated with frivolity in this house. It is, continued Mr. H., a serious and important subject, and it is so regarded by many citizens whose character for respectability, integrity, morality and public virtue, stands as high as that of any other portion of the community. All I desire is, that this proposition should be treated with decent respect, and that an opportunity should be afforded to us to take a direct vote upon it. We all know that this is an exciting subject in the state of Pennsylvania; and I do not desire that we should get into a discussion upon it here; for we have many other matters yet to go through which will create sufficient excitement, without throwing this into the number.

I would suggest, however, to my friend from Allegheny, (Mr. Denny) to introduce his amendment in another shape; that is to say, as section two, to the new article of the constitution which is to be numbered ten.

The CHAIR said, he would state that the committee appointed on the subject of secret societies and extra-judicial oaths, had made a report which would come up, he supposed, next in the order of business.

Mr. DENNY said, that he should prefer to have the question taken in the manner he had proposed.

Mr. M'CAHEN, of Philadelphia county, said that it was his intention to withdraw the amendment which he had offered; but that, before he did so, he had a word to say in reply to the observations of the gentleman from Allegheny (Mr. Denny.)

The gentleman has thought proper to call me to task about my humanity. He troubles himself unnecessarily in this respect; for he may be assured that if ever the time arrives when I feel in want of lessons on that subject, he is not the gentleman to whom I shall appeal. I have so often seen the extraordinary *liberality* which characterises his mind, in the course of our proceedings here, as to convince me that such would not be a proper source for me to draw upon.

The gentleman has been pleased also to refer to my vote, to deprive what he calls a class of freemen, of the right of suffrage. It is not to be forgotten that, on one occasion in this body, the gentleman was anxious to disfranchise a large class of the white population of this state; not of the coloured population, sir, but of the white population—his own peculiar race. I say, he was anxious to deprive a large portion of his own fellow citizens of the rights in which they were participating. It would be in vain, therefore, for me to look to him for any instruction as to liberal principles. I could not in any spirit of propriety, do so.

I deny the intention to cast any ridicule upon the unfortunate class of beings to whom my amendment has reference. I have no such desire. But I choose to exempt them from any action on the part of this convention, which will go, by constitutional provision, to deprive them of their natural rights. I think that the project of the gentleman from Allegheny, (Mr. Denny) is one which this convention ought not to sustain, and which, unless I am grievously mistaken, they will not sustain. I do not think that there is any thing like such a number of the citizens of this commonwealth as he has spoken of, who are in favor of such an amendment to the constitution. And I think that the proposition is calculated only to consume time, without the chance of arriving at the result proposed.

I withdraw the amendment to the amendment.

Mr. CUMMIN, of Juniata, said that if the section proposed by the gentleman from Allegheny, were such as ought to receive the sanction of this body, he, for one, would cheerfully vote in its favor.

But who, continued Mr. C., is to be the officer that is to inquire into and examine the secret of these extra-judicial oaths? There have no doubt been many extraordinary and novel motions made since the commencement of the labors of this convention, but none more extraordinary or novel than the one now under consideration. Secret oaths! or secrets of any sort whatsoever! who are to be the discoverers of such transactions, except those who are the movers in them? Does the gentleman from Allegheny, (Mr. Denny) suppose that, when any association of men collect together for a secret purpose, they will make themselves known? If a man goes to commit an assault, or a robbery upon his neighbor, will he take a witness with him who may hereafter testify against him, and bring him to punishment for the crime? Or, if a man goes to commit any other crime, does he carry a witness with him, when he knows it will be in the power of that witness at any moment to bring him to condign punishment? This is not the rule by which the conduct and actions of men are in such cases governed.

There is not much that can be said on this subject, if suffered to stand alone on its own merits. The gentleman from Allegheny, (Mr. Denny) is aware of this, and so he couples it with other questions. He insinuates broadly that the rights of other portions of the people of Pennsylvania, are taken away. What has that to do with the proposition which he has brought forward? He has alluded to the decision of the convention in relation to trial by jury; and he says that the rights of a portion of the people of the state have been taken away by our action here. Sir, I am astonished to hear such language from any gentleman claiming a seat on this floor as the member of a Pennsylvania convention. We had a dis-

cussion on that question which lasted nearly four days, when every gentleman who spoke took what range of debate he thought proper to take, and the result was the decision which stands recorded on our journals. What more would gentlemen have? Do they suppose that we are assembled here for the purpose of making a constitution for any of the southern states of this Union? or, do they concede that we have assembled to frame a constitution for the government of the people of this commonwealth of Pennsylvania? If the latter, they must see that it is our duty to confine ourselves to the limits of our own state, and to do that which the wants, and the wishes, and the interests of our own people may demand, without reference to considerations beyond our borders. I trust we shall not depart in the remotest degree, from the true path of our duty.

Mr. C. here gave way to Mr. BIDDLE, who moved that the convention do now adjourn.

And, the question having been taken,

The convention refused to adjourn.

Mr. CUMMIN then resumed.

The gentleman from Allegheny, (Mr. Denny) has contended, ingeniously enough, that the right of the citizen was invaded in taking away the right of trial by jury, in the case of a certain class of people.

The CHAIR suggested to the gentleman from Juniata, to confine himself a little more closely to the question immediately before the convention.

Mr. CUMMIN resumed.

I am aware, Mr. President, that I am a little out of the track; but I am merely saying a word in reply to what has fallen from the gentleman from Allegheny. I say, that nothing has been done on the part of this convention to deprive a citizen of the state of Pennsylvania of his right to trial by jury; and I say that it was an act of imposition to occupy four days of our valuable time in making a constitution for a southern state. I say more—I say that, if the notions of some gentlemen here had been carried out, it would have been tantamount to giving a premium to slaves to run away from their masters.

The CHAIR said, he must again interrupt the gentleman from Juniata, and request that he would confine his remarks to the question before the house.

Mr. CUMMIN resumed.

Well, Mr. President, I know I am travelling beyond the record, and that you are only discharging the duty which the rules of the convention impose upon you, in trying to keep me within it. But I will endeavor to come back to the subject-matter.

I have remarked that no person who was about to commit a crime, would take with him a witness to look upon the act. The gentleman from Allegheny ought to appoint a board of officers to go to all the lurking places in the commonwealth in order to apprehend these violators of the law. I do not see by what other means it will be possible for him to do any thing at all with this matter. For my own part, I must say, that I look upon this amendment as one of the greatest curiosities that ever was presented to a deliberative body in this, or any other part of the world.

and I think it ought to be put down by the unanimous voice of this convention.

Mr. **HIESTER** said that the time of the convention was altogether too limited to admit of a long discussion on this amendment, and he would therefore, ask the convention to second him in the call for the immediate question.

When the said motion was seconded by the requisite number of delegates rising in their places.

And the question was ordered to be now taken.

And on the question,

Will the convention agree so to postpone?

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

**YEAS**—Messrs. Ayres, Barndoller, Barnitz, Chambers, Clarke, of Beaver, Clark, of Dauphin, Cline, Chochran, Cox, Crum, Cunningham, Denny, Dickey, Harris, Hays, Henderson of Allegheny, Henderson, of Dauphin, Hiester, Houpt, Long, Maclay M'Sherry, Merrell, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Russell, Saeger, Thomas, Young—32.

**NAYS**—Messrs. Agnew, Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chandler, of Philadelphia, Clark, of Indiana, Cleavinger, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donagan, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, High, Hopkinson, Hyde, Ingersoll, Jenks, Keim, Kennedy, Krebs, Lyone, Magee, Mann, Martin, M'Cahen, Miller, Myers, Overfield, Payne, Read, Ritter, Rogers, Scheetz, Scott, Sellers, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Woodward, Porter, of Northampton, *President pro tempore*—66.

So the motion to postpone the further consideration of the said tenth article, for the purpose indicated, was rejected.

And the said report being again under consideration,

Mr. **STERIGERE** observed that there was an inaccuracy in the report of the committee, in the second line, in the use of the word "assembly," whereas it should be "house of representatives."

A motion was therefore made by Mr. S.,

To amend the said report by striking therefrom, in the second line, the word "assembly," and inserting in lieu thereof, the words "house of representatives."

Which amendment was agreed to.

A motion was then made Mr. **MERRILL**,

Further to amend the said report by inserting after the word "representatives," the following, viz: "Upon petitions signed by citizens of this commonwealth, in number not less than one tenth of the number of votes which shall have been polled at the then next preceding governor's election."

Mr. **MERRILL** said, that if the project suggested in this new article was to be adopted, it ought to be adopted with great care and caution. It

behoved this convention to exercise the greatest circumspection in deciding upon it, lest too easy a way might be provided for making amendments to the constitution.

The object which I have in view, continued Mr. M., in proposing this amendment, is to prevent a large portion of the time of the legislature from being consumed in propositions for amendments which the people of the commonwealth do not actually require. It is known that in those states of the Union, where amendments to the constitution can be had through the means of the legislature, young men—and sometimes old men—but young men more especially, go into that body and make long speeches in behalf of certain favored projects of their own, by which the time and money of the state are very unprofitably consumed. I believe if ever the time comes in Pennsylvania, when an amendment to the constitution is really desired by the people, that desire will be expressed before hand by at least one tenth “of the number of votes which shall have been polled at the next preceding governor’s election.”

I desire that my proposition may receive the calm consideration of this body; I believe that is entitled to receive it; and that such a provision, while it will not stand as an obstacle in the way of any proper amendments being made to the constitution, will prevent the time of the legislature from being wasted in the discussion of such proposed amendments as are not positively desired by the people. I have no desire to make a speech, especially at this late hour of the day. But the question I wish the convention to decide, is this: shall these propositions for amendment to the constitution come from the people, or shall they come from the representatives of the people, or in what other way?

To give time for reflection, I will move that the convention do now adjourn.

Which motion was agreed to.

And the convention adjourned until half past nine o’clock to-morrow morning.

# PENNSYLVANIA CONVENTION, 1838.

WEDNESDAY, FEBRUARY 7, 1838.

Mr. KONIGMACHER, of Lancaster, asked leave to record his vote among the yeas and nays, taken yesterday on the motion to postpone the consideration of article tenth, for the purpose of proceeding to the consideration of the following amendment to the said report, to be called section one, viz :

SECTION 1. No secret society using or administering unauthorized oaths or obligations in the nature of oaths, and using secret signs, tokens or passwords, operating by affiliated branches or kindred societies, shall hereafter be formed within this commonwealth without express authority of law.

The question being put on the motion, it was decided in the negative.

Mr. BROWN, of Philadelphia county, submitted the following resolution, which was laid on the table for future consideration, viz :

*“Resolved, That the committee on English Debates be instructed to inquire into the manner in which the Debates are prepared for publication, what progress has been made in the same; and if any, what measures are necessary to be taken for the more speedy and perfect completion thereof.”*

Mr. COCHRAN, of Lancaster, from the committee appointed to prepare the amendments made to the constitution for a third reading, reported as follows, viz :

That the first and second sections of the sixth article are found to be correctly printed.

That the third section of the said sixth article be made to read as follows, viz :

“SECT. 3. Prothonotaries of the supreme court shall be appointed by the said court for the term of three years, if they so long behave themselves well. Prothonotaries and clerks of the several other courts, recorders of deeds and registers of wills shall, at the times and places of election of representatives, be elected by the qualified electors of each county or the districts over which the jurisdiction of said courts extends, and shall be commissioned by the governor. They shall hold their offices for three years, if they shall so long behave themselves well: and until their successors shall be duly qualified. The legislature shall provide by law the number of persons in each county who shall hold said offices, and how many, and which of said offices shall be held by one person. Vacancies in any of the said offices shall be filled by appointments to be made by the governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid.”

They recommend further that the word “and” in the first line of the seventh section, of the said sixth article be stricken out, and the word “or” be substituted therefor.

The committee report the remaining amended sections of said sixth article as they stand on the printed files.



Your committee further report the amendments to the seventh article is correctly printed, and submit them as they are arranged on the files.

The report was ordered to be laid on the table, and printed.

Mr. FULLER, of Fayette, rose to ask a question as to the nature of the power given to the committee which had been appointed to prepare the schedule.

Mr. WOODWARD, of Luzerne, replied that they had the power to say where the elections should be held, and what officers should perform the duties. But they had no power to say any thing as to the manner in which, or the time when, the constitution should go into effect.

Mr. FULLER, then moved that the convention proceed to the second reading and consideration of the resolution read on the 6th instant, in the following words, viz :

*Resolved*, That the several amendments agreed to by this convention to the constitution, shall be arranged and embodied in such manner as to submit to the electors of this commonwealth, a whole constitution as amended, to be by them adopted or rejected at the next general election for members of the legislature.

The question having been put, the motion was decided in the affirmative.

Mr. DICKEY, of Beaver, expressed a hope that the gentleman from Fayette, would modify his resolution, so as to submit the whole matter to the committee on the schedule. The questions which had been stated were such as it properly belonged to them to determine. He would be glad to have the benefit of the report of the committee on the subject.

Mr. CHAMBERS, of Franklin, moved to amend the resolution, by striking therefrom all after the word "*Resolved*," and inserting in lieu thereof, the following words, viz :

"That it be referred to the committee on the schedule to consider the form and manner in which the amendments adopted in convention, shall be submitted to the people, and when the amended constitution shall go into effect."

Mr. FULLER accepted the amendment, as a modification of the original resolution.

The resolution in its modified form was then agreed to.

#### ORDER OF THE DAY.

The convention resumed the second reading of the report of the committee, to whom was referred the resolution concerning the expediency of providing a mode by which future amendments to the constitution may be made, at the desire, and by the act of the people.

The question being on the motion of Mr. MERRILL, of Union, to amend the said report by inserting after the word "*representative*," the words following, viz :

"Upon petition signed by citizens of this commonwealth, in number not less than one-tenth of the number of votes which shall have been polled at the next preceding governor's election."

Mr. MERRILL modified his amendment, so as to read as follows, viz :  
"Provided, that no such amendment shall be considered in either branch

of the legislature, unless, upon petitions signed by citizens of the commonwealth, in number not less than one-twentieth of the number of votes which shall have been polled for governor at the then next preceding election."

Mr. MERRILL said it did not appear to him to be desirable that the amendment should be proposed and acted on in the legislature in the first instance. If there was any thing wrong in the making of the new constitution, the people would find it out. He was not willing that the time of the legislature should be spent on the subject. Yesterday he had thought that one-tenth of the number of votes was not too many to induce the action of the legislature on the subject of amendments, but as that might amount to twenty thousand persons, he believed it might be too numerous: and as this was the opinion of other gentlemen, he had modified his amendment so as to make about ten thousand petitioners a sufficient number.

It had been alleged that this number was too small, and that it might be obtained from some corner of the state on a subject, in which all the other parts of the state felt no interest. But this was only a preliminary measure. If any provision of the constitution operated with peculiar hardship on any portion of the state, although it might be local, it ought to be taken into consideration. A single member of the legislature, as the report now stands, may bring forward measures to consume the time of that body, and although he may be voted down, he can renew them. A great portion of time may thus be consumed unprofitably; while the petitions of the people would be properly attended to. He was of opinion that amendments should not be too easily adopted. His object was to prevent the adoption of such as are not proper.

Mr. READ, of Susquehanna, moved to amend the amendment, by inserting the words "three thousand" before the word "citizens" in the third line, and by striking out all the words, after the word "commonwealth," so that the amendment may read as follows, viz:

"Provided that no much amendment shall be considered in either branch of the legislature, unless upon petitions signed by three thousand citizens of this commonwealth."

Mr. EARLE, of Philadelphia county, expressed a hope that nothing of the kind would be adopted. He should vote in favor of the amendment of the gentleman from Susquehanna, and then he should vote against the whole proposition. This new article, the gentleman from Union, thought would lead to the useless consumption of the time of the legislature, because any one member could bring forward measures. If that gentleman knew the rules of the legislature, he must know that a majority would not permit time to be wasted upon a subject which was of no importance. Let the gentleman look at the history of England. A single act of parliament may alter the course taken there, yet the government remain stable. New Jersey allows her legislature to alter the constitution of that state. It has been altered twice by the act of the legislature, and that body can make any further changes at pleasure. In Maryland, every danger is obviated by the sanction which is required of the people to any act of the legislature, by which a change in the constitution is proposed.

The great difficulty was, in getting the legislature to make any reform,

when it was desired. In the state of Georgia, he thought, the two houses may alter the constitution, without a vote of the people. And, no evils had arisen, in any of the instances he had mentioned. What, he asked, was our own experience? Had not the people been urging, for the last twenty years, an alteration of the constitution of Pennsylvania? But, while they had done this, it was in a cool and temperate manner, and not from a disposition for change. On the contrary, they had shown great forbearance under the evils they were suffering, in consequence of the defects in the constitution.

There had been but one legislature in thirty years that had afforded the people an opportunity of obtaining an alteration of their constitution. The circumstances and manner under which the work of revising and reforming the fundamental law of the state had been commenced, were entirely different from those of former times. We had been infinitely more cautious and particular in carrying on this great and important work than any of our predecessors had been. In 1776, the constitution was made voluntarily, and it went into operation without ever being submitted to the people. And the last constitution was made by a single house. Here we were met in convention—sitting as one body, and acting with an *esprit du corps*. But this would not be the case in reference to the proposition of the gentleman from Union, (Mr. Merrill.) In order that any amendment may be made to the constitution, according to the mode proposed by the gentleman, it would be necessary that it must pass four legislative bodies—two senates and two houses of representatives, it will run two chances of disagreement between the houses and senate, and must then pass a vote of the people. There is no danger in the mode proposed by the committee, which leaves seven chances of defeat for every amendment.

He thought the amendment of the gentleman from Union, would be productive of very great inconvenience. It was exceedingly troublesome to carry petitions round for signatures; people attend to their own interest before the public interest.

He was sure the gentleman from Union, would not go about his county and collect signatures. What is every body's business, is no body's business. Every man would put off other business until he had done his own. He (Mr. E.) was of opinion that young and inexperienced members could not—as was thought by the delegate from Union—make the legislature consider their propositions, unless they were deemed worthy of consideration. Hence they could not waste the time of that body against its will.

Mr. SHELLITO, of Crawford, thought the convention should be cautious in regard to giving power to the legislature on this subject. If the people wanted any thing, they would find out ways and means to obtain it. He wanted a law to be general, and not made to apply to the city or county.

Mr. HAYHURST, of Columbia, said that the gentleman from the county of Philadelphia, had remarked that the amendment which was offered yesterday, was something new, but the one proposed to-day by the gentleman from Union, was something newer still. He (Mr. H.) took the contrary position. He preferred the amendment of the delegate (Mr. Merrill) to the other, because it would render the doors of the legislature

less accessible to those men whom it was desirable to keep out of the legislature. He very much doubted the propriety of holding out an opportunity to every disappointed politician to unsettle and disturb the good people of this commonwealth with propositions to amend their fundamental law.

He held the very elements of democracy to consist in that which keeps the government among the people, and frequent and extravagant alterations in its laws tend only to remove it further from their view. If the father of his country ever made a true remark, it was when he said that perpetual innovation would work the destruction of the republic. He (Mr. H.) was for dividing the government among the people according to the true democratic principle. Had we not, he asked, the fact recorded in history of republics being overthrown in consequence of the constant introduction of innovations and changes in the government? The experience of all ages had shown most conclusively that this constant desire of change makes the destruction of a government.

Now, the gentleman from the county of Philadelphia, objected to introducing the pre-requisite of petition, on the ground that it was calculated to defeat a project to change the constitution. He, however, was mistaken in this: it would do no such thing. If the people desire to change their fundamental law—finding that there are defects in it—that it is vibrating from side to side—there would be no difficulty in getting one-twentieth of the people to petition. He wished the basis of our government to be settled and firm, and not to be continually disturbed by the breath of faction flowing from the parted lips of demagogues and disappointed politicians.

And, he was in favor of leaving the constitution within the reach of the people—that they may make amendments to it—without the form of calling another convention. But, as he had already intimated, he was not willing to leave the political pendulum to be set in motion by the breath of every political leader. He wanted the government to be that of the people—that they should have it in their own hands—and that they should not be deprived of the management and control of it by the leaders of a political faction. Was there, he asked, any danger in this? Could any possible inconvenience arise from it? Now, if those who complain that there are evils in the constitution, and from which they say they are suffering, cannot bring one-twentieth of the people to support their complaint, is it rational to believe that it is well founded? Every one knew that nothing was more easy than to obtain signatures to petitions, so that if the people really did desire amendments they could get them with great facility.

Was not the chance too great of unsettling the government, even where one in twenty petition for an alteration of the constitution? The pre-requisite number of petitioners being obtained, the proposed amendments would be considered by the legislature, and then submitted to the people for their decision. If one man out of twenty could not be found to sign a petition for amendments, was it at all likely that two out of twenty could be found to vote for amendments, suggested by the legislature? He thought not. He was in favor of the amendment proposed by the gentleman from Susquehanna, (Mr. Read) if nothing better could be obtained, though he was decidedly of the opinion that there would be much

more stability in our institutions by requiring a greater number of petitioners to authorize the submitting of amendments to the people.

As the gentleman from the county of Philadelphia was an advocate for voting for things that were new, he (Mr. H.) would advise him to give his support to the amendment offered by the gentleman from Union. He regarded it as infinitely preferable to the report of the committee, because it was much further removed from the rock of danger. He thought there was more safety in acting on the expressed will of the people, by their petitions, than in vesting two successive legislatures with power to propose and submit amendments to the people. He desired to prevent the perpetual agitation of propositions, in the legislature, to alter the constitution of the state.

He wished to give no opportunity to unprincipled politicians and demagogues to unsettle and shake the stability of the republic. It was not only impolitic but dangerous to the prosperity and welfare of the state to be eternally mooting and proposing changes in its fundamental law. As in material, so in the corporeal capacity, every thing tends to decomposition, hence, therefore, the necessity of laying such a restriction on the disposition to change, as would prevent the indulgence of it. Let us interpose a barrier between the instability of demagogues and the stability of our institutions.

Let us then adopt the amendment of the delegate from Union, which fixes a ratio, not a specific number, to authorize the legislature to make and submit amendments to the people. This amendment would, in his opinion, provide an easy and accessible mode to the people, to amend their constitution when they should find that it did not work well. If this amendment had been a law of the state at the time this convention was called, it would have been much easier to have got ten thousand signers to petitions than to have obtained two votes for the call of a convention. Mr. H. concluded by expressing his hope that the amendment would be adopted.

Mr. MERRILL, of Union, said that for the first time since he became a member of this convention, he should now offer an argument *ad hominem*. The gentleman from the county of Philadelphia. (Mr. Earle) was entirely mistaken in the views he had taken of the operation of the amendment he (Mr. M.) had offered, and he thought that every gentleman must see how fallacious was the argument he had held in respect to it. With regard to the amendment of the delegate from Susquehanna, to his (Mr. M's.) proposition, he would remark that it was immaterial to him, (Mr. M.) what the number of signers fixed upon should be.

But he would put it to the gentleman whether a ratio of three thousand—admitting it to be large enough for the present—would not be too small in a few years when our population would have become much greater. If the gentleman thought the number he (Mr. M.) had stated in his amendment too large, he would thank him to state what number would be better.

Mr. FULLER, of Fayette, said that he had suggested, yesterday, a proposition that it would be better that the legislature should submit to the people but one amendment at a time. He believed that a provision of this character would be a check on the too frequent disposition to offer amend-

ments, and would operate to the convenience and satisfaction of the people. Having reflected on the subject since, the thought had struck him that the adoption of one amendment would render it necessary to add one also to another section. No doubt, however, could be entertained that some check was necessary. He was decidedly of the opinion that frequent changes in the fundamental law of a people had a strong tendency to destroy it.

The proposition now before the convention, appeared to him to be too loose and unguarded to effect the object in view. And, the amendment proposed to it by the gentleman from Susquehanna, (Mr. Read) he thought amounted to nothing. What signified three thousand signatures? Why they could be had in any one county of the state. We all knew, as had already been remarked, how easy it was to obtain signatures to petitions. He, therefore, could not regard such a ratio as that, as any restraint upon the making of unnecessary amendments. The amendment offered by the gentleman from Union, (Mr. Merrill) was much more plausible. Now, the object in view, was not to prevent the people from adopting or rejecting the amendments that might be submitted to them; but it was to prevent the legislature from being harrassed, session after session, with unnecessary propositions. For there could be no doubt that a portion of the people, perhaps a very small minority, would be continually making applications to the legislature for amendments, and thus take up their time very unprofitably. He wished to exempt the majority of the people from any annoyance which must necessarily result from the adoption of any such proposition as this. His opinion was, that the number of taxables, as proposed by the gentleman from Union, was not sufficient to authorize the legislature to propose and submit amendments to the people.

Now, the question which presented itself was, whether ten thousand taxables, or voters, should be privileged to memorialize the legislature, and keep them session after session acting on the subject, while nineteen twentieths are opposed to any change whatever in the constitution. If it was said that the people of this commonwealth had lived fifty years under the existing constitution, without any amendment having been made to it, the fact should not be forgotten, that there was no mode provided by it for amending it, and that the legislature, before passing an act to call this convention together, had taken upon themselves the responsibility of recommending to the people the propriety of amending their constitution.

The case, however, would be different under the new constitution. As he had already said, if either of the amendments now before the convention should be adopted, the result would be that a large portion of the time of the legislature would be uselessly taken up. It appeared to him that if the delegate from Union, would modify his amendment so as to read twenty thousand, the number would not be too many. He thought it only fair and reasonable that nine-tenths of the people should be protected from this harassing process.

[Here Mr. MERRILL observed that if the amendment of the gentleman from Susquehanna, should not prevail, he would modify his amendment.]

**Mr. FULLER** porceeded. He looked upon the amendment of the gentleman from Susquehanna, as holding out the shadow without the substance. It would not operate as any check at all against the apprehended evils. The report of the committee was as good as any that could be had: it requires the action of two successive legislatures. This made the matter perfectly safe to his mind. The question was, whether the people and the legislature shall be protected from the annoyance to which they would certainly be subjected, if the present proposition prevailed. It was well known that for the last ten days a small minority of this body—who, no doubt, had thought it their duty to do so—had tried every means to obtain the privilege of suffrage for a certain class of the community. These gentlemen had told the convention that the time was coming when the people of the state of Pennsylvania would make some change in the condition of that class of people.

Now, he would ask if it was unreasonable to suppose that this very party—(and he believed that he used the correct term when he said “party”) memorialized the legislature for a change in the constitution, so as to extend the right of suffrage to the blacks, trial by jury to fugitives &c., with several other favorite propositions of theirs—all of which had been defeated here by large majorities? Yet he thought it highly probable that the same party would continue to memorialize the legislature in future. And, he would repeat the question he had before asked, if it was right that the legislature and a large majority of the people of the commonwealth should be continually annoyed by propositions to amend the constitution originating with a small portion only of the citizens of Pennsylvania? He contended that the restriction proposed by the delegate from Union, was not sufficient, and that a greater one ought to be introduced. He hoped that both amendments would be rejected, and something else better, proposed. He reiterated his opinion that frequent changes in a constitution proved the destruction of it; and concluded by saying that it was all important that the restrictions should be such as to prevent a small minority from interfering with the majority.

**Mr. FLEMING**, of Lycoming, said that he had risen for the purpose of making a suggestion, rather than to offer any argument on the subject, which was one unquestionably of great importance. The object which the convention had now in view, was to make such a provision as that future amendments to the constitution might be made with less inconvenience, loss of time, and expense to the people of Pennsylvania. He would inquire of gentlemen who had had more experience than himself, whether any thing was to be gained by the adoption of a provision requiring a particular number of signatures to petitions praying that certain amendments may be made to the constitution? Would it prevent unnecessary agitation in regard to amendments? Most assuredly it would not. It appeared to him even from the little attention that he had paid to the manner of obtaining signatures to petitions that a few industrious individuals might at any time, easily procure the number required by the amendment, now before the convention to authorize legislative action. He asked, if delegates should agree to insert a provision of this character, whether it would not be necessary to add a restriction requiring that the requisite number of signatures shall be procured within a prescribed time? It was his deliberate opinion that such a restriction was indispensable, for

without it, the same petitions might be handed about session after session, until the number of names required was at length obtained. In fact, several years might be devoted to the collecting of signatures, and then the petition be handed in to the legislature as an evidence of the desire of the people to have certain amendments made to the constitution of the state! He would have supposed that if it was the wish of the convention to prevent in future an unnecessary consumption of time in relation to the proposing of amendments to the constitution, that the requirement of a certain number of petitioners, would have been dispensed with. What was to be apprehended most was, that the alterations might be too often proposed. He, however, did not fear the action of the legislature.

I certainly, said Mr. F., would not consent to make this provision so loose, as to enable a bare majority of the legislature at any time to submit an amendment to the people. I am inclined to believe that the provision on this subject which is to be found in the constitution of the state of New York, will answer the object we have in view as substantially and effectually as any thing I have heard suggested on this floor; if not more so. And believing as I do, from the suggestions which have been thrown out here, that the requiring a certain number of citizens to petition in the first place, before the legislature can act, will have no tendency whatever to prevent the action of the legislature on the subject. I am not disposed at present to give my vote in favor of a provision to that effect. I am willing, however, to go for any reasonable provision which will accomplish the object we all have in view.

The provision to which I have referred in the constitution of the state of New York, is in the following words:—

“Any amendment or amendments to this constitution, may be proposed in the senate or assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice; and, if in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment, or amendments shall become a part of the constitution.” [See amended constitution, state New York, art. eight, section one.]

This, continued Mr. F. appears, in theory at least, to obviate all the obstacles which lie in the way of proper changes being made in the fundamental law of the land, and, in my view, is preferable to the proposition now before us. I should like to hear the opinions of other members of the convention upon it.

Mr. SMYTH, of Centre, said. I believe, Mr. President, that we have now arrived at a question of nearly as much importance to the people of the commonwealth, as any that has ever been brought before us during the whole of our long and laborious existence as a convention. I cannot



tax my memory with any single question in passing upon which more care and deliberation have been required than ought to be exercised in the present case.

In prescribing the manner in which future amendments to the constitution may be effected, we have to keep two objects steadily in view. The one is not to throw around the constitution barriers which will be impassable to the people; and the other, and equally important object is, not to leave the constitution too easily accessible, and consequently, too open to innovation.

Now, what is required by the amendment to the amendment as proposed by the gentleman from Susquehanna (Mr. Read?) It requires that the assent of three thousand of the taxable inhabitants of Pennsylvania shall be procured, before any proposition for amendment to the constitution, can be considered in either branch of the legislature. In my estimation, this is quite too low. If we take a view of the number of taxables in Pennsylvania, we shall find that it amounts to over three hundred and nine thousand, and to require the assent of only three thousand out of three hundred and nine thousand is next to nothing. Take an instance. How easy would it be, in the city and county of Philadelphia, to get up three thousand names to a petition to the legislature to make an amendment—thus making it appear that the amendment was desired by the body of the people of the state, whereas, in other parts, the people might regard it as not wanting at all. Propositions, thus got up, would then be sent to Harrisburg, and, probably, half the session of the legislature might be lost in discussion upon it.

But my friend from the county of Lycoming (Mr. Fleming) has brought to the view of the convention, the provision on the same subject in the constitution of the state of New York, and seems to be of opinion that that is more free from objections than any other amendment of the kind that we can adopt. I apprehend that he is mistaken in his estimate of the advantages to be derived from it; for it will be observed that, under the constitution of that state, the amendments originate with the legislature—the very thing, as I have been led to suppose, which this convention is anxious to avoid. There, an amendment passes one legislature, and is recommended to the attention of the legislature next succeeding it, who pass upon it by a vote of two thirds—after which it is submitted to the people for the first time. Now this, as I have said, is the very thing which I supposed the convention is anxious to avoid. I, at least, am so. I wish that the legislature should, in the first instance, understand that the people want such amendments, and that the number of those who call for them should be clearly ascertained. If I understand the matter, the requisition of the gentleman from Union (Mr. Merrill) is not too great. I would rather see it made larger than smaller. But the gentleman from the county of Philadelphia (Mr. Earle) objects to this as a novel thing. It is rather singular that such an objection should be raised in such a quarter. I am at a loss to conceive what it portends. I should suppose that the gentleman from the county of Philadelphia would be the last man in this body to complain of any thing being new; for he has brought us more new things here than any other man.

Mr. EARLE asked leave to explain. He had not intended himself to object to the proposition because it was new; he had merely applied the argument to those who did object to new things.

Mr. SMYTH resumed.

Even if this were entirely a new measure, that would matter nothing if it were in itself expedient and proper. At all events it is our duty, in view of the wants of the people and the safety of our republican institutions, to act in this matter with very great care and caution. I do not know of any one subject which has been, or may be before us; in which a hasty or false step might be attended with more pernicious results. I am, therefore, extremely solicitous that we should weigh the matter well, before we come to a decision. Is the number designated in the proposition of the gentleman from Union (Mr. Merrill) too great? I think not. On the contrary, I am inclined to the belief that it is lower than might be supposed to be requisite by our constituents. In any event, I am not in favor of placing the number lower, but I will go higher if any gentleman will introduce an amendment to that effect. And whenever a proposition for amendment to the constitution comes before the legislature in such an imposing form, it will be the duty of that body to take it up, and to give to it their serious consideration.

Under all the circumstances, I think that the proposition offered by the gentleman from Union (Mr. Merrill) is as fair and reasonable a one as we can expect. At all events, it is a question which requires our most serious consideration, for I believe that much of the stability of our institutions may depend upon the manner in which we provide that future amendments to the constitution shall be made.

For these reasons, I am in favor of the amendment of the gentleman from Union, and am willing to vote for it. But I cannot go in favor of the proposition of the gentleman from Susquehanna.

Mr. BROWN, of Philadelphia county said that he concurred in the opinion that this was a very important question. I believe also, continued Mr. B., that there will be some wisdom and some integrity left in the legislature of this commonwealth and in the people of this commonwealth, when this shall cease to be a convention, and when we who are the members of it shall be laid in our graves. I am not one of the number of those who believe that all intelligence, all wisdom, and all integrity are centered in this body, or in this generation of men. There may be, and most certainly there will be, such qualities in other bodies and in other times.

Believing this, I think it is my duty to create proper facilities, by means of which the people of future times may be able to amend their fundamental law. I do not believe that those whom I represent here desire me to throw obstacles in the way of amending the constitution, and I will not do it. If we cannot now agree upon a clause through which the people can, with proper ease, amend that instrument, I, for one, would not put in any thing at all of that kind, but would leave the matter to be acted upon by the people of the state in such manner as they may think proper.

The second section of the bill of rights, which we are now again about to ratify, is couched in the following language:—

“That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness: For the advancement of those ends, they have, at all times,

an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper."

This, continued Mr. B., is the language of your present bill of rights. Now, in the constitution of 1776, there was an amendatory clause placed, by which that instrument could be amended before a council of censors. The people found this to be an obstacle; they disregarded it; and they called a convention to frame the existing constitution of 1790—thus acting in open violation of that provision. They have a right, as all free people have, to possess such a form of government as the people may require. And yet what are we now told? We are now told that the legislature should not even consider any proposition of amendment to the constitution, unless a given number of citizens shall petition for it. Well, sir, upon this rule, who is to say whether the persons who sign these petitions are citizens or not? Who is to examine their names to see that they are not counterfeit? I suppose they are to be legal votes—registered voters—and that it is to be seen that they all voted at the preceding governor's election. How is all this to be ascertained? Whose duty is it to be to see to it? Why cannot we trust the legislature to originate these amendments without petition, as we can and do trust them in any ordinary act of legislation. Can we trust them to create banks in such numbers as they may think proper? Can we trust them to create a debt of twenty millions of dollars? Can we trust them to say, how the justices of the peace shall be elected—whether by townships or wards? Can we trust them, I ask, with all these important matters without petition, and yet be afraid to trust them in this? It seems to me absurd, in the face of such facts, to require that the names of a certain number of petitioners shall be collected together, before the legislature shall take the matter into their consideration.

But there is an absurdity of a still higher order. The legislature can not only commence action on all these important matters to which I have referred, without previous petition, but they can also determine them without petition—and yet here is a subject on which you are about so to bind down that body as to allow them to do nothing; for the plan which you now propose to adopt amounts in effect to that. Look at it. You propose that no propositions for amendment shall be considered except on petitions previously presented and signed by a given number of voters; then one legislature is to act upon them, and then another, and then they are to be submitted to the people for ratification or rejection. And all this parade and process must be gone through, before an amendment can have any obligation or force. I am willing that you should exercise a just and proper caution, as to the manner in which you dispose of this power of amendment.

I concede that it is a great and important trust. But there is no need that you should throw unnecessary obstacles in the way, and the more so when I reflect that all amendments must ultimately be acted on by the people. This is, in itself, a great security. And I am unable myself to see the force of the reasoning which we have heard, as to the great waste of time which may be expected to result from leaving in the legislature the power to originate amendments. I do not believe, that the members of that body will suffer their time to be frittered away in the

discussion of propositions for amendment, until the necessity of considering them shall be actually forced upon their minds by the action of public opinion. Experience has proved this to be so. In all those states of the Union where this amendatory clause has been adopted, we cannot find an instance in which time has been uselessly expended in the discussion of propositions to amend the constitution. Sir, this is the old doctrine of throwing every possible obstacle in the way of the people reforming their own government—the old doctrine of binding the people down to the cars of government as established by the old regime—the old doctrine, in short, of opposing all beneficial reforms—all changes which are to benefit the people, and to enable them to govern themselves as a free people should do.

Mr. President, we are here about to adopt a new form of government; and we are told by a large number of the members of the convention, that it is not as good as that which we are about to abandon. If this should turn out to be the fact, it is still more essential that we should lay before the people every proper facility for a return to the constitution of 1790. If, on the contrary, it should turn out that the new constitution is better adapted to the wants and wishes of the people, than the old one, it is important that we should give all proper opportunity to the people to go still further in their reforms, if it should be for their interest to do so.

The gentleman from Lycoming (Mr. Fleming,) has intimated his preference for the two-third principle. What is that? What is it, I ask, but to make one man equal to two—because the one happens to think that the existing form of government is a good one? Thus making one man, who may happen to be a conservative, equal to two men who may happen to be reformers. For my own part, I am entirely willing that these propositions for amendment, should be left with the legislature—always, of course, reserving the right of the people to give their final vote upon them, to say whether they will accept them or not. The people of this commonwealth think it no trouble to attend at the polls, and give their votes upon matters affecting their government; nor do I think that they would ever regard it as a trouble, if they were called upon to give their votes upon the adoption or rejection of every law which the legislature might enact;—thus giving a double sanction to that law. I think we should leave it to a majority of the legislature to say whether they will, or will not, propose any amendments to the people; and that we should leave it to the legislature to say, whether they will, or will not, give their sanction to such changes. As I have intimated before, if I can not get a proper clause, I will at least do nothing to put a clog upon the people, but will leave them to act in their own way and at their own time. I believe that the legislature could at all times have proposed amendments to the people, and that if the people had accepted them, they might at once have been made a part of the constitution—And this is the plan which we should adopt for the future time. Look at the state of New Jersey. The legislature there, in the absence of any amendatory clause in the constitution, deem that they have a right to propose amendments to the people. They have done so, and the people have accepted of them—and thus they are a part of the fundamental law of the land. The right to propose amendments is regarded there in this point of view; I have no doubt it is a good one, and I would leave it so here, rather than do any thing to clog the people.

I shall, therefore, vote against every proposition requiring the assent of petitioners to enable the legislature to enter upon the consideration of these matters. I shall do so, because I believe that to adopt such a provision, would be to trifle with the rights of the people. I, for one, can never consent to do so.

Mr. CHAMBERS, of Franklin, said, that if he correctly understood the argument of the gentleman from the county of Philadelphia, (Mr. Brown) it was that he was opposed to the amendment as a clog upon the people; and the convention had again been called upon to listen to those loud professions of regard for the people and the rights of the people which they had so often before heard in the course of their deliberations here.

What (continued Mr. C.) is the real nature of this proposition? Is the object of it to abridge the rights of the people? Not at all. But it is for the protection of the people against the agitation of radicals and innovators—be they whom they may. It is proposed that the demand for amendments to the constitution should originate, with whom? Why, with the people—where, of right, they ought to originate; not with a member of the legislature, who is sent into that body to legislate under the constitution, and who has certain powers and duties delegated and limited to him by the fundamental law. It is no part of his duty to propose these amendments; it is a subject for the consideration of the people. If there are grievances felt and experienced under the government, they are grievances felt by the people, and it is for them, therefore, to complain; and if the legislature is to act, their action ought to be at the instance of the people.

The gentleman from the county of Philadelphia tells us also, that we allow the legislature to act, without petition, upon many of the most grave and important matters touching the interests of our people. Why is it that we do so? It is because in acting upon the matter alluded to, they are only acting upon those things which come within their proper and legitimate jurisdiction; they are only acting upon matters delegated to them under the constitution. They are, in short, only exercising the ordinary duties of legislation. But when it is attempted to change the fundamental law of the land, by which all the departments of the government are created; when it is proposed to dissolve that government into its original elements, I say that the movement should come from the people—that all propositions for amendment should originate with the people. So far, then, from this requirement of the assent of a certain number of petitions being, as the gentleman from the county of Philadelphia designates it, a clog upon the rights of the people, it is in fact their strong protection.

But the gentleman has also professed to feel a great regard for the legislature. He is now willing to trust the legislature with all the power over these most important matters; yet only one short week ago, that body was not to be trusted even with the power to regulate the number of the justices of the peace in a township or ward. I confess myself at a loss to account for this strange inconsistency.

Mr. BROWN, of Philadelphia county, asked leave to explain. He did not wish the gentleman from Franklin (Mr. Chambers) to place to his (Mr. B.'s) credit, things which did not belong to him. I am not in favor

(continued Mr. B.) of giving power to the legislature to alter the constitution, but only to consider propositions for amendment, and then, if they should think such amendments expedient, to submit them to the approbation or rejection of the people. This is the extent of my argument in favor of the legislative power.

Mr. CHAMBERS resumed.

The gentleman is willing to repose in the legislature a power over the constitution, without there being any petition before them praying for a change. He is willing, I say—for he told us so over and over again—that the legislature should act upon these matters without having been petitioned by the people. This is the amount of his position. Now, I too, am willing that the legislature should act; but I want them to act, not upon their own impulses or their own responsibility, but upon the demand of the people, and in such reasonable numbers as to entitle their propositions to the respectful consideration, not only of the legislature, but of the great mass of the people of the commonwealth. I should prefer that the number of petitioners should be greater than that proposed by the gentleman from Susquehanna (Mr. Read);—three thousand is, to my mind, altogether too low a number. I am opposed, therefore, to that proposition. It is to be borne in mind that there may be a local feeling of excitement pervading some particular portion of the commonwealth, and not extending beyond it, under the influence of which the names of three thousand might readily be secured, and thus the legislature might be required to act upon a proposition for amendment which might be in direct opposition to the wishes of nine-tenths of the people of the state. I think we should obviate the possibility of such a state of things. We should fix upon a higher number of petitioners, so that the names cannot be got up in any particular district; and if a demand for amendment should in such a manner be made, it will then be entitled to the consideration and respect of the legislature as the organ of the people—and, after having been acted upon there, can be finally laid before the whole body of the people, for their approval or rejection.

It seems to me that the proposition of the gentleman from Union, (Mr. Merrill) is preferable to any other which may go to fix definitely the number of the petitioners, because the number ought to be apportioned to the taxables and the voters of the commonwealth. If there are grievances which the people wish to be redressed, or changes which the people believe will be conducive to their happiness or their welfare, it is not to be doubted that the number of one twentieth of the voters, as proposed by the gentleman from Union, can be procured for the purpose of petitioning the legislature. If there is a feeling pervading the minds of the people against their form of government, in any of its features, and asking for reform, that feeling will surely express itself by the number of one twentieth. If, on the contrary, that number can not be had, the manifest and irresistible inference is, that there is no such call on the part of the body of the people for revision and amendment of the constitution, as would render it necessary or proper for the legislature to enter upon the discussion of such propositions, and to submit them to the ratification or rejection of the people. To my mind, nothing could furnish more fair or more conclusive evidence of the true state of the public mind, than the method here proposed. It is preferable, therefore, that the number should be left

in this way, dependent on the taxables and the population, as it may from time to time increase, rather than that we should fix it down to a precise number; because if one twentieth or one tenth of the voters should be considered a reasonable number at the present time, it may not be so in the course of ten or twenty years, in which space of time our taxables and our population may have been doubled. Let the number of petitioners, therefore, be in proportion to the number of taxables and the number of voters.

The gentleman from the county of Philadelphia asks us further, how we are to determine as to the number of those who voted. There surely cannot be any great obstacle here; I should suppose that any school-boy who knows the rule of three could determine this question without difficulty. It is simply to take a number equal to one twentieth part of those whose votes were polled at the then next preceding election for governor. That is all. This number, I think, is not too great. I feel strongly disposed to require that there should be some shield of this kind interposed by us, in order to protect the legislature, as well as the people, against being harassed by frivolous and vexatious propositions for amendment.

It has been said by another gentleman in the course of this discussion, that it is not to be supposed that any member of the legislature will harass that body with amendments, against the will of a majority of its members. What does our own experience teach us—I mean, the experience which we have had here upon this floor? Do we not know that it is in the power of gentlemen to tax a deliberative body with the consideration and discussion of measures which it is known have not the sanction of one third of the members? Have we not had such measures here? We have had no less than one hundred and forty various schemes of amendment, and we have had them discussed day after day, and yet, when the question came to be taken, there were many of them in support of which not a vote of one third could be obtained; and it is a fact not to be controverted, that one half of our whole time has been taken up in the discussion of frivolous amendments and propositions. It is, therefore, as I have said, for the purpose of protecting the legislature as well as the people, that some such shield as this should be interposed by the action of this convention.

For these reasons, I approve decidedly of the amendment of the gentleman from Union, and shall vote for its adoption. I believe that it will prevent the legislature from improperly consuming their own time. I believe that it will place a wholesome check upon the impulsive movements of our young politicians, who will step forward to propose amendments to the constitution, as the hobbies upon which they may themselves ride into public favor. I would not indulge them with the power of doing so, unless the changes they desire to make should be based upon the petitions of such a number of the voters of this commonwealth, as will give a fair indication that public opinion is in favor of them.

Mr. CHANDLER, of Philadelphia, said:

I concur, Mr. President, in all that has been said as to the importance of the proposition before the convention, and I desire, therefore, to offer a very few words upon it.

When the gentleman from Susquehanna (Mr. Read) offered his first proposition fixing the number of petitioners at three thousand, I had my doubts whether or not he could be in earnest. Three thousand voters ! It is exactly the whig majority of Philadelphia, and it is about equal to the number of other voters in the whole city. Now, either party who might be disappointed, could rub up that number of petitioners any week in the year, and could present themselves before any legislature with petitions sufficient to draw from them legislative action. Much as I dislike and am opposed to the provisions of this new constitution, I am much more opposed to this method of obtaining legislative action. If we should adopt the amendment fixing the number at three thousand, I should feel particularly desirous that these three thousand should be in some way qualified, so as to prevent them from disturbing the people. They ought to know the causes which have operated in the introduction of certain amendments now about to be offered to the people.

But, sir, is it our object to have the people continually agitated on the subject of amendments to the constitution ? Have we not in this convention, from the vast expense which has attended it as well as from other causes—have we not, I ask, already given the people sufficient cause of dissatisfaction ? Is it not known that we, who are the conservatives of this body, are founding our hopes of keeping the old constitution on the disgust which the people feel at our proceedings ? I believe that they will be so dissatisfied and disgusted with our amendments, that they will reject them. But should the fact turn out otherwise, should they after all adopt these amendments, I believe that the good sense of the people will be sufficient to prevent any very serious harm resulting from their effects. I, for one, am too democratic in all my notions and feelings, to have the whole people of Pennsylvania disturbed and agitated by the appeals of three thousand voters—democrats though they may be. They are likely to be so.

Why, then, should we endanger the whole superstructure ? Why should we put in continual jeopardy all that is dear to us, by gratifying the desire for perpetual change ? I have somewhere read that the people of a country in the east contrived, by continual beating upon the ground, to move a weighty superstructure from the place on which it rested. And let me say that, with us, the effect of this continual cry for change will be, that all we consider democratic in our constitution will be torn away, until not a vestige is left.

The gentleman from the county of Philadelphia (Mr. Brown) has referred to the state of New Jersey, and has discoursed eloquently of the facilities with which amendments may be made to the constitution. It is to be borne in mind that New Jersey is a very small state, and that she was a hundred years ahead of us in her form of government. Every thing there depended upon the good action of the government, and not upon the broad precepts found in the constitution. The people of that state are good and quiet ; they go on attending to their duties from time to time, and there the constitution stands. Hence, though a single legislature may propose amendments to the people, few are offered. Such, I fear, will not be the case in Pennsylvania, if similar facilities for constitutional amendment should be given. On the contrary, I believe we shall find it a very easy matter to stop the whole progress of legislation



by the desire of one man—yes, sir, of one active and energetic man, who will undertake to muster the names of three thousand petitioners. Humble as I am, and laying no claims to extraordinary energy of character, I will engage to procure the signatures of three thousand persons to almost any proposition that is any thing like reasonable in its character—for instance, that this convention should adjourn—that the constitution should be burnt up, or any thing of that kind. 'This is most easily done.

'The provision of the gentleman from Susquehanna then is, in itself, destructive of the very thing it proposes to protect—that is to say, destructive of the rights and political standing of the people of this commonwealth, which we are all now, as I believe, righteously endeavoring to guard. If it were desirable to agitate the people in this way, we, the conservatives in this body, have cause enough to lend our aid to this project. For instance, we, who are fond of public schools might, by the very next session of the legislature, procure thirty or forty thousand signatures, and call for legislative action upon this very constitution, as it is now amended, and procure a change of the provision now existing. For my own part, I have no desire of the kind. I know what the feelings of the people are when they once ascertain that they are moving in a right cause. Nothing can come against it. It is like some flower that springs up more strongly, if not more beautifully, when it has been trodden upon. So it will be with our schools. We shall find, I trust, in spite of all the amendments which we have made, that the people will still continue to do well—that they will keep on under the provisions of the old constitution, and that when a fair opportunity is offered they may change the letter; but the spirit of it has been changed. Let us, however, provide against all agitation by boasting would-be democrats, and tavern politicians. Let us guard as much as possible against party influence, of every kind; and when we present to the people a constitution, let us have it in our power to say, that we think, in some respects at least, that it is worthy of them—and that we think them worthy of having a constitution upon which the legislative action may rest.

'The gentleman from the county of Philadelphia, (Mr. Brown) if I correctly understood him, seemed to indicate a desire that whenever a road, a canal, or any thing of the kind was wanted, the people should vote upon the law. I have no such wish. All that I desire is, that when we present this constitution to them, whether it be right or wrong, we should present it to them as if we believed it was right, and as if we believed them to be worthy of something that was right.

Mr. READ, of Susquehanna, said that he was not altogether satisfied that either the amendment of the gentleman from Union, (Mr. Merrill) or his own should be adopted. He very much doubted whether we could make any improvement on the report of the committee. Indeed he was quite satisfied with it as it now stood. But if some restriction of this kind must be introduced, he thought his own much better than that proposed by the gentleman from Union. First, because it was a smaller number; and secondly, because it was a fixed and definite number. The objection to a fluctuating number—a number increasing in proportion to the number of inhabitants to be taxed, was that it required much trouble to ascertain, if at all practicable, if there was the requisite number. If the gentleman from Union would take the trouble to look over the returns of the judges,

to see the number returned at the election, he would find that it could not be ascertained; consequently he would be obliged to send to the prothonotary's office in every county for the purpose of obtaining this information. He would discover that one half, at least, of the returns do not state the number of votes given. They only set forth that A B or C D. had a majority of the number of all the votes given, and was duly elected. Again: if the returns were perfect, in all cases, the fact was not ascertained for what offices the required votes shall have been given.

**Mr. MEERILL:** Yes.

**Mr. READ:** Then I am answered. However, it was doubtful whether either of the proposed amendments ought to be adopted. That certainly appeared to be the case, judging from the arguments of the gentlemen from Franklin and Fayette. The delegate from Fayette first assumed that there would be an anxious disposition at all times, on the part of the legislature, to agitate the subject, and then—

**Mr. FULLER** explained: I was not of opinion there would be an anxiety on the part of the legislature to agitate the subject. But I said, there would be great anxiety manifested by a small portion of the people of the commonwealth to agitate the subject.

**Mr. READ** said, taking it for granted, as stated by the gentlemen from Fayette and Franklin, that there would be some local operation felt on the subject, yet it was not to be forgotten that experience had fully proved there was and always had been an eternal reluctance shown by the people to act on this particular subject. He thought there was no danger to be apprehended in relation to the legislature acting on it. They certainly were not likely to do so, unless perfectly satisfied from the petitions presented to them that there was a general feeling of uneasiness in reference to the supposed required amendments. Supposing that there should be a local feeling in Philadelphia, Lancaster, or any where else, and that three thousand or five thousand names are obtained, and that some ambitious politician, as the gentleman from Franklin had supposed, should introduce into the legislature a petition founded on this local feeling—what would be the consequence? Why, he might obtain the permission of the legislature to make a speech of an hour or two, but his proposition would be immediately indefinitely postponed, unless there happened to be a general feeling throughout the state in favor of some amendment being made. He would contend that it was not in the power of a small minority, or of any small section of the commonwealth to agitate the subject for half a day in the legislature. Nor was it, in his opinion, at all likely that such an event would occur unless the body to which it was introduced, were confident that among their constituents there existed an anxious desire to agitate the subject. He (Mr. R.) doubted, therefore, whether either the amendment proposed by the gentleman from Union or his own, ought to be adopted. But, if the convention chose one or the other of them, they should most certainly, determine on having a definite number of petitioners, and not a floating number, and that number should be a small one. He felt quite sure that the legislature would not act on any proposition for amending the constitution, unless there was a very strong and general feeling in favor of legislative action in reference thereto. As he had already remarked, he did not think there would be any danger of continual agitation, or of local agitation in regard to amending the fuu-

damental law. He would modify his amendment so as to require five thousand, instead of three thousand.

Mr. BANKS, of Mifflin, said that he had thought, on reflection, that he might be able to bring his mind to agree to the amendment proposed by the delegate from Union. He, however, had not been able to do that. And with regard to the amendment offered by the gentleman from Susquehanna, to the amendment, he had come to the conclusion that it was best not to restrict to any number of petitioners. Being desirous of obtaining any knowledge or light that might be shed on this important subject, he had, with that view, examined the amended constitutions of New York, of Tennessee, of Virginia, and of North Carolina, and also the constitutions of the states of Arkansas and Michigan, but he had not been able to find any such provision as the one to which reference had been made.

Let gentlemen examine the constitution of the United States, and they would find no restriction imposed in relation to this subject. It was not stipulated in any of the constitutions of the states, or in the constitution of the United States, that ten thousand or twenty thousand petitioners in favor of amending that constitution, or of any of the states, would authorize the legislative bodies in proposing amendments.

The amendment of the gentleman from Susquehanna required the number of five thousand petitioners; but he (Mr. B.) did not see why one thousand had not an equal right to ask that the constitution shall be amended. He did not see why they should not be heard as patiently and with as much respect as ten thousand, as any other number.

Sir, (said Mr. B.) I have not been so instructed in the affairs of Pennsylvania; I have not been so instructed in regard to the rights of the people of Pennsylvania, as to suppose that any man is to be allowed to prescribe rules for me—to tell me that my voice shall not be heard upon any question, affecting my interest and happiness in common with the interest and happiness of my fellow citizens, until a certain number shall have joined with me in asking redress or remedy. This is a state of things that does not fall in with my views of a republican government. If I, as an individual, think proper to ask the legislature to grant me any thing, it is my right to ask respectfully, and it is the duty of the representatives to hear me. Yes, sir, and they will hear me.

Mr. READ here rose, and said he would withdraw the amendment he had offered.

So the amendment to the amendment was withdrawn.

And the question then recurring on the amendment of Mr. MERRILL, as follows, viz:

“Provided, that no such amendment shall be considered in either branch of the legislature, unless upon petitions signed by the citizens of the commonwealth, in number not less than one twentieth of the number of votes which shall have been polled for governor at the then next preceding election.”

Mr. BANKS resumed.

I am glad that the gentleman from Susquehanna, (Mr. Read) has withdrawn his amendment, though I am not so vain as to attribute its withdrawal to any remarks which have fallen from me. If I can succeed in

satisfying the gentleman from Union, (Mr. Merrill) that in justice to the people of this commonwealth, he ought also to withdraw his amendment, I shall think that we have gained something.

Now, why is it that one twentieth of the voters—of the taxables if you please—of this commonwealth should be required to sign a petition before any amendments shall be considered by the legislature?

Taking as a standard the number of votes polled at the last election—which was supposed to have brought out the people in great numerical strength—one twentieth would be about ten thousand voters.

The gentleman from the city of Philadelphia, (Mr. Chandler) has argued, if I did not misapprehend him, that there were at least three thousand good men and true in the city of Philadelphia, and who possibly might petition the legislature to do something or other—whether to amend the constitution or not, I do not know. I have no doubt that it is the desire of the people of Philadelphia, to do what is right towards others as well as themselves, although of course they will always keep in view their own rights as the people of the county do. It is their duty to do so.

Well, sir, if there be three thousand men in the city of Philadelphia, who present their petitions to the legislature on any subject, would it not be right that their petition should be considered? Have they not a right, as freemen, to demand that it shall be heard? I ask the gentleman from the city whether he would not regard any constitutional restriction upon that right, as onerous and oppressive to the people? And I ask him whether, if such restriction were to be placed in the fundamental law, he would not give his vote to expunge it. Let us make the experiment, and the gentleman, I doubt not, will be among the first to enter his protest against it. He will say, this is what I did not understand; for, if I had understood it, I never should have said, that three thousand good men and true in this city should not be heard, simply because they could not get seven thousand more to join them;—for this is the effect of the provision before us. I, for one, shall be unwilling to go home to my constituents, and give them such an account of my stewardship, and I will not do so if I can possibly avoid it. Whether the gentleman from Union who proposed this amendment and who comes from the same district as myself, but represents a greater one, is willing to go home to his constituents, and to say to them—“my good fellows, you sent me into the convention to extend your privileges; I have done so, it is true, in certain particulars—but I have tied you down in other things—and those, too, of a most important nature;—for I have given my assent to a new provision in the constitution, that you shall not again elect a member to a convention to make changes in your fundamental law, by which even the legislature will not be suffered to propose amendments to the people unless ten thousand men shall first have petitioned for them”—if, I say, the gentleman tells them this, what answer may he expect to receive? I apprehend it would be such as the gentleman would not like very well to hear.

The examples of which I have spoken are such as come from wise men—the framers of the constitution of other states. History, it is said, is philosophy teaching from example; and the history of our government from its foundation to the present time, contradicts the position which has here been assumed by the gentleman from Union, (Mr. Merrill) and other

gentlemen, wise as they are in the things of their generation;—I mean the position that there is great danger of innovation, if the people have ready opportunity to amend their constitution. Those gentlemen have mistaken, as I conceive, what the true interests of the people require in this respect. At all events, either they are mistaken, or I am.

The framers of the constitution of 1790 took no such limited view. And shall we give less to those who are to take our places, than the framers of that constitution gave to us? Shall we do less for the cause of human freedom than they did? My object is to enlarge, not to circumscribe freedom. The action of freemen should not have limits prescribed for it, and, for the most part, I believe that nothing should be done calculated to cast restrictions upon it.

A motion was then made by Mr. FLEMING to strike out the report of the committee, and insert in lieu thereof the following, viz :

“Any amendment or amendments to this constitution may be proposed in the senate or house of representatives; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice; and if in the legislature next chosen as aforesaid such proposed amendment or amendments, shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner, and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution.”

The CHAIR said, that as the gentleman from Lycoming had offered his proposition as an amendment to the report of the committee, and not as an amendment to the amendment of the gentleman from Union, (Mr. Merrill) it could not be received at this time.

The question then recurring on the amendment;—

Mr. EARLE, of Philadelphia county, said, I wish to notice the remarks of the gentleman from Union, (Mr. Merrill) who has applied the *argumentum ad hominem* to me. I will endeavour, in return, to apply it to him.

I have said that the legislature will not take up amendments for consideration, unless such propositions were worthy of being considered. Now, I will endeavour to prove, by application to the gentleman himself—that bodies of this kind are more apt to refuse to consider that which is worthy, than to trouble themselves with considering that which is not worthy. The other day when a certain committee was appointed to report about the amendments, and to prepare them for a third reading, I offered an amendment giving the committee the power to correct the phraseology. The house, by an overwhelming vote, refused to consider the proposition; and only a very short time afterwards, the committee, finding that they were not invested with sufficient power, came into the convention and asked us to give them that very thing.

Again ;—Has not the gentleman reasoned here, hour after hour, of the congregated wisdom of the people of the commonwealth assembled in the legislature ? Has he not voted and adhered here to the principle of investing the legislature with a kind of omnipotent power to pass laws affecting the rights of the people, without submitting them to the people, and without a probability existing that the people can change them in a thousand years to come ? And yet now he says that it is not proper to trust the legislature simply to make a proposition to the people to adopt a new provision in their fundamental law, which new provision the people are to have the power to change within two years afterwards, if they should choose to do so. The gentleman has been an advocate (so also has the delegate from Franklin, (Mr. Chambers) of power being given to the legislature to close up your rivers for the use of any canal company to which a charter may be granted, to take rivers which nature has made for the use of all mankind, and to give to a corporation the exclusive power to hold them ; and he has declared, by his vote here, that no subsequent act of the people, however unanimous, can take away privileges thus given. The gentleman has told us that it is safe to trust in the hands of the legislature all this vast power, and yet he declares his opinion to be that it is not safe to trust that body with the power simply to make a proposition for a law ; which law, as I have said, may be repealed at any future time. There is an inconsistency in this, which I do not know how to account for or to reconcile. So also it is with other gentlemen. And I ask the democratic gentleman from the county of Fayette (Mr. Fuller) whether he did not vote yesterday to cut us off from the further consideration of the bill of rights, before we had put into that bill any provision by which the legislature should be prohibited from creating a debt of one hundred millions of dollars ? I ask him if he did not vote to cut us off from the further consideration of the bill of rights, before a chance was given to me to move the provision which I wished to move, prohibiting the legislature from granting exclusive and monopolising privileges ?

The CHAIR (Mr. Sterigere, *pro tempore*) here interfered, and said that the gentleman from the county of Philadelphia must confine himself to the question before the convention. The course of his observations was not strictly within the rules of order.

Mr. EARLE resumed.

Nothing can be further from my intention than wantonly to violate the rules of order in this convention. I think, however, that the Chair must perceive that I am not transgressing the rules in the remarks I am making. And for this reason. Gentlemen say that, in allowing the legislature to originate amendments to the constitution, we are conferring a dangerous power upon that body. In answer to this, I undertake to shew that that power, if bestowed, is not a thousandth part as dangerous or unsafe as the power which they have already voted to give to the legislature. Surely it is in order for me to do so. Your legislature is to have power to charter a company like the Camden and Amboy rail road company, and to make a contract with them that no other charter shall be granted to carry on the progress of internal improvement through that region of country ; and gentlemen here register their solemn opinion that such a charter is irrevocable, and yet they refuse to the legislature

the comparatively small power involved in the proposition to suffer the legislature, of their own action, to submit amendments to the approbation or rejection of the people. They talk about demagogues. I do not know what demagogues are, unless it be men who say that at one time you must trust every thing to the legislature and nothing to the people, and at another time that you must trust every thing to the people, and nothing to the legislature. I say if these are not demagogues, I do not know what manner of men they are.

The gentleman from Franklin (Mr. Chambers) has been pleased to tax some of the members of the convention with having introduced frivolous and vexatious amendments. Even admitting his position in this particular to be correct, it has in point of fact nothing at all to do with the argument which I advanced. What was my argument? I said that, if any young member, any ambitious member, or any demagogue, was disposed to harass the legislature with unreasonable propositions for amending the constitution, the legislature might refuse to consider them. And what does the gentleman from Franklin say to this? He says that this convention has been compelled to listen to propositions some of which have been of a frivolous and vexatious character. And does not the gentleman know, that although this convention must of necessity listen to propositions for amendments to the constitution, yet that the legislature may positively refuse to listen to any thing of the kind. They may reject the matter *in toto*, and it will be impossible, therefore, for any member to take up the time of the legislature, except it may be with a few preliminary observations. But as to the attack which has been made upon certain members of this convention, that they have consumed time unnecessarily and wantonly in the discussion of frivolous and vexatious amendments, I deny that there is any foundation for it. I say I deny it. If there has been any fault in this convention—and I believe that there has been, it has been the fault of refusing to listen to propositions which gentlemen have brought forward for the purpose of representing the views of their constituents. And it is no argument to say that these propositions have been rejected—some of them, probably, almost as soon as offered. You have no right to cast censure upon those propositions which are rejected, any more than upon those which are adopted; and it may be found, at some future day, that it would have been better and more conducive to the interests and the welfare of the people of this commonwealth, if this convention had adopted some of those propositions which have been rejected, rather than those which have been adopted. When the time of this body was consumed in the discussion of political questions having no sort of connexion with the purposes for which we have assembled—questions affecting the policy and prospects of Martin Van Buren and Daniel Webster; did the gentleman from Franklin then think proper to interfere? I recollect only one frivolous amendment which has been offered here, and which the gentleman himself advocated; that is to say, a proposition to prevent the members of this convention from holding office under the amended constitution.

We have been told that if we do not require the signatures of one twentieth of the voters to petitions asking for amendments, before the legislature is allowed to enter upon the consideration of them, you give scope to young ambitious politicians, and to demagogues. Where, let

me ask, would the demagogues and the young ambitious politicians flourish, if not in getting up these petitions? Where can you find a more advantageous field for their action? Where is the place in which these demagogues are to agitate and disturb the people in the manner spoken of by the gentleman from the city of Philadelphia, (Mr Chandler)? The place will be among the people themselves; and if you want to have the state and the people disturbed by things which ought not to disturb them, you can not accomplish the purpose better than by adopting the very amendment proposed by the gentleman from Union, requiring the assent of one-twentieth of the voters, before the amendment shall be considered by the legislature. The aspiring politician, the demagogue, will push the plan year after year—not suffering the people to rest upon it, and, probably, in the course of time he will get up the names of one-twentieth of the voters; and thus the legislature will be bound to submit the amendment to the people when probably it ought not to be submitted. This will be the effect of the amendment of the gentleman from Union; and I do not believe, therefore, that the mode here pointed out is by any means the best which can be adopted. I believe that it will be better to leave it to the wisdom of the people, assembled by their representatives, to discuss the matter, before a subject is proposed to the people. Let all such propositions originate with the legislature, and let them there, in the first instance, be fairly discussed, if they should be considered entitled to discussion. By this means you will have both sides of the argument. The matter, whatever it may be, will be published to the people, and the people will act understandingly upon it. But if they hear only one side, as they are likely to do under the amendment before us, those who sign the petitions will feel themselves committed to the measure without having heard both sides of the argument. Did not the gentlemen from Fayette (Mr. Fuller)—and I come now to apply the *argumentum ad hominem* to him—did not that gentleman, I ask, think that the legislature ought to have passed the law providing for the call of this convention, one year sooner than they did? and yet it is notorious that a year before, there was not one-third of the number of petitioners required by the amendment of the gentleman from Union; and that, immediately before the law was passed, there was only one-half of the number that he now considers requisite.

What is the provision in the constitution of the United States in relation to amendments? The fifth article declares that “the congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress.”

Thus, continued Mr. E., we perceive that under this provision amendments may be incorporated into the constitution of the United States without having been submitted to the people.

You can frequently get up the names of more petitioners when the



object in view is not good, than when it is ; because you can procure the services of more active men to answer some political end. We have had more petitions against the school law than ever were presented on any other subject ; and I venture to assert, that if a man would bring forward a petition for the disfranchisement of some particular sect, a few bigotted men could get up the names of ten thousand signers in favor of the object of that petition. To be sure, the other one hundred and ninety thousand of the voters of the commonwealth would, in the end, overrule this portion. I do not believe that the people, as a body, are bigotted, but a portion of the people are always so ; and when you have got up this number of petitioners, the legislature will feel themselves bound to consider the proposition for amendment, and to discuss it, whatever its nature or character may be ; for here you make it their imperative duty to do so.

I believe, as I have said, that the much wiser way will be to leave the matter to the legislature ; let it be discussed in both houses, and let the discussion go fairly and fully before the people.

The gentleman from Franklin (Mr. Chambers) among other things of rather an extraordinary nature which characterized his observations, has intimated that my colleague from the county of Philadelphia (Mr. Brown) had been inconsistent in his course here, because at one time he had used his efforts to restrict the power of the legislature ; whereas, in the present instance, he was willing to let them go on and have the whole power in their own hands. It never has been the desire of my colleague that the legislature should possess the power to form a constitution, of themselves ; but only that they should have the power to act upon the constitution from time to time as necessity might arise—to suggest amendments to the people, and leaving to the people the power to pass upon the fact whether the constitution shall, or shall not be changed in the particular feature proposed. This is the utmost extent of power for which my colleague has contended.

The gentleman from the city of Philadelphia (Mr. Chandler) has taken up the argument in reference to the neighbouring state of New Jersey, and has said that she was a small state with a well-administered government, and that though the legislature could propose amendments to the people, yet that changes were not improperly made in that constitution. This he attributes to the fact that New Jersey is a small state. What a discovery we have here ! Who ever before heard that it was more difficult to get up agitation in a state extending over a small territory, than in a state covering a larger extent of territory ? This is a new doctrine to me, and it is not correct in point of fact. It is, on the contrary, more easy to get up an agitation over a small than a larger extent of territory, and it is more easy to bring about changes in the form of government. And yet no alterations of any consequence have been made in the constitution of the state of New Jersey since the time of the revolution. There have been, it is true, a few but slight changes.

Again, as to the number of petitioners, what has been our own experience ? This convention decided in committee of the whole at Harrisburg, that the word "white" freemen should not be inserted in the third article of the constitution. Well, what followed ? We came to the city of Philadelphia, and we received some petitions praying that the right

of suffrage might be limited to "white" freemen; and gentlemen there said, no doubt conscientiously, that they were convinced that the people of the commonwealth required that this change should be made. Required, how? By the voice of ten thousand petitioners? Not at all. Did we get ten thousand petitioners? Nothing like it. We had only about fifteen hundred. We had nothing like a twentieth part of the taxable population even in Montgomery and Bucks; in which counties, as we know, that question was most agitated. When we look at these things, do we not at once perceive that every individual who has his own private interests to attend to—finding himself called upon to take money out of his pocket to print a petition, and to give a portion of his time to procure signatures to it; do we not perceive that he will be inclined lightly to make such sacrifices? I do not believe that the gentlemen from Fayette, (Mr. Fuller) or the gentleman from Franklin, (Mr. Chambers) could ever have got up any thing like the number of one-twentieth of the voters, even for a convention to change the constitution of 1790. The state of New York found it necessary to make some alterations in relation to the salt tax, and some alterations having reference to the city of New York. The city of New York was secured in certain corporate privileges, amendments to the constitution. They had not to go and secure the names of one-twentieth of the citizens to a petition for these objects. It would have been unreasonable, and such a proposition never would have been adopted. Now, all that I ask is that if the legislature of Pennsylvania should hereafter find that the shoe pinches in any of the amendments which we may make, they shall do as the legislature of the state of New York did unanimously, recommend certain alterations, without being put to the necessity of sending persons round among the citizens to secure the names of any number of petitioners.

Mr. MERRILL, of Union, said that, before the question was taken, he would say a word in reply to some of the objections which had been raised against his amendment. The gentleman from Susquehanna (Mr. Read) seems to be of opinion that there will be some difficulty in ascertaining the number of the voters. I do not see, continued Mr. M., how there can be. I propose that the petitions should be signed by one-twentieth of those who voted at the next preceding governor's election; the votes are deposited in the office of the secretary of state, and it would, therefore, be an easy matter to procure the requisite information.

As to the appeal made to me by the gentleman from Mifflin, (Mr. Banks) I have only to say, in reply, that I am ready at any moment to meet my constituents, and to give an account of my stewardship here. I have no fears upon the subject. I hope the gentleman is himself equally well prepared to adjust accounts with those whom he represents in this body.

The gentleman from the county of Philadelphia (Mr. Earle) has replied in a tolerably fair way to my argument, although in some respects I do not think he has treated it with perfect candour. It was the first time that I have ever addressed any remarks to the course of argument of gentlemen here, and I hope it will be the last.

One word as to the power which I would give to the legislature. Those who are acquainted with the course I have marked out for myself, as evinced here and elsewhere, are well aware of the fact that I have

never been disposed to place too much power in the hands of the legislature. Such is the fact. But I am not now disposed to take from them any power which properly belongs to them. My object now is, not to limit the legislative action, for I do not fear that that action would be wrong: but to prevent the time of that body from being frittered away in the discussion of unnecessary and uncalled-for amendments. This is the whole aim and scope of my proposition.

The gentleman from the county of Philadelphia says, that this is a restriction which, if carried into the constitution, will prevent the rights of the people from being protected. What an argument is this! Do we believe—does our own experience teach us—that the rights of the minority are more secured than the rights of the majority. I have been in a minority nearly all my life, and am as anxious as any man to protect their rights.

Mr. DICKEY here rose, and submitted to the Chair that the gentleman from Union (Mr. Merrill) had spoken more than twice on this subject; which, Mr. D. submitted, was in contravention of the tenth rule of this body.

Mr. MERRILL said, he would not task the patience of the convention any further, and that he hoped the question might be taken without further debate.

And the question on the said amendment was then taken.

And on the question,

Will the convention agree to the amendment as modified?

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

YEAS—Messrs. Agnew, Baldwin, Biddle, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cope, Dickerson, Hayhurst, Hays, Henderson, of Dauphin, Hopkinson, Kennedy, Kerr, Krebs, Long, Magee, Mann, M'Sherry, Merrill, Merkel, Porter, of Lancaster, Russell, Saeger, Serrill, Smith, of Columbia, Smyth, of Centre, Snively, Porter, of Northampton, *President pro tem*—35.

NAYS—Messrs. Ayres, Banks, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Coates, Cox, Crain, Crawford, Crum, Cummin, Curl, Darrah, Dickey, Dillinger, Donagan, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Helfenstein, Henderson, of Allegheny, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Konigsmacher, Lyons, Martin, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payns, Purviance, Read, Riter, Ritter, Scheetz, Sellers, Seltzer, Shellito, Sterigere, Stickel, Sturdevant, Taggart, Todd, White, Woodward, Young—67.

So the amendment was rejected.

The question then recurring on the report of the committee;—

A motion was made by Mr. FLEMING,

To amend the said section as reported, by striking therefrom all after the word "and," where it occurs in the fifth line, and inserting in lieu thereof the words as follow, viz: "Referred to the legislature then next to be chosen, and shall be published for three months previous to the time of making such choice; and if in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each House, then it shall be the

duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution."

And the said amendment being under consideration,

A motion was made by Mr. BIDDLE,

That the convention do now adjourn.

Which was agreed to.

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

### WEDNESDAY AFTERNOON, FEBRUARY 7.

The convention resumed the second reading of the report of the committee to whom was referred the resolution concerning the expediency of providing a mode by which future amendments to the constitution may be made, at the desire and by the act of the people.

The amendment to the said report being again under consideration, in the words following, viz :

Strike out therefrom all after the word "and" where it occurs in the fifth line, and insert in lieu thereof the words following, viz :

"Referred to the legislature then next to be chosen, and shall be published for three months previous to the time of making such choice : and, if in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe : and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution."

A motion was made by Mr. HIESTER,

To amend the amendment by adding thereto a provision that the amendments which may be agreed to by the people under the said clause, shall become a part of the constitution, and take effect as such, within the space of two months after the annunciation of the ratification thereof shall be made in such manner as shall be directed law.

Mr. HIESTER, in explanation of his amendment, said that the amendment proposed by the gentleman from Lycoming, (Mr. Fleming) did not,

in the form in which it now stood, specify when the amendments, if agreed to by the people, should take effect;—whether immediately after the day of the election—or in one month therefrom—or at what other time. It seems to me also, said Mr. H., to be a matter of some doubt whether it will be in the power of the legislature to regulate the time when the amendments shall go into effect, unless something is said by this convention in relation to it.

There is also another matter which is left indefinite in the amendment. It is this; it is not specified in what manner it shall be ascertained whether the people have ratified or rejected the amendments. Some provision ought to be made for this. We should establish some tribunal or other; and this object is embraced in my amendment. It supplies the defect in this way; namely, it provides that within two months after the result shall have been promulgated, in such manner as the legislature may direct, the amendments shall take effect. I am not tenacious as to the exact time, but it appears to me that there ought to be a definite period fixed before we finally adjourn. If the members of the convention would prefer that the period should be fixed at three months, or one month, or any other time, I am willing to modify my proposition so as to meet their views. All I wish is that a definite time should be agreed on. These are the objects of my amendment.

Mr. HAYHURST, of Columbia, said he did not know that he had any objections to raise against the amendment to the amendment, as proposed by the gentleman from Lancaster, (Mr. Hiester.)

It certainly does appear to me, continued Mr. H., that there should be some definite rule of this kind prescribed by the convention, either in the shape of a proviso at the end of the section, or in some such way as the gentleman from Lancaster proposes to introduce it. I think it is necessary. I have my doubts, however, whether two months is a sufficient length of time.

In reference to the amendment itself, I have many objections. The proposition which was before us this morning, and which was rejected by the convention, met my approbation, because it went simply to prevent unnecessary excitement, where it was not probable that it would result in effecting any amendments to the constitution. But I think that the reverse state of things presents itself, in the amendment before you. If you adopt it—as I hope you will not—what will be the consequence? After all the excitement here created, after the time of the legislature has been consumed, after the public money has been expended in discussing the subject and printing the necessary information for the use of the public—you then forsooth, put it in the power of some ten men in the senate to prevent the action of the people upon the proposition, whatever that may be. I took occasion this morning to say that, as it is in the corporeal so it is in the physical world—all ferment tends to dissolution. And, after you have put the commonwealth to all this excitement and expense, you shut out the people from giving the expression of their opinion on the subject. And how? By the action of twelve men in the senate.

Suppose that any proposition for amendments should have received the sanction of one legislature, probably by a unanimous vote, or nearly so; and suppose that the same amendment should have received the approba-

tion of the lower house at the second session, and probably also by a unanimous vote, or nearly so—it is then sent to the senate, and there twelve men, voting in the negative, may reject it. Does this tend to allay excitement? Does this tend to pacify the public mind? I think not. You put it in the power of twelve men to say to the people of the commonwealth, “you shall live under your old constitution, however defective it may be—you shall live under your old constitution, simply because we have the power to control your action, by virtue of this minority principle, which your representatives, in convention assembled, engrafted on that instrument.” No, sir, I can not sanction such a measure. After you have gone through all the excitement attending such movements, after you have spent your money upon them, it will be better to submit your proposed amendments to the people, and let them amend the constitution accordingly, or refuse to amend it, as may seem to them most proper and most conducive to their interests. This, I believe, to be the true and correct principle. But let not the action of the people be arrested in the senate by the votes of twelve or thirteen men. If you do so, depend upon it that you will be doomed to witness such scenes of excitement, such ebullitions of popular passion as will shake the institutions of your commonwealth to their deepest foundations. You had better, therefore, leave your constitution without giving this power to your senators; or you had better leave the matter so as to require that the proposed amendment after receiving the sanction of the legislature, shall receive the action of the people; thus making it imperative to submit the amendment to them. Sir, it is the prerogative at all times, and under all circumstances, to adopt such a form of government as will please them best. It is a provision in your bill of rights that “all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness: For the advancement of those ends, they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.”

This is your fundamental law. Let us, then, act up to it, and after these propositions have been acted upon by the legislature, let them be submitted to the approval or rejection of the people; for it is upon the people that they are to operate for good or for evil. But if you should outrage the people by the action of the minority, the excitement attending any given proposition will be renewed again and again; until at length that proposition will be submitted to them, probably only to be rejected. I should desire that the action of a majority—and not two-thirds—of two successive legislatures, shall be required to submit amendments to the people; and they may then be passed upon, and settled definitely beyond the power of faction to change or agitate them more.

In preference to the amendment of the gentleman from Lycoming (Mr. Fleming) let us adopt the report of the committee; and let us follow it up with a precise provision, fixing a definite period at which the amendments which we may have made shall go into effect.

Mr. DICKEY, of Beaver, said:—On looking at the amendment to the amendment as proposed by the gentleman from Lancaster, (Mr. Hiester) it will be perceived that after the people shall have ratified any amendments which may have been submitted to them under this clause, it leaves only two months for the action of the legislature. Now, if the amend-

ments are submitted to the people at the general election, the legislature will not meet until two months have elapsed; and if they are to be submitted at a special election, the inconvenience will be still greater. I think therefore, that the gentleman from Lancaster should modify his proposition, so as to insert "three" months instead of two. And if he will do this, I shall vote in its favor.

I come now to the amendment of the gentleman from Lyeoming, (Mr. Fleming) and I will do that gentleman the justice to say, that I think this is precisely such a proposition as ought to be adopted by this convention. I do not think that the people desire to place it in the power of one, two, or three counties to keep up a continual agitation in relation to amendments to the constitution, when those amendments may be in opposition to the wishes of a majority of the people of the commonwealth. Sir, we have decided questions in this convention which will hereafter be agitated by the legislature, and if you leave this power of amendment too easy of access, those questions will continue to be agitated until the objects which may be had in view shall finally be accomplished. Take, for instance, the question as to the right of trial by jury. Do gentlemen suppose that there are not ten, or fifteen, or twenty thousand men in the commonwealth of Pennsylvania, that will espouse the right of trial by jury in all cases?

If they do entertain such a supposition, I believe that they deceive themselves grossly. Now, if a majority of the first legislature should act upon any amendments which might be proposed, I would require the assent of a majority of two-thirds of the next succeeding legislature; and before submitting any question of the kind to the people, I would have such a manifestation of popular opinion, as to leave no doubt what the wish of people really is. The majority of the people, we all know, have the right at all time, to revise the constitution under which they live; and they could do so, as they have done in the present instance, without any provision being inserted in the constitution. Such was the fact with reference to the constitution of 1790. There was no provision on the subject of future amendments inserted there, and yet here we are, a convention called together by the people of the state to prepare and submit amendments to them. At one time, the call for the convention was rejected, at another time it was agreed to. For my own part, I am not aware that the people of Pennsylvania have asked us to indulge the demagogues of the land, by granting them the power of perpetual agitation which must result from any provision which we may insert, by which the constitution may be made too easily accessible. It would be well, therefore, that a large portion of the people should petition for such amendments before they are agreed to by the legislature—although, by a vote of the convention taken this morning, we have refused to fix upon any definite number. In any event, before the legislature should finally act, it should be made manifest to them that there is something like a general feeling among the people, which calls for amendment. And this fact can be satisfactorily ascertained by requiring a majority of the first legislature, and a majority of two-thirds of the second legislature to act upon any propositions before they are submitted to the people.

For these reasons, I am in favor of the amendment of the gentleman from Lycoming, (Mr. Fleming) and shall vote for its adoption.

Mr. FULLER, of Fayette, said he was opposed to the amendment of the

gentleman from Lycoming, and believed that the report of the committee, in its present form, was about as well calculated to meet the views of the electors of the commonwealth as any thing which could be devised. I am myself, continued Mr. F., no believer in any system which goes to impose restrictions upon the people, as regards the power to amend their own constitution; and when I speak of the people, I mean the majority of the voters.

What is the proposition of the gentleman from Lycoming?

It requires the assent of a majority of the first legislature, and the assent of a majority of two-thirds of the succeeding legislature. What is this but placing restriction on the action of the people? I voted this morning in the negative on the proposition of the gentleman from Union, (Mr. Merrill) not because the principle it contained was inconsistent with my own views, but because it did not go far enough to reach the evil which it sought to prevent; for, as the gentleman from Beaver, (Mr. Dickey) has very justly remarked, it is no very difficult matter to get up the signatures of ten, or fifteen, or twenty thousand petitioners on any question of ordinary import. It might be easy to get up such a number of signatures for some particular project, which was in opposition to the wishes of nineteen twentieths of the people of the state.

Another objection which I had to the amendment of the gentleman from Union, (Mr. Merrill) was that the legislature was not to be permitted to act upon petitions presented for amendments to the constitution, unless signed by one-twentieth of the number of votes polled for governor. Now, I would say that the legislature ought not to act on such petitions, without there was a sufficient expression of the opinion of the people of the commonwealth to justify that action—that is to say, the voice of the people ought to be expressed to some considerable extent. It is not only the time of the legislature which will be taken up on this subject, but it is the inconvenience to which the people themselves are put by voting for or against the amendments, which demands our consideration. Great annoyance would result to the people from this source, and therefore it was that I voted against the proposition of the gentleman from Union, although, as I have before said, the principle of it was not in opposition to my own views. If an opportunity presents itself to me, I shall offer an amendment embracing my own ideas of the provision we should adopt. In any event, however, I can not vote in favor of the amendment of the gentleman from Lycoming.

Mr. M'DOWELL, of Bucks, said that he desired to assign his reasons why he should vote against the amendment of the gentleman from Lycoming.

I am one among the number of those, continued Mr. M'D., who believe that the people have a right to amend their fundamental law at any time which they may think proper, and that they have a right to do it precisely in the same way in which they have a right to do any thing else.

As to the amendment of the gentleman from Lancaster, (Mr. Hiester) it strikes me as being of very little importance in any point of view. It involves no principle; it is a mere matter of detail. It is a provision the object of which is simply to fix a period at which any amendments which



may hereafter be proposed by the legislature and adopted by the people, shall go into operation. This is, therefore, a mere matter of detail.

I intend to vote against all amendments which may be offered to the report of the committee on this tenth article; because I believe that when a majority of the people determine upon any principle in regard to the fundamental law, that principle ought to become a part of the fundamental law of the land. And, I will go further and say, that I believe that the people, generally speaking, are right in their determination. They may, it is true, err for the time being, and all that is wanting to a safe and successful issue is, so to prolong the action of the people as to guard against the possibility of any thing being done under a state of excitement.

This, then, brings me immediately to the matter now before the convention. What is it proposed to do? It is proposed that a majority directly shall not determine that the constitution shall be changed; but, with a view to protect them from the evil influences of any excitement which may arise—with a view to give them time for reflection, and in order that no party may hold the sway over the minds of the people and lead them into error, it is proposed that a legislature of the commonwealth, elected directly by the people, shall say, by a majority, that they are certain that the proposed amendments are needed; and this, without regard to the nature of the amendment, whether it be trifling or important.

Now, let us take a case. Suppose that the people should consider it important that the day of election should be changed from the second Tuesday in October, to the third Tuesday of the same month. Are we to be told that, when the people desire an amendment of this kind, two successive legislatures, voting in favor of it by majorities, are not sufficient to give this privilege to the people, but that a two-third majority of the second legislature might be required? I do not believe in the doctrine, and I should like any gentleman, in or out of this hall, to furnish me any satisfactory reason, if he can do so, why the sanction of this convention should be given to it. Why not as well say that, when the amendment is submitted to the people, two-thirds of them shall vote in favor of it, or that it shall not become a law?

It is to be recollected that you have to obtain the sanction of a majority of the senate, and also a majority of the immediate representatives of the people in the first legislature. Well, when a majority of that legislature has said, they are certain that the amendment ought to be submitted to the people—what follows? With a view that the people themselves may have an opportunity to examine and weigh the matter and that the opponents of it may paralyze all party power and influence, you are to have the sanction of a successive legislature—after the people have had the question before them for twelve months, and probably after the second legislature has been elected with reference to that very question. This, sir, is the report of the committee. And, is it said that this is not sufficient protection? And then, after all this ordeal has been gone through, after two successive legislatures have suggested the wisdom and the propriety of the amendment, the whole matter is to be submitted to the people for their approbation or rejection. And what, I would ask, is the effect of the action of the legislature? Their action amounts to nothing more than a suggestion to the people. What is the object of requiring

two successive legislatures to pass upon the matter in the first instance? It is to divest the subject of all excitement, by which the people may be led to take a false step. So that two years must elapse from the time the amendment is first suggested by the legislature, until it is submitted to the people. I say, they have two years in which to weigh the matter; and, under such circumstances, are we to be told that two-thirds of the second legislature shall say to the people that they shall have a right to do this thing, or that they shall not! Shall we be told, what is worse, that one-third of the people's representatives shall say to the people, you are not to be trusted—you shall not have a right to vote on this matter; it shall not be laid before you, that you may take your choice whether you will have it or not? Sir, I deny the doctrine—I will have nothing to do with it. I hold that a majority of the people have a right to govern in all things, unless in cases where there is an indispensable necessity that the two-thirds principle shall prevail. I do not mean to say, that there may not be such a necessity; as, for instance, in the case of punishment for high crime and misdemeanor; but, I say, that unless there exists an absolute necessity, the principle should never be introduced. It is anti-republican; yes, sir, it is anti-federal; I do not care whether it is anti-democratic or not—it is anti-federal. I never can, and never will, subscribe to such a principle, whatever other gentlemen may think proper to do in regard to it.

Why, I ask again, why should there be a majority of two-thirds of the second legislature? Why not make it two-thirds of the first legislature?

Why not make it two thirds of both legislatures? Why not require the votes of two thirds of the people? There is just as much necessity for the one as for the other; and you might with as much propriety adopt the principle in the last two cases as in the first.

If your object is, as it appears to be, to protect the people against themselves, make a majority of both legislatures necessary to submitting an amendment to the people, and then make the votes of two-thirds of the people necessary to its approval. I say, we may as well do the one as the other. After two years of deliberation, can there be any danger of excitement?

Suppose this matter were submitted generally to the people. I am sure that there is no man in this convention who will say that the people ought not to govern. How are all your laws passed? Are they not supposed to be passed as the will of the people? And how is that will ascertained? Is it not ascertained by the voice of the majority of the people? And what is this which we are about to pass? It is the fundamental law of the land. And why is it more important than any other law? I confess, it may be so; but there are hundreds of amendments which may hereafter be suggested, and, no doubt, there may be some of them which may not be approved by the people, or which may not work well after they have been approved. And is there to be all this trouble and perplexity about every proposition for amendment, even about a mere matter of detail?

You can not change a day—to say nothing about a principle—you can not change a day—you can not change the slightest matter without all this difficulty.

In all fundamental changes, I do certainly believe it to be essential that the people should act calmly, understandingly, and wisely. There should be nothing rash—nothing precipitate—nothing done under excitement or impulse. I believe that the fundamental principle should not be changed except upon due reflection, and a necessity, the urgency of which should be made clearly manifest. But, at the same time, I lay it down as a general rule, that when a period of two years had been given to the people to reflect on the propriety of the change, it should be considered, after the lapse of that length of time, that the people had made up their minds one way or the other, and that a majority of them would determine rightly.

For these reasons, I shall vote against the proposition of the gentleman from Lycoming. I will vote for the sanction of a majority of two successive legislatures—but not that it shall be decided by the two-thirds principle. Let the majority govern.

Mr. HIESTER said, that as the amendment he had proposed was simply a matter of detail, involving no principle, he would, for the purpose of disembarassing the action of the convention on the amendment of the gentleman from Lycoming, withdraw it—with the intention, however, of renewing at a future stage of the proceedings.

So the amendment to the amendment was withdrawn,

And the question then recurring on the amendment of Mr. FLEMING.

Mr. BROWN, of Philadelphia county, said :

My neighbor on the left (Mr. M'Dowell) says, that the amendment of the gentleman from Lycoming is anti-federal. For my own part, I am not well versed in federal doctrines ; but I do take upon me to say, that this amendment is anti-democratic. I do not mean that it is anti-democratic according to the democracy of any particular section of the state, but that it is against the democratic principles of the state of Pennsylvania. And that it is so, we have the best evidence in the history of Pennsylvania herself.

The same restrictions as are here proposed, were intended to be made by the convention which framed the constitution of 1776. They took upon themselves to prescribe a certain mode in which the fundamental law of this commonwealth should be changed, to the exclusion of all others ; and yet the people, knowing their own rights, and justly resolved to exercise them, laid aside the provision thus made by those who attempted to bind them, and provided, in the very face of that provision, for the call of a convention to amend the constitution.

I take it for granted, therefore, that any rules which you may think proper to lay down in reference to future changes in the fundamental law, will be disregarded by the people—that they will take the matter into their own hands, at any time when a change shall appear to them to be desirable, and that no legislator who may hereafter come within the walls of our capitol will feel himself bound by the two-thirds principle, even if it should be carried into the constitution by this body ; and that, if there is a majority in the legislature in favor of any proposed amendment, it will be submitted to the people. If, then, a majority of the people should ratify that amendment, who will say that it is not law—law as valid and

as binding as any that you have power to incorporate into the constitution now?

What court in your state will take upon itself to say, that such an amendment is invalid? Who doubted the legality or validity of the constitution of 1790, because it was not made in conformity with the provisions laid down in the constitution of 1776? Who, I ask, has doubted it? Who has called it in question? Who will say, that when the people rise in their might to prescribe new rules for their own government,—who, I ask, will say that those rules are not the law of the land? I do not believe that there is any man within the sound of my voice who will venture such an assertion.

But, Mr. President, it appears to me that there is a mis-conception of this whole subject. There is a great difference between those laws which the legislature passes for the government of the people, and that fundamental law which the people pass to give laws to the legislature itself. There is, I say, a great difference between the two.

The people have a right to change that fundamental law, and no power can do it for them, unless the people themselves choose to give that power to others. But there is no such wish here in Pennsylvania; the people do not wish to give the power to others.

You may provide such restrictions in relation to those laws that are to take effect without the vote of the people; but you cannot place such restrictions upon the people themselves to prevent them doing, as a body, that which they believe to be for their good.

I do not concur in the sentiments expressed by the gentleman from Beaver, (Mr. Dickey) in regard to the majority of two-thirds of the second legislature. I am one of those who believe that the people have as much confidence in a majority of themselves—and more, too—than they have in two-thirds of any body selected to represent them. I trust that they will always continue to have that confidence in themselves; it is a token of the security of our institutions; and I consider that it is neither democratic nor republican to say, that the people are afraid of themselves. If we place obstacles in the way, so that they shall not have the power to amend their own constitution except by extreme delay and difficulty, we may rest assured that they will disregard any such provision which we may make. They will act for themselves; they have done so before, and will do so again.

They have sent us here for the very purpose of clearing away what they consider obstacles in their way.

I believe that this amendment to the constitution, as reported by the committee, will be one of the most popular which we shall send forth to the people. Depend upon it, they will adopt it.

I do not believe that the people of Pennsylvania, after the experience they have had, will be desirous to call another convention together. Or, if it should be so, if another convention should be called some fifty years hence, the people of Beaver county may not have so high and able a man to represent them as the gentleman who sits on the other side of the house (Mr. Dickey.) So it may be with the city of Philadelphia; she may not have her judges and her lawyers there. So it may be with the county of Franklin; she may not have it in her power to send such an able tactician.

And I have no doubt that the people will prefer that their amendments should come through the legislature, from time to time as necessity may dictate, and in such manner that they may vote for it singly and alone. If they should be in want of amendments, they will consider that as the best mode of obtaining them; not to wait twenty, thirty, or fifty years, with amendments all the time accumulating upon them, at last to be submitted to a convention.

I repeat my conviction that this will be one of the most popular amendments which we shall adopt. Why should we adopt this two-thirds principle? Why should the opinion of one member from the county of Philadelphia, for instance, be considered to weigh as much as the opinions of two other members from a different part of the state? Where is the necessity for the adoption of such a principle here? There is none. And if there is none, by what course of reasoning shall we justify its adoption? It is a fundamental rule—it is a principle lying at the very root of all republican government, that the majority ought to govern; and to say, therefore, that a majority of two-thirds shall be required, is to demand that which is in direct violation of the principles which we profess.

Mr. President, I am here to adopt amendments to the constitution, according to the best lights which we have before us. I am anxious to do that, and that only, which, according to my best judgment, will promote the welfare and the best interests of the people.

Suppose that the legislature which authorized the call of this convention, had required that no amendment should be made to this constitution, unless upon a vote of two-thirds. Who would have entertained such a proposition? And what right have we to say, that the votes of two-thirds of the legislature shall be required? Sir, this question of amendment is one which a majority of the legislature ought to determine at all times—leaving it to the people to say, whether the action of that majority is right or wrong. And I shall give my vote accordingly.

Mr. DICKEY, of Beaver, said he regretted that the gentleman from Lycoming, who had prepared the amendment, was not now in his seat. I regret it, continued Mr. D., because I think that if he were here, he would, notwithstanding the animadversions of the gentleman from the county of Philadelphia, (Mr. Brown) and the gentleman from Bucks, (Mr. M'Dowell) lay just claim to as much democracy as either of those gentlemen can boast of; and I believe further that he would undertake to prove the true democracy of the provision he has offered.

Mr. M'DOWELL asked leave to explain. He had said that the doctrine set forth in this amendment was anti-federal and anti-republican; but he did not say that it was anti-democratic.

Mr. DICKEY resumed.

I hope the members of the convention will bear in mind the fact, that this amendment now before us comes from the constitution of the state of New York—that it was framed by the democracy of that state, having the sanction of the distinguished gentleman who now fills the presidential chair of this Union—the father of the democracy of the present day. It should not be denounced, therefore, as anti-democratic and anti-republican.

Few federalists, if any, were in the convention which framed that con-

stitution, and the opinion on the subject of reform was almost unanimous. How was it then—I ask the gentleman from the county of Philadelphia, (Mr. Brown)—how was it that the empire state, by a convention in which such men as the President of the United States sat as members, adopted this provision? How could it have been adopted by them if it was anti-democratic or anti-republican?

He would ask the gentleman if he would go so far as to control the action of the majority of the people, by the insertion of a provision of this kind? He would say, why not leave it at the option of a majority of the people to call a convention when they deemed one to be necessary? Where did the delegate get authority to say that it was anti-democratic to pass anything by a vote of two-thirds? It was easy enough to see why the legislature of New York required two-thirds to sanction the submitting of amendments to the people. We all know that the most common law cannot be passed without the sanction of the executive, unless by a vote of two-thirds of each branch of the legislature: for the governor can negative the action of a majority of either house, or of both houses. But, a vote of two-thirds, according to the argument of the gentleman from Bucks (Mr. M'Dowell) and that of the gentleman from the county of Philadelphia, (Mr. Brown) was anti-democratic. In the proposed amendment, the assent of the governor was not required to the amendments to be submitted to the people. Hence the approval of two-thirds of the second legislature was necessary before they could be submitted to the people for their ratification or rejection.

Mr. D. argued that the doctrine contended for by the gentlemen from the county of Philadelphia and the gentleman from Bucks, was entirely erroneous, and that every act of the legislature must receive the signature of the governor before it becomes a law. He trusted he had shown that the veto power was not anti-democratic. He doubted whether under the constitution of 1790, the action of the legislature was necessary to bring this convention together. He believed that the people could have convened it without the legislature acting in reference to it. And they should be left free to do so for the future. Among other objects of the veto power, it was to prevent the adoption of crude and hasty legislation, and also to protect the people from being troubled with demagogues, and amendments proposed by them, which they do not care one straw about, and do not want. We have had some as bright specimens of radicalism from the county of Philadelphia since May last, as ever came from among a free people. If we consulted our records, we should find that more wild propositions have emanated from the county of Philadelphia than from all the rest of the state; and the delegation from that county have consumed more of the time of the convention with wild projects not approved of by the county, and long speeches, than all the rest of the convention, and thus occasioned a vast expense to the commonwealth. And the delegate from the county, (Mr. Brown) who last addressed the convention, had gone far beyond any other member, and yet had not the boldness to pronounce the veto power anti-democratic. Mr. D. hoped that the amendment of the delegate from Lycoming would be adopted.

Mr. BROWN replied that we could not exactly characterize expressions and language that might be used in this body in the same manner

within these walls, as without them. He, therefore, could not comment here on what had fallen from the gentleman from Beaver, as might be done elsewhere. However, if the delegate would turn to the records he would find that so far as he (Mr. B.) was concerned, that he had not offered six amendments since he had been a member of this convention, and he was free to say that he was ashamed of none of them, and not one hour had been consumed in debating any of them.

How many hours, he would like to know, had been spent in debating propositions offered by the delegate Beaver; propositions, too, that were only calculated to disgrace the body. As to whether his (Mr. B's.) proposed amendments had been approved by the citizens of the county of Philadelphia, the gentleman from Beaver was at liberty to ask them. Now, whether his (Mr. B's.) amendments were radical or not, or approved of by the convention, was to be ascertained by inspecting the journal. When up before, he had spoken of the two-thirds principle as being anti-democratic, and he might have said then as he did now, that it was taken from the constitutions of many of the southern, western, and other states, viz: South Carolina, North Carolina, Tennessee, Ohio, Delaware, New York and Michigan. He believed that the same provision as we are now about to put in the constitution of Pennsylvania, was to be found in all those constitutions, and some others. He cared not whether this kind of democracy came from New York or elsewhere, it did not accord with Pennsylvania notions of democracy. He, therefore, could not give his assent to any such principle as was proposed. He trusted that the amendment would be rejected.

Mr. CHAMBERS, of Franklin, said that he had advocated and voted for amendments which had been submitted by gentlemen without inquiring whether they were democratic, federal, or republican. He had voted for them without considering from what side of the convention they came. It had happened that he had frequently voted for those which had been offered by his opponents, and against those of his political friends. With regard to the amendment of the gentleman from Lycoming, (Mr. Fleming) he would remark that it recommended itself to his attention. It was one of a highly important character, and well deserved the consideration of the convention. The proposition to introduce an article into the constitution providing the mode and manner in which future amendments shall be made to the constitution, was certainly entitled to the most serious attention and deliberation. He trusted, therefore, that we would not act hastily on the subject.

Although he had been elected to this body as a conservative, and he considered himself one, still he had entertained the opinion that amendments might be made to the constitution, which would be improvements, and he had voted for them. There had been many amendments, however, proposed, which he could not vote for. He was for having the amendments adopted, whether they met his approbation or not, put in the most acceptable form. With regard to the proposition then pending, providing for the making of future amendments to the constitution, he would say that although it might not be exactly what he could desire, he should be satisfied with getting it put into the best shape he could. He was disposed to vote for such amendments as he thought would meet the approval of the people of the commonwealth of Pennsylvania. He

entertained the opinion that the people would reject the amendments which might be adopted by this convention. But, whether they did or not, they, at least, should be put in such form as would make them unexceptionable, as respected phraseology and the grammatical construction of the sentences.

Believing that the amendment of the gentleman from Lycoming was an improvement upon the report of the committee, therefore, he was in favor of it. What, he asked, was the objection to it? Why, we had been told by the gentleman from Bucks (Mr. M'Dowell) that we were requiring too much, when we asked that two-thirds of the people should express their opinion in favor of a change of the form of government, before their petition should be entertained. This, however, was not the object in view; two-thirds of the legislature and not of the people, were required to effect a reform or change in the constitution. It was an entire mistake to confound the representatives of the people with the people themselves. He would repeat that the argument of the gentleman from Bucks was founded upon a wrong assumption—that the legislative assembly was the people themselves. The legislature of the commonwealth is a limited department of the government. It possessed certain delegated, limited powers, and was to be distinguished from the people. While he was free to admit that it was competent for a majority of the people to change the form of their government as they might think proper, yet it was a very different thing to allow a majority of their representatives to effect that object. If the people of the commonwealth should say that their representatives should provide for future amendments to the constitution, provided that there shall be two-thirds of the people in favor of such a measure—why, that was a totally different thing.

But, we had been told that this was an anti-democratic and anti-republican course of proceeding. What, he desired to inquire, had been the experience, and what the opinion of communities on this subject. Was the government of the United States anti-federal, anti-democratic and anti-republican? Why, in one of the provisions of the constitution of the United States, it was provided that amendments to that constitution must be first proposed by two-thirds of the congress of the United States, and afterwards passed upon by three-fourths of the legislatures of the several states. Here was a similar principle, showing, that if the public will was in favor of making amendments to the constitution, by a vote of two-thirds, they should be made.

We had been told that a like provision was to be found only in the constitutions of the states of New York and Michigan. Let us examine and see what had been the opinion and action of the people of those states who had revised their constitutions. The principle, as contained in the constitution of New York, was incorporated in the amendment of the gentleman from Lycoming. The people of Tennessee had, within a few years past, revised the constitution of that state; which now provides that all amendments which may be hereafter proposed, shall be published for six months before being acted on. And, that, after the constitution shall have been amended, no further amendments shall be made thereto under six years thereafter. The state of Connecticut—a northern state—had also revised her constitution within the last few years. That instru-



ment contained a provision that if a majority of the house of representatives should deem it necessary to alter or amend the constitution, the alterations or amendments should be laid before the next legislature, and if approved by two-thirds of each house, the amendments should be published, and if they met the approbation of the majority of the people, they should be adopted. Massachusetts, too, had revised her constitution, and what had she done in reference to making future amendments to her constitution? Why, a provision was there inserted, making it necessary that a majority of one legislature, should, in the first instance, be in favor of amending the constitution, and that the next legislature should give a vote of two-thirds in concurrence of that object, and that the question should then be submitted to the people. Under the constitution of Ohio, it was provided that, although two-thirds of the legislature might be of the opinion that the constitution should be amended, yet that they should direct the electors to vote for or against amending it. In the constitutions, also, of Michigan and Arkansas, was to be found the same principle.

The constitution of the state of Arkansas requires that the amendments shall, in the first place, be adopted by a vote of two-thirds of each house of the legislature—then that they shall be printed during the space of twelve months—then to be ratified by two-thirds of both houses of the next legislature.

Those western and northern states which have had their constitutions revised within a few years past, have adopted a principle in terms nearly tantamount to the proposition of the gentleman from Lycoming; nay, even going beyond that, in some instances, and requiring a vote of two-thirds of the legislature that first give their sanction to the amendments. This principle is not anti-republican—it is not anti-democratic—it is not anti-federal. It does not deserve any of the disparaging epithets which some gentleman on this floor have thought proper to bestow upon it. We who are in favor of it, say that it is a constitutional principle recommended to us by the opinion of those distinguished men who framed the constitution of the United States—recommended to us by the statesmen of all parties, who have lent their aid to revise the constitution of the states to which I have referred. It is a principle which gives stability to our government; it is a principle which goes to prevent the people from being unnecessarily harassed to vote upon questions affecting the fundamental law of the land. The great body of the people of Pennsylvania are not politicians by trade; they do not like to be brought to the polls except it be for some important purpose. And I, for one, am unwilling that our citizens should be harassed and brought out to the polls, without there being, at all events, such an expression of popular sentiment, rendered through the medium of two-thirds of the legislature, as will shew that there is some reasonable occasion why they should be called upon to vote.

Mr. SMITH, of Centre, said, I had indulged the hope, Mr. President, that the time had gone by when so much heat, so much party spirit, and so much unfriendly feeling would be manifested in this convention. I find, however, that the hope was delusive—that it has been all in vain. I find that when we come to act upon a matter which all of us must acknowledge to be of the utmost importance, we are rated soundly for

declaring our sentiments and convictions freely in this public body. For my own part, I had flattered myself that my course here had been such as not to render me liable to the observations or the animadversions of any member on this floor, be his principles or his party what they may. In this, also, I perceive that I am mistaken and disappointed—for I find such animadversions made upon myself, and that too, in a quarter from which I should not have expected to hear them. However, I have a plain and straight forward course to pursue. I shall pursue it without fear, favor, or affection, as I have endeavoured to do heretofore; and, so far as that course is concerned, I shall not hold myself responsible to any man in this convention:—but I shall hold myself responsible to my constituents alone. By them I am willing to be judged, and by their judgment I am content to stand or fall.

I advocated the amendment that was before us this morning—I allude to the amendment of the gentleman from Union, (Mr. Merrill) because I entertained the belief that the call for any amendments to the constitution should first come from the people. A majority of the convention, however, decided that the call should first come from the legislature. Agreeably to the principles which I profess, I must submit to the will of the majority. And I am perfectly willing so to do. But in doing so, I hold it to be my privilege to retain my own conviction that the course I have pursued is just and proper. I award to no man the right to interfere with me in that respect. But, amongst other things, the gentleman from the county of Philadelphia (Mr. Earle) has taken occasion to bear hard upon some of us for voting upon a particular motion in such a manner as we thought to be correct, and as our consciences pointed out to us to be so. Yesterday I was rated because I thought proper to vote in favor of postponing the further consideration of a part of the ninth article. And for what reason? Why, because it went to deprive a certain member of the convention of the opportunity of placing in the bill of rights a provision against increasing the debt of the state beyond a given amount. I am sure that, in voting as I did, I had no such design in view; for I believed then, as I believe now, that the article would still be left open to amendment. And I contend, moreover, that such a provision can as well be placed in the article on which we are now acting, as in any other part of the constitution. But I suppose that the gentleman had a number of amendments prepared, and that he feels himself aggrieved in not having been able to present them all. Well, Mr. President, it is an old adage, and not the less true because it is old, that those who live in glass houses should never throw stones. Now, let us see what the opinion of the gentleman from the county of Philadelphia was, and the convention will then perceive whether, in the course which he has pursued, he has acted agreeably to his own doctrines. By turning to our printed files, gentlemen will find the following resolution which he offered so far back as the tenth of May last. It is numbered eight:—

*Resolved*, That a committee of nine be appointed to consider and report, whether any, and if any, what provision ought to be inserted in the constitution, prescribing the manner and form in which future amendments to that instrument may be made at the desire and by the act of the people.

Now, continued Mr. S., the main object which I have had in view, has been that the first act towards future amendments should be on the part of the people; and because that was my object, I have been thus

severely animadverted upon by the gentleman from the county of Philadelphia. I think it might be well for him to look a little more closely to the "ways of his own household," and not to interfere with other gentlemen in what they believe to be a conscientious discharge of their duty.

I know, Mr. President, that it is not exactly in order to allude to these matters at the present time. I have been forced into it by the observations of the gentleman, in rating me for the vote which I gave yesterday. As to the amendment immediately before us, I suppose I had better say nothing about it, lest I should again incur the displeasure and subject myself to the animadversions of the gentleman from the county of Philadelphia. I will, therefore, take my seat.

Mr. MILLER, of Fayette, said he had stated the other day that he wanted to go home to attend to harvest. But he feared he should never get there in time for any useful purpose, unless the convention get on a little faster with the business before it. He would, therefore, call for the immediate question.

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

And the question being taken,

Shall the question be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the said amendment?

The yeas and nays were required by Mr. FRY and Mr. M'CAHEN, and are as follow, viz :

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Bonham, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Craig, Cum, Deany, Dickey, Dickerson, Fry, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Kerr, Konigsmacher, Long, M'Sherry, Merrill, Merkel, Porter, of Lancaster, Purviance, Russell, Saeger, Scott, Serrill, Snively, Thomas, Todd—44.

NAYS—Messrs. Banks, Barclay, Bedford, Bigelow, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Coates, Crain, Crawford, Cummin, Curl, Darrah, Dillinger, Donagan, Egan, Earle, Foukrod, Fuller, Gearhart, Gilmors, Grenell, Hastings, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Maclay, Magee, Mann, M'CAhen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Riter, Ritter, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Taggart, White, Woodward, Young, Porter, of Northampton, *President pro tempore*—60.

So the amendment was rejected.

And the question then recurring on agreeing to the section as amended:—

A motion was made by Mr. M'CAHEN,

To amend the said section by adding to the end thereof the words as follow, viz : " Provided, that if more than one amendment be submitted, it shall be in such manner and form that the people may vote for each amendment separately and distinctly."

Mr. M'CAHEN said, he should not occupy the time of the convention with any remarks on this amendment. Its object was plain, and such as, he should suppose, would receive the unanimous approbation of the

convention. It would prevent the legislature from connecting two dissimilar amendments, one of which might be good and the other evil, and in consequence of which connexion the good which was wanted, might be rejected by the people rather than be taken with the evil which accompanied it.

And on the question,

Will the convention agree to the said amendment ?

The yeas and nays were required by Mr M'CAHEN and Mr. SMITH, of Columbia, and are as follow, viz :

YEAS—Messrs. Banks, Bedford, Bigelow, Brown, of Philadelphia, Butler, Cleavenger, Cochran, Craig, Crain, Crawford, Cummin, Curl, Lenny, Dillinger, Donagan, Doran, Earle, Farrelly, Foulkrod, Fuller, Gearhart, Gilmore, Grenell, Hastings, Henderson, of Dauphin, High, Hought, Hyde, Ingersoll, Keim, Kennedy, Kerr, Konigsmacher, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merrill, Miller, Myers, Nevin, Overfield, Ritter, Ritter, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, White, Woodward, Porter, of Northampton, *President pro tempore*—59.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Bonhara, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cope, Cox, Crum, Darrah, Dickey, Dickerson, Fry, Harris, Hayhurst, Hays, Henderson, of Allegheny, Hiester, Hopkinson, Maclay, M'Sherry, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Russell, Saege, Scott, Snively, Sterigere, Thomas, Todd, Young—43.

So the amendment was agreed to.

And the question then again recurring on agreeing to the section, as amended,

Mr. EARLE said, he hoped that the report of the committee would be agreed to. It provides, continued Mr. E., for a government of the people, in accordance with the principle laid down in the second section of the bill of rights, and which is in the following words :—

“SECTION 2. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness : For the advancement of those ends, they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.”

Allusion has been made, continued Mr. E., to the constitution of the United States, and to the principle of two-thirds therein laid down as requisite to amendments to the constitution. That case is entirely different from that now under discussion. The two-thirds principle, while it did not apply to a consolidated sovereignty of a state like that of Pennsylvania, might apply to a confederated sovereignty like that of the United States ; and in the latter case, probably, even a unanimous consent might be required before a change in the constitution could be effected. In the constitution, as originally made, there were doubtless some provisions crept in, contrary to the will of the majority ; yet the people were obliged to take them all together. Such may be the case with us. If we submit the amendments all together, some of them may become the law of the land under the vote of a minority.

Allusion has been made by the gentleman from Centre county (Mr. Smyth) to a resolution presented by me, at an early stage of the proceedings of this body, providing for the appointment of a committee to

inquire whether any provision should be inserted in the constitution to enable the people to amend the constitution at their own desire, and by their own act. I hold that this is a proper amendment; and I ask the members of this convention, if the amendment, as it is now before us, will not enable the people to amend their constitution at their own desire and by their own act? It must necessarily be so, for it is the act of the people which makes the amendment valid as a part of the constitution, and if the amendment is not approved by the act of the people, it can not become valid as a part of the constitution.

In my opinion, however, the amendment does not go far enough, and if I could have hopes of being sustained by the convention, I would move to go a little further.

According to the principle of the bill of rights, the whole people of the commonwealth of Pennsylvania have a right to alter their government whenever they think proper. He would move an amendment—though he entertained no hope of its being carried—so as to make it a majority of male citizens, or male inhabitants above the age of twenty-one. He believed that principle was adopted in New York. He thought that the convention was elected by a vote of the whole people, and not the whole of the voters under the old constitution. Now, there was a correct principle adopted. He would move to amend so as to correct the phraseology.

Mr. EARLE then moved to amend the section by striking therefrom the words "at such time and manner," where they occur at the twelfth line, and inserting in lieu thereof the words "in such manner and at such time."

Which was agreed to.

Mr. DICKEY moved to amend the section by striking therefrom all after the word "amendments," where it occurs in the fourth line, to the word "shall" in the eleventh line thereof.

And on the question,

Will the convention agree to the said amendment,

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

YAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Butler, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Coates, Cope, Cox, Craig, Crain, Crawford, Crum, Cummin, Curl, Dillinger, Donagan, Doran, Darrah, Denny, Dickerson, Earle, Farrelly, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hout, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Pennypacker, Porter, of Lancaster, Purviance, Ritter, Ritter, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Taggart, Thomas, Todd, White, Woodward, Young, Porter, of Northampton, *President pro tem.*—101.

So the question was determined in the negative.

A motion was made by Mr. HIESTER,

Further to amend the said section by striking therefrom the words "as soon as practicable," where they occur in the sixth line, and inserting in lieu thereof the words "three months before the next election."

Mr. **HIESTER** said, his reason for offering this amendment was to make the section more explicit. The words "so soon as practicable" were very indefinite, and it would be better that the time should be explicitly proscribed.

Mr. **BARCLAY**, of Westmoreland, said that he saw no end to these amendments, and he hoped, therefore, that he would be sustained in the call for the previous question, which he now moved.

But the convention refused to second the demand.

And the question on the amendment of Mr. **HIESTER** was then taken, and decided in the affirmative without a division.

So the amendment was agreed to.

And the question again recurring on the adoption of the section as amended :

Mr. **MILLER**, of Fayette, rose and called for the immediate question.

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

And on the question,

Shall the question on the section as amended be now put ?

It was determined in the affirmative.

And on the question,

Will the convention agree to the section as amended ?

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

**YEAS**—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Bedford, Biddle, Bigelow, Bonham, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cope, Craig, Crain, Crawford, Cummin, Cull, Darrah, Dickey, Dickerson, Dillinger, Donagan, Doran, Earle, Foulkrod, Fuller, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Helfenstein, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenka, Keim, Kennedy, Kerr, Krebs, Lyons, Maclay, Magee, Mann, M'Cahen, M'Dowell, M'Sherry, Miller, Montgomery, Myers, Nevin, Overfield, Purviance, Riter, Ritter, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shelito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Taggart, Thomas, Todd, White, Woodward, Young, Foster, of Northampton, *President pro tem.*—84.

**NAYS**—Messrs. Barnitz, Chambers, Coates, Crum, Denny, Farrelly, Forward, Harris, Henderson, of Allegheny, Konigsmacher, Long, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Scott, Snively—18.

So the section as amended was agreed to.

A motion was made by Mr. **M'CAHEN**,

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

"SECTION 2. The legislature shall enact laws for the punishment of fraudulent debtors; but after the adoption of this amended constitution, imprisonment for debt in this commonwealth shall be forever abolished."

Mr. **M'CAHEN** said,

It had been his intention to have offered this amendment as section sixteenth of the bill of rights, but that he had been prevented from so

doing, by the indefinite postponement of that article. Should it be adopted here, the committee of revision will have no difficulty in finding an appropriate place for it in the bill of rights.

He had presented the amendment in the fervent hope that it might be adopted. He firmly believed that period of time had arrived, when the enlightened citizens of this commonwealth were willing to blot out forever this barbarous stain upon our free institutions; that Pennsylvania in the nineteenth century would assume a stand before the world which should at once place her the pride and the model of this western hemisphere.

It was true, he said, that some states in the Union had to some extent abolished imprisonment for debt, but none he believed had entirely eradicated it; but this convention had now the opportunity to place in the organic law of the commonwealth a declaration which would prohibit it for ever.

It was also true the legislature of this state had ameliorated the condition of the poor debtor; they had prevented our citizens from being imprisoned for debts of less amount than five dollars and thirty-three cents; saved much expense thereby to the counties and the commonwealth, and preserved the unfortunate debtor who may owe less than that amount from confinement within the loathsome walls of a prison; but under the existing laws freemen can be, and are shut out from their liberty, when they are indebted for a greater sum than five dollars thirty-three cents; and to be discharged from prison by the insolvent law, the expense attending such discharge was nearly as great as the amount of the debt.

Suppose then, he said, a man imprisoned for the paltry sum of five dollars and fifty cents,—but seventeen cents more than the amount provided for by law,—and he should be confined for six days,—and the probability is, that in a majority of cases he would not be discharged in less time,—does not this deprive him of the opportunity of laboring just so much time? thus making him indolent against his will, and denying him the equivalent for his labor.

Besides, he believed a citizen of another state could not bond for his discharge by the insolvent laws, until he became a citizen of this state. He was sure that great difficulties existed, and long confinement, before such *freemen* could be released from prison.

A citizen of our own state surrendered by his bail, or committed by the court for informality in his petition, is obliged to remain in jail until the next holding of a court. These are all matters for serious consideration.

But it may be answered, that the legislature have ample power to correct and remedy these evils. But he contended that would not be a sufficient reason for avoiding the subject now; and he maintained that it was directly within the province of this body, and ought not only to be calmly and deliberately considered, but should be unanimously adopted.

The question then that fairly presents itself is—does imprisonment for debt answer any good or just purpose?—is it in accordance with the spirit of the free institutions of a republican form of government? is it wise, humane, or politic? does it improve the spirit of sound morality or religion?

In his mind, the answer was at once in the negative. It is not just, it

is unwise, humanity revolts at the idea, morality and religion blush at the *results* of such punishment for poverty. Look at a picture which no doubt frequently has been stronger in reality than he presented it—the case of a father taken from the bosom of his family, without having committed any crime, torn from his helpless wife and children; they thus thrown upon a cold and uncharitable world; perhaps in addition to their destitution, sick, heart-broken; himself mortified beyond bearing, his pride and ambition prostrated, a virtuous citizen thrown into prison; his family liable to starve—because

“You take my house, when you do take the prop  
That doth sustain my house: you take my life.  
When you do take the means whereby I live.”

Let every man imagine this case his own, and he felt assured that this amendment would then meet general approbation. He had read in an old book of a circumstance which occurred in Virginia, and it forcibly illustrated to his mind this unchristianlike policy. The narration is as follows :

“A wooden jail in Virginia, with a prisoner for debt confined in it, took fire. The alarm spread; the jailor, in hastily turning the key, spoiled the lock. The prisoner, seeing all efforts for his release to be in vain, stripped off his clothes, thrust them through the bars of the door, which was of iron, and bade the keeper carry them, as being all which he had to his family. He then retired to a corner of the prison, laid down, and perished in the flames.”

Here, then, Mr. President, he said, you have a beautiful commentary upon the consequences likely to happen under this practice of government—this precious relic of antiquity.

He again asked, was it consistent with the republican precepts of this enlightened community, thus to deprive a free citizen of the enjoyment of his liberty, because he was so unfortunate as to be poor? Does their imprisonment for debt pay the debt? or does it not deprive the debtor of the opportunity to satisfy his creditor? What evidence have we in the past, that proves benefit to the creditor, and compensation to him for his claim, by disfranchising his debtor? It can then but satisfy a spirit of demoniac vengeance in the bosom of the creditor—what else? You place within the power of a creditor, who may be destitute of all the great attributes which should adorn the human heart, the means to oppress the unfortunate. Ay, the OLD SOLDIER! who may have periled his life for *the liberty we enjoy*, may in his old age, when all should strive to make his lot happy, to administer to his comforts, relieve his wants, and smooth his march to eternity, be *imprisoned* by an unfeeling creditor; and *there*, after having struggled for liberty for us, die in bondage.

It may be said, that public opinion would degrade the cruel wretch. “It is in the bond,” would be his reply—he but executed the law. You might point the finger of scorn at him, and detest him; but unfortunately the world, or a great many of its inhabitants, sustain the wealthy oppressor, when reputation, honor, and justice have deserted him, and he feels no punishment until the vengeance of God overtakes him!

Let us then be punished for our vices, not for our misfortunes; we



then preserve the moral law, and the virtues of our citizens. The almost entombing a man alive—the taking him from his family, throwing him among some who are abandoned wretches, outcasts upon society, without his having wronged any one, serves only to drive him to despair, to induce him to the commission of crime to satisfy his necessities, and it cannot produce good to the man or the community by the example or the punishment. It is therefore cruel, inhuman, and demoralising; it serves only to subdue the better feelings of the heart, provoke resentment against your laws and the creditor, and make him who was a good citizen, a good husband, father, brother, or son, a desperate villain.

What a pleasing *emancipation* from slavery would this be; commence in this fair state this great work of *abolition* among your own citizens, within your own boundaries, and you will then be better agents to advise the south to abolish slavery in their territory.

This amendment Mr. President, (he said,) ought to be adopted; should it not be, he would be disappointed; but he would have the proud consolation, in the exercise of his rights as a member of this convention, that he had exerted his humble abilities in advocating a principle which he religiously entertained, and firmly believed a majority of the people were in favor of; he would regret if his feeble exertions had not been sufficient in language or eloquence in obtaining its adoption; but the principle in the amendment, contained volumes of language, and eloquence unsurpassed.

Mr. STERIGERE, of Montgomery, fully concurred in the sentiments expressed by the delegate from the county of Philadelphia. The gentleman must not be surprised if it should be voted down, as the legislature have full power over the subject. It was now time to prepare the amendment for a third reading.

Mr. EARLE, of Philadelphia county, was sorry that his colleague had introduced this amendment; because, although no doubt offered from a good motive, it was calculated to do harm rather than good. He could say, after much personal observation for the last ten years, and a great deal of information which he had obtained from magistrates, constables, and other officers, that every law which had been passed by the legislature for the benefit of the poor, had proved, on the contrary, extremely oppressive and injurious to them.

He knew that the law preventing arrest for debt for sums under five dollars and thirty-three cents, and the seizure of goods for rent, had operated very injuriously. He knew landlords that had charged twenty-five per cent. more rent, on account of the difficulty they had in collecting it. He was of the opinion, when this law was passed, that it was a good one, but experience had convinced him that it was not.

He thought it important to say, that the constitution shall not be amended by the legislature, without the concurrence and sanction of the people. The Bill of Rights should set forth that it shall be amended as they think proper.

Mr. EARLE then moved to amend, by striking out all after the words "section 2," and inserting in lieu thereof the following, viz:

"No amendment to this constitution shall ever be made in any manner whatsoever so as to have any force or validity, unless the same shall have

been submitted to a vote of the people, and by them ratified or approved."

Mr. M'CAHEN said it was evident that his colleague was afraid to vote on the question. Unless the gentleman could offer some objections to his (Mr. M'C.'s) amendment, he would cheat him out of his vote.

[Here the CHAIR (Mr. Porter) intimated to the gentleman that he was not exactly in order, in making use of such an expression.]

Mr. M'CAHEN proceeded.

He had yet to learn how the condition of the poor had been made worse. He could not believe that the landlords charged twenty-five per cent. more—that they would be guilty of making any such cruel charge. He thought it anti-christian if they did so.

If the creditor fears that he will not be paid, let him be more careful whom he trusts, and the debtor will then be more careful not to go beyond his means.

It seems to me to be nothing less than barbarous to continue this practice of imprisonment, in the absence of all crime; and it is the misfortune of the debtor, and not his crime, that he is unable to fulfil his engagements with his creditor; and yet, because he may be unfortunate, you hold before him the terrors of a prison. How often may instances occur in which men may be so unfortunate as to have all their earthly possessions destroyed by fire, and may thus be left without the means of subsistence. Yet here also the creditor may step in, and throw his victim into prison.

Sir, this should not be. It is time that this practice, which I can only regard as a relic of the barbarism of past ages, should give way before the enlightened intelligence of the present day. While the creditor has ample power to take all the property of the debtor, why should we suffer him to be incarcerated in a dungeon?

Mr. MILLER, of Fayette, said that he thought he had already given sufficient evidence of his anxiety to go home to attend to his harvest, but that lest he had not done so, he would now ask for the previous question.

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

And on the question,

Shall the main question be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the amendment to the said report, in the words as follows, viz:

"Sect. 2. The legislature shall enact laws for the punishment of fraudulent debtors; but after the adoption of this amended constitution, imprisonment for debt in this commonwealth shall be forever abolished."

The yeas and nays were required by Mr. M'CAHEN and Mr. KEIM, and are as follows, viz :

**YEAS**—Messrs. Brown, of Philadelphia, Butler, Chandler, of Philadelphia, Clark, of Dauphin, Crain, Denny, Hastings, Hiester, Keim, M'Cahen, Merrill, Ritter, Russell, Scott, Serrill, Smyth, of Centre, Taggart, Porter, of Northampton, *President pro tempore*—18.

**NAYS**—Messrs. Agnew, Ayres, Banks, Barclay, Barndollar, Bedford, Bell, Biddle, Bigelow, Bonham, Chambers, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Coates, Cope, Craig, Crawford, Crum, Cummin, Dickey, Dillinger, Donagan, Earle, Forward, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Hayhurst, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Kerr, Konigsmacher, Krebs, Lyons, Maclay, Magee, Mann, M'Dowell, M'Sherry, Merkel, Miller, Montgomery, Myers, Overfield, Pennypacker, Porter, of Lancaster, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Snively, Sterigere, Stickel, Thomas, White, Woodward—68.

So the amendment was rejected.

A motion was made by Mr. Cox,

That the convention do now adjourn.

Which was disagreed to.

On motion of Mr. STERIGERE,

*Ordered*, That the said report as amended be referred to the committee appointed to prepare and engross the amendments for the third reading.

A motion was made by Mr. HIESTER,

That the convention proceed to the second reading of the report of the committee to whom was referred the subject of the public improvements, public loans and state debt, in the words as follow, viz :

“ARTICLE . —The public debt of this commonwealth shall never exceed the sum of thirty millions of dollars.”

And the said motion being under consideration,

A motion was made by Mr. EARLE,

That the convention do now adjourn,

Which was agreed to.

And the convention adjourned until half past nine o'clock to-morrow morning.

## THURSDAY FEBRUARY 7, 1838.

Mr. EARLE, of Philadelphia county, presented a paper concerning himself.

The CHAIR said this was not in order.

Mr. EARLE then moved for the reading of the paper, and that it be entered on the journals; and, leave having been given, the paper was read as follows, viz:

PHILADELPHIA, February 8, 1838.

*To the convention to amend the Constitution:*

GENTLEMEN:—I was not present at the reading of the journal of the sixth instant. I have seen an entry therein, perhaps not strictly necessary to have been made, that I was called to order for using the expression "untrue," in relation to statements made by Mr. Fuller. In justice to myself, I wish to say that the statement so characterized by me were of a personal character, bearing on myself, and supposed to impugn my motives. And, in justice to Mr. Fuller, I wish to state that I neither thought, nor intended to intimate that he had knowingly made an incorrect statement. I request the insertion of this on the journal.

THOMAS EARLE.

Some discussion took place on the question whether it might not be better to correct the journal, but objections being made to any alteration of the record, the motion of Mr. EARLE was agreed to; and the paper was received and laid on the table.

Mr. HESTER renewed the motion submitted by him last evening,

That the convention do now proceed to the second reading of the report of the committee to whom was referred the subject of the public improvement, public loans and state debt?

The yeas and nays were required by Mr. PURVIANCE and Mr. HESTER, and are as follows, viz:

YEAS—Messrs. Ayres, Banks, Bardollar, Barnitz, Bonham, Chambers, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Cox, Craig, Crawford, Crum, Curl, Darrah Denny, Dickey, Dillinger, Donagan, Earle, Fry, Fuller, Gamble, Gilmore, Harris, Hays, Henderson, of Dauphin, Hester, High, Hyde, Jenks, Kerr, Konigsmacher, Krebs, Long, Maclay, Magee, Mann, Martin, M'Dowell, M'Sherry, Meredith, Merkel, Miller, Montgomery, Myers, Nevin, Payne, Pennypacker, Porter, of Lancaster, Ritter, Russell, Scheetz, Scott, Sellers, Seltzer, Smyth, of Centre, Snively, Sterigere, Stickel, Taggart, Todd, Young, Sergeant, *President*—68.

NAYS—Messrs. Agnew, Baldwin, Barclay, Bedford, Bell, Brown, of Northampton, Chandler, of Philadelphia, Cope, Crain, Cummin, Dickerson, Doran, Dunlop, Fleming, Forward, Gearhart, Grenell, Hastings, Hayhurst, Hopkinson, Houpt, Ingersoll, Keim, Kennedy, Lyons, Merrill, Overfield, Porter, of Northampton, Purviance, Read, Riter, Saeger, Serrill, Shellito, Smith, of Columbia, Sturdevant, Weaver, Woodward—38.

So the question was determined in the affirmative.

The said report being under consideration, as follows, viz :

"ARTICLE.— The public debt of this commonwealth shall never exceed the sum of thirty millions of dollars."

Mr. HIESTER rose and said—

That at this late period of the session, and when the convention was so much pressed with business, he was not disposed to consume much of its precious time. For he was as anxious to get through at the earliest possible period, as any other gentleman could be. He should therefore ask the attention of the convention but for a very few minutes.

This subject had received the deliberate consideration of a committee of nine members of this body, and they appeared to have been unanimous in their report, for there was no minority report, which he presumed would have been the case had they not been so. The able and efficient chairman of that committee (Mr. Stevens) was now attending to the duties assigned him as a member of the house of representatives. And, as in his absence, no other member of the committee evinced a desire to urge the consideration of the report, and as he (Mr. H.) considered the subject matter of it, of vital interest to the citizens of the commonwealth, he had thought it a duty to call it up, with the view of getting a vote on it.

What sir, (said Mr. H.) is the situation of our public debt at the present time? It has already accumulated to the enormous amount of twenty-five millions of dollars. The annual interest of which, at five per centum per annum, amounts to twelve hundred and fifty thousand dollars. And if apportioned among all the taxable inhabitants in the state, agreeably to the last enumeration would make about eighty-eight dollars to each one. Is it not, therefore, time to pause and reflect on the propriety of putting some limit to its indefinite increase?

I am not (said Mr. H.) unfriendly or opposed to internal improvement, for the advancement of which almost the whole of our state debt has been created. On the contrary, I am, and always have been, friendly to a proper and judicious system of internal improvement, through the aid of which the riches and great resources of this commonwealth can alone be fully developed. But, sir, I have, from its commencement, deprecated the manner in which it was gone into. Instead of concentrating and applying all the energies and resources of the state, to the completion of the main line of improvement between this city and Pittsburgh—and by which course it might have been finished years ago, and before now have produced a revenue in aid of further improvements—and they then might have commenced and completed the next most important work, and so on successively from one to another, according to their relative magnitude and importance, thus securing an accumulation of income, the course has been, to begin works in all parts of the state simultaneously, which has retarded the completion of any of them, until a very recent period. Such was not the course pursued by our sister state of New York. She completed her great western canal from Albany to Buffalo first, before she began other branches, and when that was done, she went on to that which was deemed next in importance, and so successively from one to another. Thus accomplishing much more with an equal amount of money than we have done. Ohio has done the same, first completing her great chain of

canal through the state, connecting the Ohio river with lake Erie, and then undertaking other works of lesser magnitude.

We appear, however, in this particular, not to profit by experience. The legislature from year to year seem to follow in the beaten track of their predecessors, if they do not actually exceed them, in making prodigal appropriations. For it is no longer ago than at their last session, that they passed what was familiarly known as the "mammoth improvement bill," making extravagant appropriations to incorporated companies, and for the commencement of new projects. Which, had it not been arrested by the patriotism and firmness of the executive, in the exercise of the veto power, would have laid the foundation for an additional expenditure of eight or ten millions of dollars.

We have already had to pay a direct tax for several years to meet the interest becoming due on the public debt. And every one acquainted with the finances of the state knows, that had it not been for the judicious arrangement with the United States Bank, in securing so large a bonus for the charter, which was granted to it, that it would not only have been necessary to have continued that tax, but to have much increased its amount. And should the amount of the public debt not be limited, direct taxation will inevitably follow as a necessary consequence.

The limitation proposed, may be objected to as being unprecedented and impolitic. When the public debt of the state of New York was not one-third of the present amount of our debt, she provided in her amended constitution of 1821, that the tolls accruing from her public improvements, the duties on the manufacture of salt, and on auction sales, as they were then established by law, should be inviolably set apart for the liquidation and final redemption of that debt. Here then, we have at least one example of a sinking fund being created by the organic law of a state, for the purpose of discharging the public debt.

But suppose it be unprecedented. Is not the amount of our public debt also without an example in any of the other states of this Union? And as I am not one of those who think a public debt a blessing to the commonwealth, and believe therefore that the limitation proposed, is right and proper in itself, I, for one, do not require a precedent to govern my vote in relation to it.

Then, as to the policy of the proposed limitation, should it be adopted, our debt might be enlarged five millions more before it reaches the maximum. Then we have nearly three millions of dollars, received from the general government, as our quota of the surplus revenue, which is now loaned to some of our banks, and unappropriated. And although this money was received with the contingent reservation that it should be refunded if required; yet it is morally certain that neither this state, nor any other, will ever be called on to refund any part of it. I assume, therefore, that it belongs to the state absolutely. In addition to this, we have over two millions of bank stock, which may at any time be converted to improvement purposes. Here then, we have at least ten millions of dollars, which may be applied towards completing the public improvements now commenced, and in progress, before the contemplated limitation can operate as a barrier. And it is hoped that the nett proceeds from the present improvements, and from those that will be brought into use during

the time that that sum will be expending, will afford an accumulation of funds to be applied to the same purpose. This then, in my apprehension, would afford a fund sufficient to enable the system to be carried on as speedily as the true interests of the commonwealth require.

I do not, sir, think it incumbent on the present generation to make all the improvements that may be necessary now, and hereafter. I would, therefore, go on with more economy and prudence, and leave something for the succeeding generations to do, more than merely to raise the ways and means to pay the public debt, which our lavish and improvident course is about to saddle on them. And should the real interests of the citizens of the commonwealth in process of time, require a greater expenditure of money, and a swelling of the debt beyond the maximum proposed, it will be no very difficult matter for them, under the amendatory clause, adopted by the convention,—if ratified by the people—to give that authority to the legislature.

Before I sit down, Mr. President, I propose to amend the report of the committee by adding thereto the words following, viz: "Unless in time of war, insurrection or invasion, provision for the public safety should require it to be increased beyond that amount." The reasons for this amendment are obvious. If the public debt should be at its maximum and any or all the calamities mentioned in the amendment should occur, the hands of the legislature and executive would be bound. And however great the emergency, provision could not be made to prevent or arrest such calamity, excepting by first amending the constitution. While therefore I would not permit the public debt in time of peace to be increased beyond the amount proposed by the committee in their report, I should deem it impolitic and unwise to make the limitation so absolute that it could not in times of great public calamity or danger be increased.

Mr. HIESTER concluded with moving to amend the report, by adding to the end thereof the following, viz: "unless in time of war, insurrection or invasion, provision for the public safety may require it to be increased beyond that amount."

And the amendment being under consideration,

Mr. PORTER, of Northampton, rose and said:—

I was opposed, Mr. President, to proceeding to the consideration of this report, and I am opposed to the adoption of any provision in the constitution of Pennsylvania in reference to the limitation of the public debt.

My own peculiar situation in relation to the system of internal improvements in our commonwealth, renders it necessary that I should recur to a scene which took place so long as thirteen years ago.

I was a member of that convention, held at Harrisburg, which recommended to the people the adoption of that system of internal improvement which we now have. The convention was held in the early part of the month of August, in the year 1825. I was one of the number of twenty-seven delegates who opposed the system. At that time the great object of the citizens of Philadelphia and of the west, was to make a thorough communication from the east to the west. On the occasion alluded to, I observed that if we went into a system, we ought to go into a general one; that I was for developing the resources of the common-

wealth under the guidance and advice of experienced and competent engineers, and that when the various parts of the various public improvements should have been reported on by competent men, the reports thereon should be laid before the legislature and the people, that they might exercise their judgment in relation to them. I was opposed to plunging headlong into a system without the necessary knowledge arising from explorations and surveys; and I well remember saying at that time—and for saying which an attempt was made by the friends of internal improvement to throw ridicule upon me—that you could not get the line to Pittsburg completed without running the state in debt to the amount of fourteen or fifteen millions of dollars. Sir, that which was then mere assertion has now become history. On that occasion, however, I was overruled. The state determined to embark at once in a system of internal improvements, and what has been the consequence? Well indeed may the rich and powerful county of Lancaster be opposed to a state debt. She has had her rail road from Philadelphia to Columbia at an expense to the commonwealth of three millions of dollars and upwards, she has had her canal from Middletown to Columbia, costing nearly a million more; and now because she will undoubtedly have to pay her portion of the state debt, after receiving all these advantages, she does not wish that the debt should be increased for the purpose of improving other parts of the state. I have no doubt that the same reasoning would apply to the gentleman from Adams, (Mr. Stevens) who is not now in his seat. Internal improvements are going on in his rich and fertile county. You have your main communication from the city of Philadelphia to Pittsburg, and I have now in my eye a delegate on this floor, who, as a representative of the people of Pennsylvania in the state legislature, desirous of carrying out this system, and considering that the faith of the state was pledged to carry it out, voted to appropriate money to the amount of twenty millions of dollars, not one single cent of which was expended in the county in which he resided. Now, I will ask the members of this convention, is it acting with good faith to those counties which have stood by the system of internal improvements through evil report and good report—is it fair, is it just, is it right that the legislature should be bound down by such a constitutional provision as is here proposed, at least until every county in the state shall have reaped a share of the advantages to be derived from the system?

What is the amount of your state debt at the present time? It is about twenty-eight millions of dollars. For what has that debt been incurred? For internal improvements that are worth the money. I grant that there has been much money expended uselessly by those who have had the disbursement of it: but still your public works are worth all the money which has been expended upon them. What then is your debt? It is nothing, absolutely nothing. You have a communication from Philadelphia to Pittsburg. You have an unfinished line from Columbia to the Maryland line. Your Union canal locks are only eight and a half feet wide, while others are seventeen feet. If the Union canal is to be the only chain of communication by water from Susquehanna to Philadelphia it must be enlarged. There is another great avenue which is of vast importance. I mean the communication by water between Lehigh and the Susquehanna. Nor is that all. The faith of your state is



pledged to extend the north branch improvement of the Susquehanna to the state line, and that up the Delaware to Carpenter's point, if not to the Lackawaxen.

Nor yet is this all. The only feasible route, if there is one, from the city of Philadelphia to lake Erie by water, will be found to be by the west branch of the Susquehanna. And you have other deficiencies in the state works which must be supplied, in order to make those profitable which have already been constructed.

How is it with the Allegheny from the mouth of the Kiskiminetae upwards to the state line? The state of Pennsylvania, to do justice to herself, must extend the navigation of the Allegheny river to that point, and all these improvements will be cut off, if you adopt the proposition before you. Are the people in all the counties of the state through which these improvements must pass, ready to surrender their claims? Does any gentleman here imagine that they are ready to do so? If he does, I can assure him that he deceives himself greatly, and I call upon gentlemen to pause and reflect before they tie up the hands of the legislature, and say that nothing further shall be done.

I am altogether opposed to this proposition. It involves no principle of government, it never ought to form a part of the fundamental law of the land, and, so far as my opposition can go, it never shall. It is a sheer matter of legislation—a matter on which legislative discretion may be well exercised. And whenever the people of this commonwealth shall deem it expedient to increase the state debt, I want to know whether they are not sufficiently capable of self-government to decide how far they shall go? I ask, gentlemen, are not the people capable of judging for themselves in this matter? And I ask further, whether any gentleman can point me to a single petition asking this convention to insert a provision of this nature in our organic law? I again call upon gentlemen to pause, and reflect seriously on this question. I ask those delegates who reside in a part of the commonwealth which as yet has received no benefit from the system of internal improvements, whether they are willing to tie their hands from this time, henceforth and forever? I ask the delegation from the city of Philadelphia—I ask the delegation from the county of Philadelphia, if they are willing, by sanctioning a provision of this character, to shut up all the other avenues of trade to this city—this great commercial emporium of our commonwealth, than those now in use? If they are willing to say that nothing more shall be done? For they could not take a more effectual way of doing it than by passing the amendment proposed. The county in which he resided had received but a small share of the public money. It is true that a part of the Delaware canal, passing through the county of Bucks, extending some seven miles into Northampton, was of great importance to the citizens of Northampton who had felt the benefit of it.

But we have had a survey made extending the work to other counties, and the faith of the state had been pledged to carry it into effect. And we are not willing to release the commonwealth from its obligation. There are other objections. If it was proper to limit the state debt, as was contended by some, he would ask gentlemen if that which they now thought a proper amount of state debt, would be so regarded when our population should be doubled or quadrupled. The state of Pennsylvania

was marching on in population—emigration was induced by her climate, her institutions, her agricultural and her mineral wealth; and doubtless in a quarter of a century the population would be doubled.

Now, he would ask, supposing that to be the case, whether the state debt, limited to the amount proposed, would be sufficient? When the internal improvements are paying the interest of the debt, the debt may be considered as paid. We should soon have income enough to pay the interest of the improvements. But whether we had or not, he did not care a button. He (Mr. P.) would put it to those gentlemen who live in the neighborhood of the improvements to say whether or not they had not enhanced the value of their property far beyond the amount of the expenditure. He was not to be frightened at these bugaboos. He would be willing that we should pay off the debt, and begin again—take a fresh start. There was no danger to be apprehended from incurring a new debt, when by so doing we are enhancing the value of property, and consulting the convenience and comfort of every man in the commonwealth. As we are embarked in this internal improvement system, he did not think it would be doing justice to those parts of the state who had not partaken of the benefits of it, to give it up. He moved the indefinite postponement of the report and amendment.

Mr. AGNEW, of Beaver, said that he should most certainly vote for the indefinite postponement of the report and amendment. He was free to admit that when the report was first presented to the convention the impression made upon his mind was favorable to it. But examination and reflection had convinced him that he was mistaken in the view he had taken of it. He thought that no man who had considered the subject could have any hesitation as to the course he ought to pursue. He viewed it without any reference to local or sectional feeling. This convention ought to act on the great principles of policy, and not on sectional grounds. Who, he asked, could calculate what would be the amount of our wealth, and the extent of our resources for the next twenty years? And who would pretend to say what ought to be our policy for that period to come? During the last twenty years the commonwealth of Pennsylvania had increased in wealth and population far beyond what any man could have foreseen; and no man could see the eminence it was capable of reaching. To stop our internal improvements now, and to say that the state debt shall not be increased beyond thirty millions, was preposterous. This was a subject which the public mind and the public sense should regulate.

It had no connexion with the power of the government, nor with the liberty of individuals, but it was simply a question of policy only. It was a question of policy dependent on circumstances. On this subject of debt the people are always more sensitive than on any other. The fact is—when you touch their pockets, you touch their feelings. There could be no doubt of the propriety of exercising a proper vigilance to prevent the public money from being squandered. But while that was admitted, we ought not, on the other hand, to be parsimonious, and thus lose sight of the interests of the state. While others states were marching to power and wealth, in consequence of the exercise of public spirit in reference to their internal improvements, shall it be said that Pennsylvania, with a capital greater than any of them, shall cripple herself by

a constitutional provision of this sort? There certainly existed no motive of policy for doing so, at least none that he could perceive. Such a provision would, in his opinion, be detrimental to the best interests of the commonwealth of Pennsylvania. What would be the consequence of it? Did any man suppose it would prevent a debt? When works are going on, and the commonwealth cannot raise a public loan in order to complete them, the state would feel itself compelled to commit those works to the hands of private corporations to finish them. It would be found, too, that the representatives of the people would not hesitate to vote for the adoption of that course, particularly when they said that public opinion pointed it out, and that other states were taking the lead of Pennsylvania. When great public and productive works were abandoned by the state, private corporations would carry them on—would do what the state ought to have done, and the state would subscribe for the stock.

Now, it was no argument in favor of the proposed amendment, to say that hereafter if the state did not like this restriction, the constitution could be amended, and that the people must wait until that was done, before they could carry their great work of internal improvement into completion. Matters of this sort ought, in his opinion, to be regulated by circumstances.

Mr. CHANDLER, of Philadelphia said that considering the city of Philadelphia was deeply interested in internal improvements, he would avail himself of the present opportunity to make a few remarks. He was in favor of the indefinite postponement, because he considered the debt in which the state was now involved had been the means of the greatest fiscal blessings the state had ever enjoyed. It was not the fact only that merchandize could be transported to, or from, the city of Philadelphia, but that the great mines of our state had been opened, and all the vast products sent to market—thus diffusing wealth to every part of our community. The state debt had emphatically been a blessing to us, and it should be so regarded. At present, however, the improvements were not sufficiently extended for all to enjoy them. It might be said, he presumed, that the works already executed, did not seem to warrant the amount of debt which had been incurred. That might appear to be the case, but then it was to be recollected that at the commencement of the internal improvement system, (as commonly happened in making new experiments,) a great deal more money was spent than would now be done in making the same kind of improvement. The state debt was at present, under thirty millions of dollars; but, if it was restricted to thirty, forty, or one hundred millions of dollars, it would seem to be an indirect invitation to extend the debt to the amount to which it might be limited. It was the policy of the state to keep the debt as low as it consistently could.

Pennsylvania was surrounded by rivals for the trade of the west. She felt that she was yet behind the state of New York as to her internal improvements. Much money had been spent by this commonwealth to compete with her, and it had been well spent, and much more would be required to give the state the pre-eminence which she ought to attain among the great agricultural and commercial states of the Union. More channels of communication must be opened with the interior by canals

and rail roads, so as to enlarge the operations of trade. Were we to say that we would not go on with our improvements, and that we would jeopard all we had done? It would be bad policy indeed, to throw away all that we have attained, and jeopard all hopes of the future.

It was true, as had been remarked by the gentleman from Beaver, (Mr. Agnew) that one of the consequences of limiting the state debt would be to throw works, commenced under state authority, into the hands of private companies, in order that they might be completed under their superintendence. The state would have to extend its credit to carry them through. That was certain, and even if it was one of the best companies in the state, it would be rendered unproductive, if the state debt should amount to the prescribed sum as proposed by the amendment now under consideration, or any other, and it should happen to be unfinished.

The state had authorized the making of a rail road from Sunbury to Erie, and a branch to Pittsburg, and it may be necessary for the state to take it to themselves from the company. He asked if we should limit the state debt so as to take away the power of doing good. It would be legislating with a good intention—cutting off the means of good—providing for the chances of almost the certainty of evil. The people of Pennsylvania have no need to be alarmed about their state debt—he meant those living out of the city of Philadelphia. Philadelphia had curtailed the amount of her proportion. He apprehended that there were parts of the country—the large counties especially through which the improvements pass—where the people are jealous enough of the great land owners. Besides, they have a representation in the legislature who are required to vote against the extension of the state debt—the very proposition we have here. And it only went to show that the people were jealous of a state debt. It, therefore, was, as he had before remarked, good policy to keep it as low as it can consistently with the welfare of the commonwealth be kept.

If it was the wish of the people of this great state to hang behind the state of Maryland, why they could say so at once. If we were desirous to promote, as far as we could, the prosperity of New York, and to be tributary to her, then it would be as well to limit the state debt. Or if, also, we wish to be tributary to New Jersey, we might say the same. We could give up all to our rivals.

The legislature have the power to do all this, and they would do it, whenever it shall be said that the interests of Pennsylvania are not worth caring for. We could then carry our coals and iron to the great empire state—to whom we were bound to pay all homage and deference. When we were prepared to do that the citizens would lay the keys of our state at the feet of New York, and with ropes round their necks would ask to be permitted to be her slaves!

Supposing it to be really necessary to limit the state debt, we all knew how popular would be the legislators who would assert that they did not wish to tax the people—to tax the poor for the benefit of the rich? All this would be the result of adopting the proposition now pending before the convention.

He, however, relied on the good sense of the people of Pennsylvania.

and could not believe that they would give their assent to any such provision. We were all alive, if not to our own mental condition, at least, to the physical advantages of what we have now, or may possess. And he trusted that the convention would never be found aiding and abetting in any act, to check the improvement and prosperity of the state. No difficulty was experienced in paying the interest of the debt. Our canals and rail roads were rich in productiveness, and had increased and would increase in value. If he was ready to say that the debt should not exceed the present amount, then would he also be ready to say that he was content with the prosperity the state of Pennsylvania already enjoyed—that he desired no greater, and that he did not care about New York, New Jersey and Maryland outstripping Pennsylvania in internal improvement, in wealth and every thing else.

He trusted that the question would be immediately postponed, so that the legislature might not be led to suppose that this convention were willing to commit any such suicidal act as to adopt a provision of this character.

Mr. HAYHURST, of Columbia, wished to say a few words on this question before giving his vote. He was not willing to have it understood that he wished the public debt to be increased. He thought, that we had gone rather too far in proportion to our means with our internal improvements. He, however, was not for crippling the energies of the state, and permitting other states to take the lead of Pennsylvania in their internal improvements. He had been anticipated, in part, in what it was his intention to have said, by the gentleman from Northampton (Mr. Porter) and the gentleman from the city of Philadelphia, (Mr. Chandler) therefore he had only a few observations to make.

One objection might be removed by the amendment proposed by the gentleman from Lancaster, and that was by saying the state debt should not exceed a certain amount in a time of exigency or war. But he was not willing to say now what might be necessary for the future, and he would not limit the public debt to any particular sum, because the people were always competent to decide what might be necessary for the time being. If there was any one thing more than another of which the people were particularly jealous it was their money. There was nothing which rendered a legislator more popular with the people, than his being the opponent of taxation. In what a predicament would the adoption of such an amendment as this place us! All knew that we were liable to accidents by flood, or fire or a thousand unforeseen disastrous events. And yet with all this knowledge before us, we were prepared to prostrate the energies of Pennsylvania at the first calamity! For, as has been truly observed by the delegate from the city, (Mr. Chandler) if the debt was limited to fifty or thirty millions, or any other sum, it would be a direct invitation to involve the state to that amount. Many of the public works depend for their utility upon the dams erected in the river Susquehanna. Well, supposing them to be swept away by an inundation, and the state to be in debt to the amount fixed by the constitution—how was legislative aid to be obtained? It could give no aid; and thus by the adoption of such an amendment as this, we should make desolation still more desolate. After having expended twenty six millions in making internal improvements, we should be prevented by an unfortu-

nate prohibition from erecting bridges, dams, &c., so that they would be rendered useless, and Pennsylvania become tributary to other states? And all on account of a restriction which was not asked for?

What signified the expenditure of a million of dollars to repair any accident that might have happened to the public works, when put in competition with the revenue that would be lost in consequence of their lying useless, perhaps for years? It was his decided and deliberate opinion that the adoption of a provision, limiting the state debt to a certain amount, would be highly impolitic and injurious to the best interests of the commonwealth. It might be a very popular movement to limit the state debt, but it would be extremely ruinous in its consequences. If popularity were put into one scale, and the interest of the commonwealth into the other, he (Mr. H.) would most assuredly go for the interest of the state.

There was another view to be taken of the case. The march of intellect was onward. This was the age of improvement. Twenty years ago rail roads and canals, were spoken of in the same strain as animal magnetism is now. Very little faith was put in their practicability. Now, supposing the march of intellect should result in the discovery of other improvements, and Pennsylvania to be in debt to the amount to which she might be limited, she would consequently lose all the advantages she would have gained but for her narrow-minded policy. She would then be unable to keep pace with the other states of the Union. She would be a dark spot in the map of the United States.

Let us pause before we give the keystone state this retrograde movement. Let us put her in a condition to be able to co-operate at all times with her neighboring competitors. Leave her unshackled, and his (Mr. H's.) word for it, she would be fully able to compete with both her northern and southern neighbors and competitors. But fetter her, and you ruin her. He conjured delegates not to do it. Let us reflect long and deeply before we determine to check her prosperous career. Leave her to the wisdom of her legislature.

By whom, he would ask, had this restriction been called for? He had heard nothing said on the subject in his county. If it be a blessing to be thus restricted, two years after the adoption of the constitution would find her so. He would say, let us trust to her virtue and intelligence for the time to come, and not now impose a restriction upon her action which might be calculated to promote her best interests.

He would vote for the indefinite postponement of the amendment. If, that should fail, he would vote for an amendment like that of the gentleman from Lancaster; although he confessed that he would prefer voting against the whole proposition, leaving the subject to the representatives of the people to act as circumstances might require.

Mr. FLEMING, of Lycoming, said he would have looked over the whole list of members before he should have picked on the gentleman from Lancaster as having made such a proposition as this.

Mr. HIESTER replied that it was not his proposition—that the gentleman at the head of the committee of nine reported it, and that he (Mr. H.) merely called it up.

Mr. FLEMING observed that the gentleman from Lancaster had called it up, and therefore he had taken charge of it, and proposed to carry it through. There could not be a doubt of it. The gentleman had asked to restrict the public debt of the commonwealth which proposition he (Mr. F.) held to be, in itself, a misnomer—a misapplication. He denied that it was a public debt. It was no such thing. It was an investment, and the revenue accruing from it nearly paid the whole of the interest. So that, in fact, only so much of the interest as remained unpaid, was a debt. Just so much as the revenue does not pay might be regarded as a fund for which the state was responsible.

Why, sir, this is one of the many propositions which has been laid before this body at various periods of our session, to limit and restrict what? The legislature? Certainly not the legislature; but it is an attempt to restrain the people themselves. Disguise it as we may, sir, I repeat that it is an attempt to restrain the people themselves. It is emphatically an attempt to tie down the people of the commonwealth in such a manner that they cannot move hand nor foot; that they shall have no power under the fundamental law of the land to take a step towards any public improvement, or to make any investments for the purpose of aiding and advancing the great interests of the commonwealth. Such is the object of the proposition before you.

But, Mr. President, I will ask the gentleman from Lancaster, (Mr. Hiester) who has stepped forward under the obligation of what he considers an imperious sense of public duty, to force this report on the notice of the convention when none of the members of the committee who reported it evinced any desire to do so—I will ask him, I say, what this question has to do with the constitution of Pennsylvania? Does the gentleman intend to say, that he will not trust the people? Does he intend to say, that he will not trust the representatives of the people in the management of this matter? men who are selected from year to year by the people themselves—who act under the instructions of the people, and who dare not make an appropriation for any such purpose without the consent of the people? Does the gentleman intend to say, that he will for the time to come prevent the people of this commonwealth from making any improvements which they may desire to make? This would indeed be a most beautiful state of things, and we, the members of this convention, should place ourselves in a most enviable position! Truly enviable! for we shall bind down the people of this commonwealth to a certain narrow sphere; we shall lay a paralyzing hand upon that energy and that spirit of persevering enterprize which has hitherto characterized them—we shall say to them, “thus far ye shall go, and no farther.” Is this the object at which the gentleman from Lancaster is aiming? If so, I have no desire to participate with him in the glorious results which will flow from his scheme.

What is it that has given to the state of Pennsylvania, the character which she now sustains among her sister states of this Union? and what is it that yet bids fair to elevate her to the position of the first state in the Union? Is it *restricting or limiting* her public debt, as the gentleman from Lancaster calls it? Is it curtailing her works of public improvement? Is it crippling her resources? Is it saying by constitutional provision that she shall not make canals, that she shall not make

rail roads, that she shall not connect one part of her territory with the other, that she shall not encourage her commerce and manufactures? Is this the way in which it is designed to advance the interests and the character of this commonwealth? And are we to be called upon to adopt such a plan, by a member of this convention who stands here as the representative of a county, which has had a full share of the public money expended within her own borders? a county, I say, which has had a full share of the public money—which has had all that can be asked in her behalf.

The people of that county, as is well known, have nothing more to ask of the commonwealth at this time; and therefore, in order I suppose that they may manifest how anxious they are to be just and generous to those portions of the state which have not enjoyed the same benefits and advantages as themselves, they come into this convention by their representatives here, and gravely ask us to place in the fundamental law of the land a provision, by which the hands of the people of the commonwealth shall be bound down and manacled, so that other regions of country may not secure like improvements. This is liberality in the extreme! This is justice! This is generosity! This is indeed doing unto others, as you would that others should do unto you! Here you have the people of a county when they are themselves well fed, sleek and fat, coming forward and saying to you, “now tie us down—now prevent us from expending more money—we have had a sufficient sum expended by the commonwealth upon us in works of public improvement by which *we* thrive and *we* grow rich—and we ask no more!” I repeat, this is generous in the extreme.

But the gentleman from Lancaster proposes to amend the report of the committee, by adding to the end of it a provision, that in time of war, invasion, or insurrection—amongst the negroes, or something of that kind—the commonwealth might increase the public debt to any indefinite amount. Now, if the gentleman will go on to make provision (and I do not see why he may not as well do so) that the population of the state of Pennsylvania shall never exceed an aggregate of two millions; that its actual wealth shall never exceed the present amount; that we shall for ever remain precisely in the condition, in all respects, in which we are at the present time; that our means shall never exceed what they are now, there might, I think, be some consistency in his proposition. But in the form in which it stands now, it is a limitation which is to last, it may be, years beyond computation—without a chance of remedy or redress; a limitation by which the people must be fettered, and from the operations of which they cannot be relieved. They are to be forbidden to overstep it for any purpose of public improvement, no matter how important it may be.

If it should happen that a few thousand dollars should be wanted to complete a work, for the want of which amount the work itself may prove entirely worthless, still it must not be appropriated, because we may have happened to come up to the very liberal *ultimatum* advocated by the gentleman from Lancaster (Mr. Hiester.)

I trust that this convention is not now about to enter into such an unreasonable kind of legislation on this subject of internal improvements; a matter which we ought not to touch—which is the pride and boast of the



people of the commonwealth—upon which the people have daily reflected, and will continue to reflect, and upon which they are fully capable to act from time to time understandingly and wisely.

Let me tell the gentleman from Lancaster—since he does not seem to be aware of the fact—that the people are now sufficiently cautious; that they are not going on in a wild and extravagant manner wasting their money in making public improvements, and that there is as much prudence and caution exercised now on this subject of internal improvements as on any other having reference to the affairs of our state. And when the gentleman tells us that the legislature must be tied down to certain bounds—and those, too, of a very circumscribed dimension—let me ask him whether the people have not sustained those who have come forward manfully in the cause of internal improvement? Sir, they have done so.

And what have been the proceedings of your legislature? Look at them, and you will find that every dollar proposed to be invested is properly scrutinized, in order that the people might not be left in ignorance as to the purpose to which it was to be applied, but that, on the contrary, they might fully comprehend it. And when we have abundant evidence before us—evidence sufficient to carry conviction to the minds even of the most sceptical—that those men who have upheld the improvements of the country, and been resolutely bent on carrying them forward to a successful termination, have received at the hands of the people the praise which was justly their due, we are to be told that the people should no longer be left at liberty to act on this subject for themselves, but that they are to be narrowed down to a certain point, to be fixed by the gentleman from Lancaster, and beyond which they shall never be permitted to go.

Mr. President: I trust that there is good sense, good feeling—yes, and I will add honesty, enough in the members of this convention, to put the stamp of their reprobation on so iniquitous a proposition.

Mr. HIESTER, of Lancaster, rose and said:

Mr. President: The gentleman from Northampton, (Mr. Porter) and the gentleman from Lycoming, (Mr. Fleming) have seen fit to taunt the citizens of Lancaster county, through me, by charging that as we have had our improvements in that section of the state, we feel anxious to place restrictions on the progress of public improvements in other regions. If either of those two gentlemen had paid attention to the remarks I submitted when I first addressed the convention, and upon which they have chosen to found the charge of hostility to further improvements which they bring against me, they would have known that I expressly and emphatically disclaimed being opposed to further improvements, but that, on the contrary, I declared myself to be favorable to them. I trust that the majority of the members of the convention will do me the justice to recollect that I made that declaration, though it might have passed unheard or unheeded by the gentleman from Northampton and the gentleman from Lycoming.

If I were inclined to be contracted in my views on this question, and to act only with reference to the especial and exclusive benefit of the people of Lancaster county, I might say to gentlemen, "Take the rail road from us as soon as you think proper, for you can not injure us by doing so." The rail road has opened an intercourse from the extreme west to the city of

Philadelphia; it has brought unimproved lands under cultivation, and it brings the produce of this city in competition with our produce. Has it been attended with such favorable results in the county of Lancaster? Not at all. There the prices of land have deteriorated. We have our turnpike roads, and teams to take our produce to market; and so far from being a benefit, I assert that the rail road is a disadvantage to the county of Lancaster.

This, however, is not the contracted principle of action on which we go, although we are desirous that some governing principle should be established in reference to this system of internal improvements, and to the amount of debt which may be entailed by means of them on the people of this commonwealth. We do not want to be running in debt to a great extent, and then find ourselves subject to a direct taxation.

We, in Lancaster county, who have not received any advantage from the rail road, we have to pay upon our lands that are assessed, at the rate of one hundred cents per acre, while the people of the western parts, whose lands have been benefited, pay probably only twenty cents on the acre.

I and my constituents go for internal improvements, but we go for them on a more extensive scale than that of mere self-interest. They do so for the general interest.

The gentleman from Northampton (Mr. Porter) and the gentleman from Columbia (Mr. Hayhurst) have asked, where are the memorials asking that such a provision should be incorporated in the fundamental law of the land? I will ask them, in return, whether this is the principle upon which the convention has acted in the amendments which have been made to our constitution? Where are the petitions for limited corporations? Where are the petitions for a limited judiciary? Where are the petitions asking for the election of justices of the peace? Where are the petitions asking for the amendatory clause of the constitution, which we adopted the other day? Where are the petitions in relation to the county officers? Where, I ask, are all these? They are no where to be found.

According to that principle, then, we need not act at all. But, sir, it is our duty to do that which we have reason to believe the interests of the people require at our hands, without first receiving petitions from them; and by that rule we have been governed in all our proceedings here.

But the gentleman from Lycoming (Mr. Fleming) asks, why not trust the legislature—a body composed of the immediate representatives of the people? I will again answer the gentleman, by asking another question. Why not trust the legislature, the immediate representatives of the people, with the subject of corporations? And is it not in the recollection of every member of this body, that the gentleman from Lycoming manifested fully as much zeal in favor of placing constitutional restrictions upon corporations, as any other delegate on this floor. What more necessity, I will ask, or what more propriety is there in entrusting the legislature with the matter now before us, than there was in entrusting them with that of corporations.

The gentleman from Columbia (Mr. Hayhurst) has put an extreme case. He says, suppose that your state debt has reached to the *maxi-*

*num* of thirty million of dollars prescribed in the report of the committee, and there should come a hurricane upon us—or, that by some act of God, our canals or works of public improvement should be destroyed. Will you, asks the gentleman, for want of funds, let them lie in their ruins? I answer, no; tax the people. Go on in advance, and then the people will look into the matter and see, when they find themselves taxed, how their money is expended. And this view, I should suppose, would well fall in with the idea of the gentleman from Beaver, (Mr. Agnew) who says that the people are jealous about their money. It is proper that they should be so.

Mr. HAYHURST, of Columbia, asked leave to say a word in explanation:

He had, it is true, put the case as represented by the gentleman from Lancaster; but he (Mr. H.) had also said that the length of time which must elapse before the requisite money could be expended for the reconstruction or repair of the works, would in itself be ruinous to the commonwealth.

Mr. HINSTER resumed.

The gentleman from Northampton (Mr. Porter) has further asked me, will you cut short the public improvements of the state, now that you have got them in your own part of the country? I answer him emphatically, no. When I was last on the floor, I attempted to show to the convention, that you would have the sum of ten millions of dollars, or thereabouts, before you got up to the *maximum* prescribed in this report. In the mean time, your tolls are accumulating, and they may be appropriated to your public works; and if these things should not be enough, I say tax the people directly, and the people will then look into the matter themselves.

We have been told by several gentlemen that the legislature never will run in advance of the people in this particular. What does our own experience teach us? Look at the bill which passed the legislature last year! Was not that in advance of the people? The executive of this commonwealth staked his popularity upon the step, and took the responsibility of *vetoing* that bill; and, if I am not greatly mistaken in my judgment, this is the proudest feather in his cap, and will make him more popular when he again comes before the people, than any thing he has ever done in the whole course of his official career.

What, then, does the passage of such a bill indicate? Does it not furnish practical demonstration—notwithstanding the opinions expressed or entertained to the contrary in this body—that the legislature *will* run in advance of the people, and that they *have* done so?

I know that it is a very popular thing in this commonwealth of Pennsylvania, distinguished as she is for her indomitable spirit of enterprise, to legislate on these works of internal improvement, so long as it can be done without a resort to direct taxation. But let the matter be brought down to direct taxation, where those who receive no benefit from these works will have to pay for them, and I apprehend we shall find a very different state of things existing.

I have explained the views by which I shall be governed in my vote on this question, and I do not know that it is requisite for me to add any thing further.

Mr. FORWARD, of Allegheny, rose and said: I should like to ask the gentleman from Lancaster, (Mr. Hiester) whether he pretends to foresee what will be the future condition of the commonwealth of Pennsylvania in fifty years, in twenty-five years, or even in ten years from the present time? Will he tell us, will he presume to tell us, what the resources of this great commonwealth will be fifty years, or twenty-five years, or even ten years hence? Let him apply his arithmetic now, if he can, and give us the result of his computation.

Mr. President, the gentleman will not presume to venture on such a step. Will he tell us what the wants of the people are to be in fifty years, or in twenty-five years hence? Why, he does not pretend to any definite knowledge, on this matter—none at all. Does he intend to say, that the debt of a commonwealth should bear no relation to its resources? Will he say that? Does he intend to say that the debt of a commonwealth should have no relation to the wants of the people, and to their ability to pay it? Will he say that? No, sir, he will not venture on any such position. He knows little, very little of the future resources of this commonwealth that may be developed; he knows little, very little, of the future wants of the people, or of the prospective profits that may arise on the investment of capital. And yet, for that posterity which alone can know these things, he would lay down a rule in the dark, without pointing to any one definite calculation, by which the people should be governed and regulated in the use of their own money, and the apprehension of their own wants.

Such is the liberal and enlightened policy of the gentleman of Lancaster! Sir, is it not enough simply to state the matter as it is, in order to explode the whole scheme here presented to our consideration? Will the gentleman tell us what will be the nett profits upon our own existing improvements ten years hence? I ask for knowledge, for I am in the dark. There is no forecast, there is no human vision which can reach the condition of this commonwealth and the amount of its revenue, at a distance of ten years, of five years, or even of three years, from this moment. And yet the gentleman to say just what amount of public debt may be incurred: he is ready to say just what extent of responsibility may be borne or assumed by a people whose wealth has been doubled in the space of twenty years, and whose wealth may be trebled in the same period of time.

Is it unsafe to leave to those who are to pay the debt, a measure of the responsibility? The proposition before us amounts to this and nothing less than this. Our posterity shall not incur a debt beyond the sum of thirty millions of dollars, lest it may burthen, whom? Not us, but themselves. Are you afraid to trust them? Do you suppose that they will not have equal intelligence with yourselves, equal patriotism, equal knowledge of their own wants and their own interests?

What is meant by this debt? Suppose it should appear that a debt of forty millions might be incurred with entire safety to the people, and that the nett revenues to be derived from the expenditures would do more than pay the interest? Suppose, I say, that this should appear to our posterity. The gentleman from Lancaster kindly informs them that such investments would be unsafe.

But what, I again ask, what is meant by the debt of this commonwealth? It is a capital in business! Has it been cast into the sea? No. Is it fruitless? No. It is seed sown which will bring forth its fruit in abundance, and even now the sickle is about being put to the harvest. Does any man entertain a doubt as to the large revenues to be derived from the investments of the commonwealth? Is not the experience of the country a sufficient guide to this fact? Certainly, it is so. May we not reasonably calculate that the revenue arising from the public works of Pennsylvania will, sooner or later,—and probably, very soon—pay all the interest of your debt, so that your twenty-five millions of dollars will, in fact, be no weight upon you? It is a weight permanently neutralized, while the revenues from your public works are increasing largely year after year.

What is the experience of the state of New York. What is the experience of other states of the Union? Does not the gentleman from Lancaster believe that if our public works were put up, bidders would be found to take them at twenty-five per cent advance and thank you, too, for the bargain? What was the value of the land west of the mountains before the canal and rail road were constructed? It was worth one-half or one-third as much as it is now worth.

The western farmers give one dollar a barrel on the flour brought down to market by these improvements.

Mr. HIESTER, asked leave to call the attention of the gentleman from Allegheny, (Mr. Forward) to the fact, that the argument which he, (Mr. F.) was now applying, was the very same argument which he, (Mr. H.) had himself brought forward; that was to say, that the advantage derived from these works was to the western farmers, and not to the people of Lancaster county; although he had expressly disclaimed being governed by that principle in the course he was adopting here.

Mr. FORWARD resumed.

For my own part, I disclaim all sectional views. They form no part of my principle of action in this body. I am not complaining of the argument of the gentleman from Lancaster; I am simply stating a fact.

Who can measure the augmentation in the value of the freehold property of the commonwealth, apart from the revenue of these public works, but resulting from the construction of them? In many parts, the value of the freehold is already nearly doubled—I may say, trebled—and this result is clearly to be traced to these works of improvement. The western farmer, as I was about observing, when interrupted by the gentleman from Lancaster—gains one dollar a barrel on flour brought down on them to market. And suppose that he should have two hundred barrels of flour to sell per annum, there would be the sum of two hundred dollars a year added to his revenue, by means of these commercial high-ways, which connect him with other parts of the state. And is this nothing? Are all considerations of this character to be thrown out of view? Is the mineral wealth, are the countless and inexhaustible resources of your commonwealth of every kind, are they, I ask, to have no value?

May we not say, without stepping beyond the bound of a reasonable calculation, that in the space of thirty years hence, the solid wealth of Pennsylvania will amount to twenty-five, or thirty, or fifty millions of dollars greater than it is now? What then, is your debt?

To the amendment which he has proposed, the gentleman from Lancaster should make an addition and say, that until the wealth and resources of the state of Pennsylvania shall exceed a certain amount, the debt to be incurred shall not exceed the sum of thirty millions of dollars. He ought to graduate the debt, as a private man graduates his debt, to the means of payment, whatever they may be. Why has he not observed this rule? Would a man put the same restriction on such an individual as Stephen Girard, as he would put upon myself, or upon you, Mr. President? The debt must be graduated according to the means of payment.

And when the state of Pennsylvania is five times as wealthy as she is at the present time, why should not the debt be placed at one hundred millions of dollars? May not our posterity with five times our wealth, bear a debt of one hundred millions of dollars, as well as we with our present resources can bear a debt of thirty millions?

Here you have a proposition not to graduate the debt to the means or the probable revenue of the state, but to fix a *maximum* beforehand in the dark, irrespective of future events—irrespective of future resources—irrespective of future revenue.

Sir, I trust that this convention will not give its sanction to any such provision. I trust that we shall leave those who are to live after us to exercise their own discretion. No principle, no organic rule is involved in this question.

Let those who think they have the means to place this provision in the constitution, take upon themselves the responsibility of it. For myself, I will have no part nor lot in it.

Mr. STEREGERE, of Montgomery, said: It seems to me that the gentlemen who have opposed the proposition now before the convention have placed it in a false point of view. That argument, so far as it has gone, appears to have been directed to the point, whether the system of internal improvements in the state of Pennsylvania would not be entirely stopped by the insertion of such a provision in our constitution.

Now, does not every gentleman who hears me, know that such is not the object of this section, and that, if agreed to, it will not have the effect to postpone or retard the progress of our public works? It is proposed to introduce this amendment into the constitution, for the purpose of guarding the people against being made liable for an immense state debt. It will be a security against improvident systems and schemes of internal improvement.

The best protection to be afforded by it will be, that the representatives of the people will be restrained—that they will be kept in check—and that such improvements as are to be made will be paid for immediately. The people will then begin to consider whether it is proper that their money should be expended in such and such schemes.

Look at the thousand wild schemes which have been proposed in this commonwealth! Look at the Gettysburg rail road. After the sum of two hundred thousand dollars has been expended upon it, it has been agreed by all parties to be unworthy of further aid from the legislature, and it will probably be abandoned, for a time at all events.

So far as this proposition can be viewed as having any reference to improvements of this state hereafter to be made, I can not see that it will have any effect upon them.

Whenever the construction of any work of internal improvements becomes a matter of importance, the people of Pennsylvania have spirit and energy enough to see that it is constructed and to pay taxes for it.

If it is not of such importance, is it proper that the people should be taxed and that their property should be mortgaged for the payment of a debt incurred in a work which may be unproductive to the people at large? We have been told a thousand times over that we were the keystone state of the Union; we have been fond of the appellation, and our pride has been ministered to by it.

According to some of the arguments which have been made use of here, it would rather appear that instead of being entitled to hold the proud position in the political arch which this designation implies, we are in the condition of paupers having no means of our own to help on our own internal improvements, but being compelled to ask aid from other states. But if it be true that our resources are to increase in so great a ratio as some gentlemen suppose, what difficulty can there be in applying them to purposes of internal improvement.

In addition to this, I have no doubt, as I said before, that the people of Pennsylvania will at all times be willing to be taxed, in order to carry on any proper system of internal improvements;—I mean any system, not having its basis in speculation, of doubtful utility and profit, but a system holding out solid and substantial prospects of usefulness, and of fair returns for capital invested. From such a case I believe that the people will never withhold their countenance and support.

What is the proposition contained in the report of the committee? It is that our state debt shall never exceed the sum of thirty millions of dollars. It is to be borne in mind that this is a very large limit to which to allow our state debt to be extended. This, if I am correctly informed, is larger than the debt of the state of New York, or than that of any other state in the Union. And is it not proper for us to reduce that debt, so that we may have five, or ten, or fifteen millions at our command to go upon in case of any sudden emergency; as, for example, such as that which has been alluded to by the gentleman from Columbia, and other cases of that kind?

Before the internal improvement system of this commonwealth was commenced by the legislature, the people had paid more than twenty millions of dollars for improvements in the shape of private companies, although we were often taunted with being behind the spirit of the age. If gentlemen will turn to the acts of assembly on this subject, they will find what I say to be correct. It is obvious, therefore, that the public spirit of our people is adequate to carry on a system of internal improvement by means of private companies, when it is important to the people at large, as the system carried on by the legislature has been. Gentlemen say that this proposition, if adopted, will have the effect of committing these matters into the hands of private companies. Why, sir, what is there in that argument? Look back only a few years, and you will find that this is the principle which has been acted upon to a great extent in this commonwealth. Are not the Lehigh navigation company, the Schuylkill canal companies, and the Union canal company, private corporations? and none are more important than they. Not long since, a company was authorized to make a rail-road from Lancaster

to Harrisburg. This is a private company. And notwithstanding that we have been carrying on a system of internal improvement by the means of the state, we have also authorized private corporations. And what has been the objection to them heretofore, or what can be so hereafter? None—none at all. Some parts of the commonwealth have been compelled under this system of a state debt, to become liable for immense amounts of money, and that, too, without any advantage resulting from them. The proportion of Montgomery county at this time exceeds probably the vast sum of one million of dollars. And what has she received for it? Not one dollar. If she has received any benefit at all from works of internal improvement, it has been from works constructed by private corporations.

I feel no disposition to take up the time of the convention, but as I intend to vote against the motion for indefinite postponement, I was desirous to state briefly the views which I entertain in relation to this subject. I do not give this vote because I am opposed to internal improvements on the part of the state, but because I believe that the insertion of this provision in the constitution will have a good effect, and that it will tend to put a check upon wild and improvident schemes of improvement.

We have been told that, if we adopt it, we shall repress the enterprize and cripple the energies of our state. I can not see by what process gentlemen can arrive at this conclusion. I should suppose that the very fact of putting the state out of debt, or of reducing that debt to very reasonable limits, would in itself increase and invigorate her energies. Can a man whose property is mortgaged consider himself in full possession of his resources and his energies? Or does a prudent man mortgage his estate, if he can avoid doing so? Surely not, sir. Nor should a prudent state do so. A prudent man should be free from debt, and a prudent state should be so likewise, or at all events she should be free from any large amount of debt. By being so, as I have said, she adds strength and vigor to her energies. We in the state of Pennsylvania do not regard a public debt as a public blessing, although there may be some gentlemen who do so, but who constitute exceptions to the general rule as applicable to the mass of our citizens. And if a public debt is not a public blessing, then it is our policy to keep it down to as low an amount as possible.

I repeat that I am not opposed to a proper system of internal improvement. But I consider that the best security which we can have against improper and improvident schemes, is to limit our state debts; and to render it necessary for the people to pay for works of internal improvement at the time they may be constructed.

Mr. JENKS, of Bucks county, said: Mr. President, I have so often attempted ineffectually to obtain the floor, that I find myself anticipated in the views I had intended to express.

I apprehend that the question now before us is, strictly speaking, a question of political economy; and that when regarded in a proper point of view, it will be found that we have nothing to fear from the expenditure of the public money and the extension of the public debt.

What is the wealth of the state? I take it for granted that it consists in the population of the state, and in the labor of that population; and



whatever tends to increase the population of a state necessarily tends to increase its wealth. Now, I ask you if such is not the result of your internal improvements? Is it not in an astonishingly degree increased in population since the system of internal improvements was commenced? And in the precise ratio of that increase has the state debt diminished.

I was an humble participant in the system of internal improvements when first commenced. At that day the prosperity of the west was jeopardized in consequence of not having a direct communication for the agricultural produce of her soil to market. I then saw the mutual jealousy which then existed between the people of the commonwealth generally and the inhabitants of this city. They were detached from each other. Their intercourse was difficult and at long intervals. In fact, they could scarcely be said to know each other when the system of internal improvements went into operation; and it was immediately perceived that the interest of the one was identified with the other. And now we all recognize a perfect identity of views existing between the people of this great metropolis and the people throughout the state of Pennsylvania. We are embarked in a great and stupendous system of internal improvements—a system which, when matured, will place this commonwealth above all the other states of this Union. By the adoption of the amendment contemplated by the gentleman from Lancaster, the most injurious, and I might say unjust effects would ensue, at the present time, to those friends of the commonwealth who are expending large sums in the extension of certain great thoroughfares through the state. Adept your amendment to limit the sum appropriated by the legislature to thirty millions, and the consequence must be that your great thoroughfares must be arrested in their progress to perfection.

Again, in order to reap full advantage from the expenditures you have already made, it is necessary that you should complete your lateral roads to communicate by your great thoroughfares with the mineral deposits in the state; and, by so doing, you increase in a fifty-fold degree the amount of the receipts of the tolls on your canals and the value of your rail-roads. The mineral products of the state are not by any means fully developed. The time, I believe, is not distant when the application of anthracite coal to the smelting of iron will be in full operation. And, when that desirable issue is once brought about, who can say what mind is sufficiently capacious to grasp all the advantages that that discovery will have on the affairs of the commonwealth? The application of science to mineral productions is now being made, and under circumstances that promise the most perfect and complete success.

And, trusting there will be no limitation of appropriations for the internal improvements of the commonwealth, as the legislature are, at all times, capable of judging to what extent they ought to carry them. I have no doubt that the immediate responsibility of the legislature to the people will prevent their ever carrying appropriations to an improper extent.

Mr. CRUM, of Huntingdon, called for the previous question; which was sustained.

And on the question,

Shall the main question be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the said report?

The yeas and nays were required by Mr. BONHAM and Mr. STERIGERE, and are as follow, viz :

YEAS—Messrs. Banks, Barndollar, Barnitz, Bonham, Clarke, of Indiana, Cox, Craig, Crawford, Darrah, Denny, Dillinger, Donagan, Fry, Fuller, Henderson, of Dauphin, Hiester, Keim, Kerr, Konigsmacher, Krebs, Long, Mann, M'Sherry, Merkel, Miller, Porter, of Lancaster, Ritter, Sellers, Seltzer, Smyth, of Centre, Sterigere, Stickel, Taggart, Young—34.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Bedford, Bell, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Coates, Cochran, Cope, Crain, Crum, Cummin, Curll, Dickey, Dickerson, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Gamble, Gearhart, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, High, Hopkinson, Hout, Hyde, Ingersoll, Jenks, Kennedy, Lyons, Maclay, Magee, Martin, M'Cahen, M'Dowell, Meredith, Merrill, Montgomery, Myers, Overfield, Payne, Pennypacker, Porter, of Northampton, Purviance, Read, Riter, Rogers, Russell, Seeger, Scheetz, Scott, Serrill, Shellito, Smith, of Columbia, Snively, Sturdevant, Todd, White, Woodward, Sergeant, *President*—77.

So the question was determined in the negative.

A motion was made by Mr. DARRAH,

That the convention proceed to the third reading of the amendments made in the first article of the constitution.

The said motion being under consideration,

A motion was made by Mr. STERIGERE,

That the convention do now adjourn.

Which was disagreed to.

The motion to proceed to the third reading of the amendments made in the first article of the constitution, being again under consideration,

The orders of the day were called for by Mr. DICKEY.

A motion was made by Mr. DARRAH,

That the orders of the day be postponed for the purpose of proceeding to the third reading of the amendments made in the first article of the constitution.

And on the question,

Will the convention agree so to postpone?

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

YEAS—Messrs. Agnew, Banks, Barclay, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chambers, Clapp, Clarke, of Indiana, Craig, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Doran, Dunlop, Fleming, Forward, Fry, Fuller, Gearhart, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Hopkinson, Hyde, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Sherry, Meredith, Merkel, Miller, Myers, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Read, Riter, Ritter, Rogers, Russell, Seeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, White, Woodward, Young—81.

NAYS—Messrs. Ayres, Barndollar, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Coates, Cochran, Cope, Cox, Denny, Dickey, Earle, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hout, Jenks, Konigsmacher, Long, Merrill, Montgomery, Scott, Sergeant, *President*—24.

So the question was determined in the affirmative.

A motion was made by Mr. DORAN,

That the convention do now adjourn.

Which was agreed to.

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

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### THURSDAY AFTERNOON, FEB. 8, 1838.

Agreeably to order,

The convention presented to the third reading of the amendments made in the first article of the constitution, and which were read as follows :

SECTION 3. No person shall be a representative who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the state three years next preceeding his election, and the last year thereof an inhabitant of the district in and for which he shall be chosen a representative, unless he shall have been absent on the public business of the United States or of this state.

SECTION 5. Not more than three counties shall be united to form a representative district : No two counties shall be so united, unless one of them shall contain less than one half of the average representative ratio of taxable population ; and no three counties shall be so united unless two of them combined shall contain less than one half of the representative ratio aforesaid.

SECTION 6. The senators shall be chosen for three years by the citizens of Philadelphia and the several counties at the same time, in the same manner, and at the same places where they shall vote for representatives.

SECTION 8. The senators shall be chosen in districts, to be formed by the legislature ; but no district shall be so formed as to entitle it to elect more than two senators, unless the number of taxable inhabitants in any city or county shall, at any time, be such as to entitle it to elect more than two, but no city or county shall be entitled to elect more than four senators ; when a district shall be composed of two or more counties, they shall be adjoining ; neither the city of Philadelphia nor any county shall be divided in forming a district.

SECTION 9. No person shall be a senator who shall not have attained the age of twenty-five years and have been a citizen and inhabitant of the state four years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state ; and no person elected as aforesaid shall hold said office after he shall have removed from such district.

**SECTION 10.** The senators who may be elected at the first general election under the amendments to the constitution, shall be divided by lot into three classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that hereafter one third of the whole number of senators may be chosen every year. The senators elected before the amendments shall be in operation, shall hold their offices during the terms for which they shall have respectively been elected.

**SECTION 11.** The general assembly shall meet on the first Tuesday of January, in every year, unless sooner convened by the governor.

**SECTION 14.** The legislature shall not have power to enact laws annulling the contract of marriage in any case where, by law, the courts of this commonwealth are, or hereafter may be, empowered to decree a divorce.

**SECTION 26.** No corporate body shall be hereafter created, renewed or extended with banking or discounting privileges, without six months public notice of the application for the same in such manner as shall be prescribed by law. Nor shall any charter for the purposes aforesaid be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the legislature the power to alter, revoke and annul the same, whenever in their opinion they may be injurious to the citizens of the commonwealth, in such manner however that no injustice shall be done to the corporators. No law hereafter enacted, shall contain more than one corporate body.

And the question being, on the final passage of the said amendments;

Mr. BELL, of Chester, rose and said it would be in the recollection of the convention, that a committee had some time since been appointed to revise the proposed amendments to the constitution and their phraseology, and to suggest any contradictions which might be found between different sections of the same, or other articles. He had been informed that the proper course would be for the convention to go into the consideration of the report of the committee, in committee of the whole.

He would move, therefore, that the convention resolve itself into committee of the whole for the purpose of considering the report of the committee appointed on the subject of proposing and engrossing the amendments to the first article, for the third reading.

Mr. CHAMBERS, of Franklin, said he was desirous that the convention should go into committee of the whole, for the purpose of considering all the amendments to the first article, as well as those reported by the committee on revision.

He moved, therefore, to amend the motion of the gentleman from Chester, (Mr. Bell) as follows;

“That the convention resolve itself into committee of the whole, for the purpose of considering the amendments to the first article of the constitution.”

Mr. WOODWARD, of Luzerne, said that there was one amendment in the first article which had been adopted with very little consideration, and which contained a principle as to the operation of which on the small counties of this commonwealth, he had become seriously alarmed. He

hoped, therefore, that the convention would go into committee of the whole for the purpose of considering that particular section, which had not been properly or maturely considered before. He found that the amendment of which he spoke was not of such a character as, under the present lights which he had to guide his judgment, he would be willing to vote for.

**Mr. BELL** said. The motion I made was for a special purpose. Those amendments have now been passed through a first and second reading, and have now been read a third time. Every gentleman has had the power to present such amendments as he thought proper to offer; and it was some time since suggested, that as some of the amendments had been adopted hastily and, therefore, not with any great regard to phraseology, it would be proper to refer them to a committee on phraseology. It will be recollected that when the first committee on that subject was appointed, some difficulty arose in consequence of which they were discharged, and that another committee was appointed with power to suggest alterations in the phraseology, and also to suggest any existing contradictions in the amendments. That committee made a report and I have moved to go into committee of the whole for the purpose of considering that report. The motion of the gentleman from Franklin, (Mr. Chambers) if it should prevail, will throw us all to sea again. I have nothing to say in opposition to it. I only inform the convention what its effect will be.

I suppose that the gentleman from Luzerne county, (Mr. Woodward) alludes to the fifth section of the first article. If he will refer to the report of the revising committee, he will see that the committee have reported the existence of an incongruity upon that section, and on which the convention can act.

The **PRESIDENT** said, he would state his views of the effect of the motion of the gentleman from Chester, (Mr. Bell) and also of the motion of the gentleman from Franklin. (Mr. Chambers.)

When the amendments to the constitution—the chair continued—are on their third reading, no amendment can be made by the convention. But, in certain cases, those amendments may be referred back again to the committee of the whole, with instructions to make a particular amendment—in which case the convention would resolve itself into committee, simply for the purpose of making that particular amendment in obedience to the order of the convention.

In the opinion of the Chair, therefore, the motion of the gentleman from Chester and the motion of the gentleman from Franklin, are equivalent to each other. The only way of restricting the action of the committee of the whole, will be to move to go into committee of the whole with instructions to make a particular amendment.

**Mr. BELL** said, that he would then withdraw his motion, and move, in lieu of it, that the convention now resolve itself into committee of the whole for the purpose of adopting the amendments as reported by the revising committee.

**Mr. READ**, of Susquehanna, said. I hope this motion will not be agreed to. It is too broad. It is not so broad as the former motion submitted by the gentleman from Chester, (Mr. Bell) nor as the amendment

to that motion submitted by the gentleman from Franklin, (Mr. Chambers.) But still it is too broad. It brings up every part and parcel of each amendment that may have been agreed to in the first article. My own opinion is that, upon third reading, an amendment may be adopted in convention by a unanimous vote, and not otherwise. But where an amendment is proposed involving a question of principle, I, for one, will object to go into committee of the whole, except for the purpose of making a special amendment; so that if three, or four, or six amendments are required upon this article, the convention may go into committee as many times as any special amendment may be proposed.

I do not deny that it is in order to go into committee of the whole for the purpose of general amendment. But I do most sincerely hope no such motion may be agreed to, and I would suggest to the gentleman from Chester, to fix upon some special amendment and to move to go into committee of the whole specially for the purpose of adopting that amendment. If we go into committee in that way, the committee will act decidedly and will have no discretion as to rejecting the amendment. But the motion as he now put it will throw open the whole discussion. I shall therefore, as I have stated, oppose any motion to go into committee except for a special purpose.

I have no disposition to give the committee of the whole any discretion, even if it should be necessary otherwise that we should go into committee twenty times a day. I am willing to go into committee only for the purpose of inserting such an amendment as may be required by the convention to be inserted.

The CHAIR said he would state for the information of the convention that the motion last submitted by the gentleman from Chester, and now pending, was a motion specially to refer into committee of the whole with instructions to introduce the amendments made to the first article by the report of the revising committee.

Mr. WOODWARD, of Luzerne, said.

The motion of the gentleman from Chester will not effect the object which I have in view. My object is to get rid of the fifth section of the first article. I am desirous of getting rid of it, because, in the light in which I now view it, it seems to me to work a forfeiture of the rights of the smaller counties of this state. Probably, I do not understand it correctly, but I must say that according to my present understanding it will be found to work very prejudicially to the interests of the smaller counties.

Now what is the character of this section? It reads as follows:

"SECTION 5. Not more than three counties shall be united to form a representative district: No two counties shall be so united, unless one of them shall contain less than one half of the average representative ratio of taxable population, unless two of them combined shall contain less than one half of the representative ratio aforesaid."

Such (continued Mr. W.) are the terms of this section. What then is to be done with the smaller counties surrounded by large counties, which are entitled to a representation of themselves, and each of which contains more than one half of the average population? If they contain less than half, they will probably, under this amendment, claim a member; but if

they contain more, what is to be done? Their joint population will not be entitled to a member, and what is to be done with them? In the apportionment of the representatives under this section, the small counties will be sacrificed for the benefit of the large counties.

In the senatorial district which I represent on this floor, there are four counties two of which are small.

Mr. Woodward was here interrupted at this point of his remarks, and some discussion ensued on a point of order. After which,

Mr. BELL said, that, at the suggestion of several gentlemen, he would modify the motion he had made, so as to read as follows:

"That the convention do now resolve itself into a committee of the whole, for the purpose of amending the fourth section of the first article by striking therefrom, in the eighth and ninth lines, the words 'each county shall have at least one representative, but.'"

Mr. WOODWARD moved to amend that motion, by instructing the committee also to strike out the fifth section of the said article; but withdrew the motion, on the suggestions of Mr. Meredith.

A motion was then made by Mr. MEREDITH,

To amend the motion of Mr. Bell, as modified, by striking out therefrom all after the word "whole," and inserting in lieu thereof the words "on the amendments heretofore agreed to in the first article."

Mr. MEREDITH said, he had submitted this motion with a view to save time. If, (continued Mr. M.) the members of the convention will not give this article the consideration that is requisite, the fault will not be mine. When we are in committee of the whole, we are the same body that we are in the convention, and we can come out of committee whenever no difficulty arises. We have already spent half an hour in settling this preliminary question. And why so? Are we afraid to go into committee of the whole, when every man knows that our only object in going into committee is, to make the amendments in a regular and proper manner? When a committee has made a report like that submitted by the revising committee, it is a reflection on the common sense of this body to be going in and out of committee upon every sentence or word that may require correction or amendment.

If we wish to save time and to go on harmoniously, and to treat each other like men of sense and discretion, our proper course is to go into committee of the whole for the purpose of amending this article. I suppose every gentleman knows that the fifth section probably ought to be negatived on the ground taken by the gentleman from Luzerne, (Mr. Woodward.) The revising committee have reported an incongruity between that section and other parts of the constitution and that its effect would be to disfranchise the smaller counties. Let us at all events try the experiment, and go into committee of the whole on the article. If it should be found that there are any gentleman disposed to travel beyond the record and to go into other matters, let us evince to them that we will not suffer it to be done.

Mr. BELL said.

The suggestions of the gentleman from the city of Philadelphia, (Mr. Meredith) are reasonable; and if it be understood that if we agree to the

amendment of that gentleman, we are all to confine ourselves to particular amendments or to the report of the revising committee, I, for one, am willing to do so. We are about to be trammelled by legislative rules in this body, which is different from all other bodies, and in this way to cripple the report of the revising committee. That committee as I understood the matter, was appointed for the purpose of pointing out alterations, inconsistencies &c., I am told now, however, that this can not be done, and that if the convention resolve itself into committee of the whole without special instructions, we shall be again at sea; and that thus every gentleman may be at liberty to offer an amendment whether it has been offered before or not. If this state of things could by any means be prevented, I would adopt the motion of the gentleman from the city of Philadelphia. But we have no assurance that this can be done. I know myself of one or two amendments which it is contemplated to offer, and thus we shall be left precisely where we are now.

Mr. MEREDITH said, he had risen just for the purpose of saying that the section in relation to divorces—which had been moved by the gentleman from Chester, (Mr. Bell) formed a part of the first article. He (Mr. M.) was under the impression that it was in another article. A motion has been made to reconsider that section, and he supposed the motion would be again brought up.

At all events, continued Mr. M. we gain nothing by the course we are now pursuing. You do not take away from any gentleman the power to move to go into committee of the whole upon any particular amendment, and if we go into committee in the manner I have indicated, we save the time of taking the votes of the house on going into committee, and then the votes in committee on going back again into convention. I trust the motion I have offered as an amendment to the motion of the gentleman from Chester, will be agreed to. I am satisfied that it will best answer our purpose.

Mr. CHAMBERS said.

I am in favor of the motion of the gentleman from the city of Philadelphia, (Mr. Meredith.) It is certainly competent for the convention to go into committee of the whole for the purpose of considering all the amendments that are contained in this article; and if we are to have a special vote on going into committee on every special amendment, it is clear that a great deal of time must be consumed. It is competent also for the convention to negative an amendment, in convention, without going into committee of the whole; and, the proposition of the gentleman from Luzerne, (Mr. Woodward) in relation to the fifth section of this article could be met in convention as well as in committee of the whole. So far, therefore, as respects the purpose of the gentleman from Luzerne, it is unnecessary to go into committee of the whole, if it should be the will of a majority of the convention that that section shall be negatived. If, however, we do go into committee of the whole, the section can be negatived there as well as it can in convention.

The gentleman from Chester, (Mr. Bell) has alluded to an intimation of mine, that I did desire to go into committee of the whole for the purpose of considering an amendment contained in this article. It is true, I do so; and if the convention does not think proper to go into that question now,



I shall make a distinct proposition in reference to it. The section of which I speak is that which relates to the subject of divorces; a section which was adopted without due consideration, and which is in the following words:

"**SECTION 5.** The legislature shall not have power to enact laws annulling the contract of marriage in any case where, by law, the courts of the commonwealth are, or may hereafter be, empowered to decree a divorce."

This section, continued Mr. C., was adopted, as I have said, without due consideration—the attention of the convention having been turned by another proposition. I was myself one of the number who voted in the majority; but within the time presented by the rules of the convention I moved a reconsideration of the vote on that section, which motion was duly seconded by another gentleman who had also voted in majority, (Mr. Chandler, of Chester.) Believing as I do that the convention has acted under a mistake in regard to that subject, I shall feel it my duty to bring it up at a proper season. I think that the greatest despatch will be attained if the convention will at once go into committee of the whole—not to be thrown to sea again upon the whole article, as the gentleman from Chester says—but for the purpose of considering the amendments—and the amendments alone—which are presented to us as the article stood after its second reading.

Mr. PORTER, of Northampton, suggested whether, to avoid difficulty, it would not be better to do that which the gentleman from Chester, (Mr. Bell) had in the first instance proposed; that was to say, go into committee of the whole for the purpose of making definite amendments. In this way, continued Mr. P., we shall agree beforehand for what we are going into committee of the whole. It will be a mere matter of form, and then we can come into convention again without delay. By this means, we shall have the definite direction to go into committee of the whole, and we shall have nothing to do but to obey that direction.

Mr. FULLER, of Fayette county, said he believed that all the members of the convention had but one object in view; and that was, to get at the amendments in the most expeditious manner. The two sections which had been referred to by the gentleman from Luzerne, (Mr. Woodward) and the gentleman from Franklin, (Mr. Chambers) were probably the only two parts of the whole article on which it would be necessary to go into committee of the whole.

But, if the motion of the gentleman from the city of Philadelphia should be adopted, he (Mr. F.) had no doubt, as the gentleman from Chester had stated, that the whole article would be again we know not where. A great many amendments had been offered to every article, and they had undergone ample discussion, and had consumed much of the time of the convention. And, no doubt if the article was again opened for discussion, many of the sections would be the subject of further discussion and further amendments would be offered. If the gentleman from Chester would make his motion more definite, so that the convention might resolve itself into a committee of the whole for a special purpose, much time would be saved thereby. He objected to going into committee on the whole article.

Mr. MEREDITH remarked that his motion seemed to be misunderstood.

All that he intended by it was to consider the amendments on second reading. All the articles had been before the convention, and now the amendments only which have been put in, were to be considered. This, he thought, was necessary in order to remove any ambiguity which might exist. But gentlemen were now wasting more time in discussion relative to performing the object, than it would require to dispose of it. Mr. M. then moved to amend the motion by striking therefrom all after the word "whole," and inserting in lieu thereof the words "on the amendments heretofore agreed to in the first article."

Mr. FULLER said if the gentleman's motion should prevail the convention would resolve itself into a committee of the whole on the fourth section, and there being no amendment to it, would consequently leave it in the same state it was previously.

Mr. MERIDITH said, two or three words in reply, (inaudible to the reporter) when

Mr. DENNY, of Allegheny, rose and contended that the motion of the delegate from the city, (Mr. Meredith) if acceded to, would be the most satisfactory as well as the shortest course of proceeding. He declared that he did not entertain any of those apprehensions expressed by the gentleman from Chester, and thought they were groundless. He (Mr. D.) had great doubts whether the committee of the whole could alter the fourth section at all, because it had not been reported to the committee. We would not given them any instructions. He was of the opinion that when a section was not amended, it was an easy remedy to strike out the revision.

Gentlemen were, however, to bear in mind that the committee to whom the article had been referred, took up a section, which was not referred to then for revision, and instead of pointing out incongruities alone, they recommended that the convention should strike out some word which the convention refused or declined to alter, and afterwards pointed out some incongruity. He believed that time and money would be saved by adopting the motion of the gentleman from the city of Philadelphia to make such amendments only as were recommended by the committee of revision, and suggested in committee of the whole, and not making any new amendments.

Mr. SMYTH, of Cente, after pointing out several slight modifications he desired to have made in various sections of different articles, expressed himself in favor of the course recommended by the delegate from Philadelphia, (Mr. Meredith.)

After a few words from Messrs. CHAMBERS and SMYTH,

Mr. DICKEY, of Beaver, remarked that the convention could resolve itself into a committee either for special or general purposes.

The object of the gentleman from Chester (Mr. Bell) was a special one; it was to strike out the fourth section. The delegate must obtain a vote of two-thirds, or the convention could not entertain his motion. For, by the rules of the body, the fourth section was already disposed of; and it was no part of the amended constitution. He presumed that all that delegates wanted was to propose nothing more than verbal amendments. He should support the motion of the delegate from the city.

**Mr. BROWN**, of Philadelphia county, disapproved of going into committee of the whole for general purposes. The only question was whether the convention would go into committee for the special purpose of considering if section four of the old constitution should be retained, or made to conform to section five.

He could find nothing in the rules of the convention as to the necessity of there being a vote of two-thirds to authorize the body to resolve itself into a committee of the whole for special purposes. He did not know where gentlemen found the authority.

**Mr. DENNY** said, if the gentleman would refer to the forty-second rule, he would there find it.

**Mr. BROWN**—trusted that the motion of the gentleman from the city of Philadelphia would be voted down.

I find (said Mr. B.) that the report which committee has made on the fifth section does not cover the whole ground; and it is my intention to propose another amendment. I hope, therefore, that the motion of the gentleman from the city of Philadelphia, to go into committee of the whole for general purposes will not be agreed to.

**Mr. EARLE** said, he would inquire of the Chair whether, upon third reading, the question was to be taken on each article separately; or upon the whole article together?

The Chair said; that the question was to be taken upon the amendments to the article altogether.

**Mr. EARLE** said, I am opposed to the motion of the gentleman from the city of Philadelphia, (Mr. Meredith) because it would not give us the power to alter any of the old sections of the first article which might be incongruous with the amendments which have been adopted, and because it would not secure the object which the gentleman himself has in view—that is to say, that only a few amendments shall be offered—because it will be in the power of any one to move an amendment. The proper way to despatch business is the usual way, namely, to go into committee of the whole with instructions. What those instructions shall be is a matter which can soon be decided, and the convention can then go into committee of the whole or out of it, in ten minutes or a still less period of time.

As to the fourth section of this article, I hope to be able to demonstrate to the satisfaction of the gentleman from Luzerne, (Mr. Woodward) that there is no difficulty about it; that there is no incongruity between the fourth and the fifth sections—that, in short, the one has no bearing upon the other.

It has been said that the fifth section as it now stands will deprive the small counties of the state of their representation. The gentleman from Luzerne expresses his fears that this will be the result. All I can say is, that I framed the section with a view to *secure* to the smaller counties their representation, and not to take it away from them; and I ask every gentleman who feels interest in this fifth section, to refer to a resolution offered by me, and which will be found at page seven hundred and seventy-three, volume first of the journal. it was as follows:—

*Resolved*, That the Secretary of this Convention be directed to cause to be prepared for the use of this Convention, a statement showing the number of members of the House

of Representatives which would have been established under each septennial enumeration, if the same had been upon a constitutional provision in the words following, viz: "The number of Representatives shall, at the several periods of enumeration of taxable inhabitants, be apportioned in the following manner, viz: One hundredth part of the whole taxable population of the State shall be taken as the ratio of representation; each representative district shall be entitled to as many representatives as it shall contain number of times the representative ratio, together with an additional representative for any surplus or fraction exceeding one-half of such ratio; not more than three counties shall be united to form a representative district: no counties shall be united to form such district, unless one of them shall contain less than one-half of the representative ratio; and no three counties shall be united unless two of them combined shall contain less than one-half of such ratio, in which case such county or counties shall be united to such adjoining county, as will by such union render the representation most equal."

It will be perceived, (continued Mr. R.) that this resolution embraces much more than is in this section. I had intended to have included it in the fourth section, but the previous question was called, and I had, therefore, no alternative except to propose a separate section.

Mr. PORTER, of Northampton, said he had suggested to the gentleman from Chester, (Mr. Bell) a modification of his motion, and which he (Mr. P.) hoped might meet with the approbation of those gentlemen who wished to limit the power of the committee of the whole. It is, (continued Mr. P.) to go into committee of the whole for the purpose of voting—that is to say, to strike out the fifth section—to amend the fourth section by striking therefrom, in the eighth and ninth line, the words "each county shall have at least one representative but;" to strike out the fifteenth section; and for the purpose of making the alterations in phraseology recommended by the revisory committee.

If the gentleman from Chester will accept this modification, as I hope he may be prevailed upon to do, all trouble and difficulty will be avoided. We may thus settle in convention exactly what we will do in committee of the whole.

Mr. BELL said, I believe we have all the same object in view, though we go different ways to attain it. We all wish to get at the amendments to the first article. I have heretofore moved to go into committee of the whole for a special purpose. It is obvious that if that course is pursued, we shall have to go into committee times without number upon every separate proposition. Much time will be consumed by this; at the same time, I think we may avoid opening the door, by adopting the proposition suggested by the gentleman from Northampton, (Mr. Porter.)

I therefore modify my motion to read as follows:

"That the convention do now resolve itself into a committee of the whole for the purpose of amending the fourth section of the first article by striking therefrom, in the eighth and ninth lines, the words "each county shall have at least one representative, but," and by striking out the fifth section of the said article, and for the purpose of making the alterations in phraseology recommended by the committee on the subject of preparing and engrossing the amendments for the third reading."

I have omitted, continued Mr. B., that portion of the suggestion of the gentleman from Northumberland which relates to the fifteenth section, because that was adopted on my motion. The gentleman from Franklin (Mr. Chambers) can submit that motion, if he thinks proper to do so.

**Mr. PORTER**, of Northampton, said he would then move to amend the motion by adding "and for the purpose of striking out the fifth section of the said article."

**Mr. DENNY** inquired of the Chair whether it was in order to submit any part of the fourth section to the committee of the whole?

The **CHAIR** said, that a motion to that effect must be made, on which an affirmative vote of two-thirds would be required.

Some debate followed on the point of order After which

**Mr. MANN**, of Montgomery, said he hoped the convention would not consent to go into committee of the whole for the purpose of general amendment. If the convention did go into committee without limits, it was certain that the chances of getting out again in any thing like reasonable time, would not be very good. Any gentleman might offer all the amendments which his fertile brain might suggest, I think, continued **Mr. M.** that the verbal amendments suggested by the revisory committee, might be agreed to by common consent. We might try this course at any rate, and after we have done that, any gentleman might submit a motion to go into committee of the whole either for general or special purposes. Although for my own part I shall prefer to go into committee for a special purpose, so as to be confined simply to the object for which we go in.

**Mr. STERIGERE** thought the proper course would be for the convention to go into committee of the whole for general purposes, since all matters having reference to the amendments might be settled as well there as in convention.

**Mr. COCHRAN**, of Lancaster, after recapitulating the circumstances under which the revisory committee had been appointed, and the peculiar duties which had been assigned to them, said he was in favor of the motion of the gentleman from the city of Philadelphia, (**Mr. Meredith**) though he (**Mr. C.**) was of opinion that the strictly proper course would be to go into committee of the whole on the report of the revisory committee.

**Mr. BROWN**, of Philadelphia, made some remarks in opposition to the decision of the Chair, that a vote of two-thirds would be required to go into committee of the whole on an unamended section of the constitution.

**Mr. DICKEY**, of Beaver, **Mr. KERR**, of Washington, and **Mr. READ**, of Susquehanna, submitted some observations, addressed mainly to the same point.

**Mr. MEREDITH** said, he regretted to feel himself under the necessity of adding any thing to what he had already said; but he must insist on pressing his motion to a decision, if the discussions were much longer protracted.

I shall say nothing (continued **Mr. M.**) by way of notice of the appeals which have been made about reform. I think that no man who knows me, will suspect me of any desire to stay here a moment longer than I can help. I wish to get through with our business; but I wish also that such additional amendments as the better reflections of the members of this body have satisfied them ought to be made to the amendments already proposed, may be allowed to be made. I, for one, want no debate in

committee of the whole, and if I find that a disposition to debate, manifests itself when we get into committee, I will second a motion to come out again as soon as may be.

But look at the motion made by the gentleman from Chester, (Mr. Bell.) You are to make three or four amendments at once—that is, to instruct the committee to make them. And what will be the consequence? The gentleman moves to go into committee to make a certain amendment. There may be a small majority in favor of the motion, and it will be agreed to. Immediately rises up another gentleman and moves to add another object, and that motion is disagreed to—and so you have to go through three or four, or a greater number of motions, with probably a different vote upon each one of them. Before you can go into committee for any one of these purposes, you must take a vote upon all, and probably at last the whole motion may fall to the ground. And after all your trouble, you may have to begin again. Is this the way to save time? Not according to my ideas, certainly.

Now, here is a proposition which includes an amendment of the fourth section and the fifth section. Upon this you may have two different votes. Then the gentleman from Northampton (Mr. Porter) moves to strike out the divorce section, and there is a different vote upon that. If the convention do not choose to take all these things, we can take none; and so we shall have to commence going round the circle again. It will be an endless, useless, fruitless mode of getting at our business. I have never before seen a body which had that distrust of itself, that when it was apparent that a number of amendments were required, were afraid to trust itself in making them.

His motion was to go into committee of the whole on the amendments made to this article. But, to offer any amendments to the original constitution would require a different motion, and according to the decision of the Chair it would require a majority of two-thirds. Let gentlemen reflect on what they are about. Here was a motion which included three amendments, that required but a majority to make them. And, one of them, the Chair had declared would require a majority of two-thirds. If, then, there should not be a majority of two-thirds the whole would fall to the ground. He would not press his motion if he did not sincerely believe the course he advocated was the most satisfactory and expeditious one that could be adopted. He was of the opinion that if it had been agreed to some time since, we should have been at the third reading now.

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

**YEAS**—Messrs. Agnew, Ayres, Baldwin Banks, Barclay, Barndollar, Barnitz, Bedford, Bonham, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crain, Crum, Cummin, Denny, Dickey, Dickerson, Donagan, Dunlop, Farrelly, Harris, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Kerr, Konigsmacher, Maclay, Magee, Martin, M'cherry, Meredith, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Russell, Saeger, Scott, Serrill, Snively, Sterigere, Sturdevant, Todd, White, Woodward, Young, Sergeant, *President*—60.

**NAYS**—Messrs. Bell, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Crawford, Darrah, Dillinger, Doran, Earle, Fleming, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hayhurst, High, Houpt, Hyde, Ingersoll, Keim,

Kennedy, Krebs, Long, Lyons, Mann, M'Cahen, Merkel, Miller, Myers, Overfield, Porter, of Northampton, Purviance, Reigart, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart—48.

So the question was determined in the affirmative.

And the motion as amended was agreed to.

The convention accordingly resolved itself into a committee of the whole, Mr. DENNY in the Chair, on the amendments heretofore agreed to in the first article.

Mr. WOODWARD, of Luzerne, moved that the committee proceed to the consideration of the fifth section of the said article, which is in the following words, viz :

“ SECTION 5. Not more than three counties shall be united to form a representative district. No two counties shall be so united, unless one of them shall contain less than one-half of the average representative ratio of taxable population. And no three counties shall be so united, unless two of them combined shall contain less than one-half of the representative ratio aforesaid.”

The question being put, the motion was decided in the affirmative.

Mr. WOODWARD moved to amend the article by striking therefrom the fifth section.

Mr. WOODWARD said he would, in a very few words, explain his motives. His objection to the section was that it might operate unjustly on the small counties. Take the three counties—Wayne, Pike and Monroe: Wayne has two thousand one hundred and twenty taxables, Pike has six hundred and thirty-one, and Monroe has one thousand eight hundred and twenty-five. Under this section “ no two counties can be united, unless one of them shall contain less than one-half of the average representative ratio of taxable population,” which is three thousand and a fraction. Wayne, therefore, has more than one-half of the average, Monroe has also more than half, and Pike has less than half; Pike, therefore, may be united to Wayne on the one side, or to Monroe on the other. If she be united to Wayne as she now is, she loses her representation. But what becomes of Monroe? She has more than half the average of the ratio, and cannot, as she now is, be united with Northampton, which has seven thousand six hundred and ninety. Monroe has not less than half of the average, and cannot be united to Northampton. What is to be done?

I hold (said Mr. W.) that, under this fifth section Monroe would be thrown out. If you unite Pike with Monroe, Pike will have her representation, but Wayne will have the same representation, so that one county would be unrepresented. But it had been said that the fourth section makes provision in this case. The language of that section runs thus :—

The number of representatives shall, at the several periods of such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each; and shall never be less than sixty, nor greater than one hundred. Each county shall have at least one representative; but no county hereafter erected shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be

contained within it to entitle them to one representative, agreeably to the ratio which shall then be established."

This is the provision. If it was ascertained that Monroe had altogether one thousand eight hundred and twenty-five taxables, and the adjoining county had more, where would you go? Would you go to one of the large counties? Would they not tell you that they must have a representation in proportion to population? They would say that the representatives must be taken from themselves. It was very easy to suppose when after taking the ratio there would be in large counties a fraction which would exceed one thousand eight hundred and twenty-five, or even two thousand. The question would then be—shall a representative be given to this fraction of two thousand, or to Monroe with her one thousand eight hundred and twenty-five? It would, properly according to population, be given to the larger counties.

Therefore, (said Mr. W.) it appears to me that, notwithstanding the provision in the fourth section, Monroe would be disfranchised by the operation of this fifth section. Look at the counties of Tioga, Potter and Jefferson, on the northern line. These are still smaller than the other, and will be subject to the same power in the larger counties. It might be said that Monroe could be united to some other county. But her geographical position forbids this. Joined by Pike on one side, her eastern limit is the Delaware river, which forms the common boundary; and unless she could be united to Jersey, he knew not what else could be done, as she had Northampton on two sides. Thus Monroe presented one case, and Wayne another. It had been said that the legislature would not make any apportionment which would give a representative to these counties. It might be so. Perhaps they would not, but this would be unjust. He was unwilling, however, that the small counties should be left at the mercy of the larger ones. He was unwilling that the large counties should have the power left with them to disfranchise the small ones. They were entitled to have a representation, not by virtue of their separate population, but by the union of several small counties. In this way they were entitled to a full representation, not quite satisfactory perhaps, because each county would wish to be represented by her own citizens; but the people of these counties would be represented by the individuals for whom they might give their votes. Under this section, they would be represented by those for whom they had not voted, in violation of every rule of republican government. The motion of the gentleman from Chester was to strike out of the fourth section, in the eighth and ninth lines, the words "each county shall have at least one representative, but." He had the same doubts as to the practical operation of this amendment.

The counties are not by reason of the taxable inhabitants within them, entitled to a separate representation; and the meaning of this section, as it stands in the constitution, could not, as it seems to me, give them a right to which they would not be entitled by the manner in which they have been erected. I take it, then, that in relation to these counties the commonwealth would stand precisely in the same condition in which she stood under the old constitution. The right of a county to a separate representation would depend on the number of taxable inhabitants, and not upon the date of erection; and you thus prevent the legislature from



making that arrangement in regard to the small counties under which they have heretofore enjoyed a representation in the house of representatives by individuals for whom they voted. This is my objection, and it is illustrated by reference to the counties of Wayne, Pike and Monroe. Now I say that if any gentleman will shew me, by a fair course of reasoning, that such is not or may not be the operation of this amendment, and that it will be harmless, I will raise no objection to its adoption;—or if it can be shown to be a proper and useful amendment, I have nothing further to say in opposition to it. But according to my present understanding, it will certainly lead to perplexity and trouble. I shall be glad to have these impressions removed by the gentleman from the county of Philadelphia, (Mr. Earle) or any other member of the convention.

Mr. BELL, of Chester, said that as this was a very important subject, and would occupy some time before it could be adopted, he would move that the committee now rise.

Which motion was rejected, ayes 39;—noes 40, and upwards.

So the committee refused to rise.

And the question then recurring on the motion,

To amend the said first article by striking therefrom the fifth section.

Mr. EARLE, of Philadelphia county, said, I do not wish, Mr. President, to go at any length into this matter, at so late an hour in the evening, but I have risen for the purpose of throwing out a few observations for the consideration of the gentleman from Luzerne, (Mr. Woodward.)

I will state briefly the object I have in view, and if I have been so unsuccessful as not to induce gentlemen to vote for a provision which I believe would effect a good object, I ask the gentleman from Luzerne not to oppose the principle, if in his opinion the principle be good, but rather lend me his aid towards making the section so perfect, that a good object may at length be attained by its adoption.

I say, then, that it is not a valid objection to this section, that it would deprive Monroe, or any other county, of her representation, for even if such were the fact, it would be very easy to bring in an amendment, by which Monroe, or any other county, might be secured against such an operation.

My object was to secure to Monroe, Juniata and Mifflin, each a separate representation. My object was to prevent Gerry-mandering, as it is called. Experience has shown us, that all legislatures will be disposed to resort to it in times of high party excitement.

I wish to have a rule, that will operate upon all parties alike, and not upon one only. If the majority are opposed to me in politics, I wish nevertheless that the majority should rule. But by means of this Gerry-mandering, the majority may be prevented from ruling, by either party happening to have a legislative majority when the apportionment of representatives shall be made.

Since the year 1790, we have had upwards of thirty additional counties made. If we make no change in the part of the constitution now under consideration, then we leave it in the power of the legislature to unite all these counties just in such manner as it may please, with a view to subserve political and party purposes. It is my object to prevent this, and if

my amendment be not sufficient to prevent it, I ask the gentleman from Luzerne, (Mr. Woodward) or any other member of the convention, to whatever party he may belong, to bring in an amendment which will accomplish the purpose. And if he will do so, I will vote in favor of it.

All I desire is, that the legislature shall never unite counties, unless there shall exist a necessity for so doing. It is to secure, and not to sacrifice the rights of the smaller counties, that I have brought in this amendment; and I voted on the first reading in committee of the whole to increase the number of representatives by five or six, so as to give to the smaller counties a better representation.

If the gentleman from Luzerne wishes to secure the two objects—that is to say, to secure the rights of the small counties and to prevent Gerrymandering, he should introduce an amendment, obviating what may appear to him objectionable in phraseology. As the constitution now stands, the new counties may have a fraction equal to the larger counties, and the legislature may deprive them of a representation for it, while they give such representation to the larger sections, and thus the older counties may have a larger representation, compared with population, than the new counties. But retain this amendment in the constitution and you secure an equality. The influence of the large counties is already great, from the fact that they act in mass.

If there is any difficulty attending this matter, the way to remedy it will be to adopt one of two courses—and if the gentleman from Luzerne is in favor of the objects which I have in view—that is to say, to stand by the small counties and to prevent Gerrymandering, he will either adopt one of the two amendments which I am going to suggest, or he will bring forward a third.

From the best reflection, however, which I have given to the matter, I do not think that there will be any difficulty as it now stands; but if any should arise, I believe that, governing ourselves by the principles of justice, the proper plan would be to give to the small county its representative, and take it off the larger one.

One gentleman has said that he can not trust the legislature. Well, then, if that be so, my answer is, insert an amendment in the constitution which will effectually accomplish the object. There is a means of doing it. I had intended to strike out that part of the fourth section which reads as follows.—

“The number of representatives shall at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each: And shall never be less than sixty nor greater than one hundred. Each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established.”

And then (continued Mr. E.) I would have inserted my resolution, No. 116, which is as follow :

“The number of representatives shall, at the several periods of enumeration of taxable inhabitants, be apportioned in the following manner, viz :

One hundredth part of the whole taxable population of the State shall be taken as the ratio of representation; each representative district shall be entitled to as many representatives as it shall contain number of times the representative ratio, together with an additional representative for any surplus or fraction exceeding one-half of such ratio; not more than three counties shall be united to form a representative district; no two counties shall be united to form such district, unless one of them shall contain less than one-half of the representative ratio; and no three counties shall be united unless two of them combined shall contain less than one-half of such ratio, in which case such county or counties shall be united to such adjoining county, as will by such union render the representation most equal."

This (continued Mr. E.) would have ensured to Monroe its representative without doubt. There was only one objection made to it. That objection consisted in the allegation that the number of representatives might considerably exceed one hundred. I offered a resolution, which was adopted, that the secretary of the convention should cause to be prepared a statement showing what the number of representatives would have been under the several enumerations, if regulated by a rule like the foregoing. The statement was prepared and has been presented to the convention. It shows that the number of representatives would never have varied more than two or three from one hundred. It was a certain, infallible, and invariable rule.

He repeated that he thought the proper motion for the gentleman from Luzerne to make, would be to amend so as to remove every difficulty, if any there was in the way, but not to strike out a provision essential for the security of justice.

Mr. GAMBLE of Lycoming, moved that the convention do now adjourn: Which was agreed to.

Adjourned until half past nine o'clock to-morrow morning.

FRIDAY, FEBRUARY 9, 1838.

## THIRD READING.

The convention again resolved itself into a committee of the whole, Mr. DENNY in the chair, on the amendments heretofore agreed to on second reading, to the first article of the constitution.

The amendment to the fifth section of said article being again under consideration, being the motion of Mr. WOODWARD to strike out the said fifth section,

Mr. EARLE, of Philadelphia county, resumed his remarks. He had already said, if any such difficulty was likely to arise, as had been anticipated by the gentleman from Luzerne, (Mr. Woodward) it might be remedied by an alteration of the language, without destroying the section. He believed there would be found a disposition in the convention to take time to make this article perfect.

He had been somewhat surprised to hear some gentlemen impugn the justice of the provision which requires that fractions of more than one half of the average representative ratio should be represented by an additional member. Any other principle would be unjust to the small counties. If the fractions are not represented, a large portion of the citizens will be without representation. Take five small counties, the population of which is about equal, and they may, unless fractions are represented, lose about two and a half members, nearly half their proper representation. Philadelphia may only lose half a member, or about one twentieth of its representation, while the five small counties, which are likely to have as great a surplus to each county as the large ones, would lose half their representation. If we take ten of the smaller counties the loss would still be greater. They would be entitled only to six or seven representatives. To do justice to all, the fractions must be represented.

The situation of Centre and Lycoming shewed that injustice had been done to them. If the fractions had been represented, according to this principle, Centre would have one more representative, and Lycoming one more. On reflection, he was satisfied that the objections of the gentleman from Luzerne are without foundation, and that the introduction of this principle would not make any difficulty in any case. He would suppose the possible case of a county, morally and equitably entitled to a member. The legislature could not deprive the county of that member without being guilty of gross injustice. He believed no member could wish to deprive Monroe of a representative. He would shew that this could not arise, unless by wilful perversion of the constitution.

The opinion of the gentleman from Luzerne is, that Monroe could not be joined to any county, because it might have more than half the representative ratio, and Pike and Wayne, also, having more than one half, the union of the three counties would be prohibited, as the amendment

now stands. Then, says he, Monroe might have no representative at all ; because the larger fractions in other counties might raise the number of members to one hundred, leaving none for Monroe.

He would shew how the difficulty might be obviated. The constitution does not say that you shall divide the population by one hundred to obtain the ratio of representation. You may take ninety-nine, or ninety. Suppose you take one hundred as the number by which to divide for obtaining the ratio : you find that it produces three thousand as the ratio of taxables for each representative, and that to give a representative on every fraction above fifteen hundred, that is to say one half the ratio, would make one hundred and one members in all. You are therefore obliged to leave the smallest fraction of those which exceed fifteen hundred unrepresented ; and it so happens, that a small county, standing by itself, has the smallest fraction of the kind mentioned, and therefore cannot be represented at all. For this case, you have only to change your divisor from one hundred to ninety-nine, and the inevitable result will be, that the small county in question will have less than half of the new ratio thus obtained, and therefore may be joined to another county, or to two others ; or if it still has more than one half the ratio, there will be enough spare members, so that you may give one to every fraction exceeding half the ratio ; and thus the small county in question will obtain its member. This would be the case with Monroe, as it would have, taking one hundred as the divisor, a fraction exceeding by two or three hundred the one half of the ratio.

Let me illustrate it. Suppose the whole number of taxables in the state to be three hundred thousand. You take one hundred as the divisor :

100)300,000(3,000 ratio.

Thus you get three thousand as the ratio. Now suppose Philadelphia county to have thirty-one thousand seven hundred and fifty taxables, and Monroe to have one thousand seven hundred. Philadelphia county would have ten members, and on its fraction of seventeen hundred and fifty would be entitled to an eleventh member, in preference to giving one to Monroe on its fraction—or whole number—of seventeen hundred. Now change the ratio to three thousand one hundred, as the legislature may rightfully do, inasmuch as we do not fix the ratio by the constitution. The result will be, that the ten members of Philadelphia county will take up three thousand one hundred of her taxables, leaving her a surplus of but seven hundred and fifty ; so that she will lose the eleventh member, which she would have had on the ratio of three thousand, while Monroe having seventeen hundred, or more than one half of the new ratio of three thousand one hundred, will be entitled to a member under the new ratio so fixed upon.

All we have to do then, to secure infallible justice, is to provide that every fraction exceeding one half of the ratio fixed upon, shall be entitled to a member ; then the legislature must necessarily fix such a ratio as will give a representative to all such fractions, and at the same time make the whole number not to exceed one hundred. I doubt not that the legislature, as the clause now stands, would act upon this principle ; but to prevent the possibility of the arising of the case supposed by the gentleman from Luzerne, I will move this additional amendment, viz :

"Any surplus or fraction of taxables contained in any district, which surplus shall exceed one half of the representative ratio that shall have been fixed upon by the legislature, shall entitle such district to a representative for such surplus or fraction."

The PRESIDENT decided that this amendment was not now in order.

Mr. WOODWARD said he would modify his motion, and would only move to strike out the words of the section, which follow the word "unless" in the third line, and to insert in lieu thereof the words "they shall be contiguous." The section would then read as follows :

"SECT. 2. Not more than three counties shall be united to form a representative district. No two counties shall be so united, unless they shall be contiguous."

Mr. READ, of Susquehanna county, said, it had not been his purpose to submit any more remarks in this convention; but the proposition made by the gentleman from Luzerne was so new and unexpected, that he was compelled to forego his resolution, and to ask the attention of the body for a few moments, while he should shew, if able to do so, that the gentleman from Luzerne had entirely mistaken the operation of the fifth section, as it now stands, and as he hoped it would stand. One of the points on which the gentleman from Luzerne had addressed the convention was that the words "each county shall have at least one representative," if permitted to stand, should take date from 1790 instead of 1838. He (Mr. R.) did not know how the gentleman from Luzerne came to such a conclusion. He (Mr. R.) held that we are not bound by the acts and specifications of the act of assembly under which the convention was called, to pursue any prescribed path, and we are to disregard any of these whenever we can hit on a better course. Some gentlemen held that we are bound. He would take it to be so, for the sake of the argument. The act provides that when the convention shall have met, and agreed on the amended constitution, the amended constitution shall be engrossed, and signed by the members of the convention, and deposited in the office of the secretary of the commonwealth. For what purpose was it to be deposited there, unless as an original document, a writ, and that its provisions might take date from the same moment.

There could be no difference between the constitution and the amended constitution. The act says, the amended constitution so agreed on, shall be thus signed and deposited—for what? That a part should bear date from 1790, and a part from 1838? To make it known to all time, that the judges, in putting their construction on its provisions, should take reference to different dates? Look at the inaccuracies which would result from such a state of things. The instant the engrossed constitution is so signed and deposited, in all time to come, a part is to go back forty or fifty years, instead of all bearing date together, as an amended constitution, in the words of the act to which the gentleman adheres. If the words "such county shall have at least one representative" stand, every one, except, it might be, some member here, would understand it as taking its date and operation from the same moment of time as the other provisions of the constitution. He was astonished that the gentleman from Luzerne should have put so singular a construction on this part of the article.

Again, the gentleman from Luzerne was opposed to the fifth section, because he fears that, under its provisions, the small counties will be injured. He fears that the rights of the small counties will be sacrificed. This section was expressly framed to give the advantage to the small counties of preserving all their rights, in cases where they might be affected by the disposition of the fractions. This gives to them all they desire.

The gentleman from Luzerne has referred to the counties of Wayne, Pike, and Monroe, to shew the difficulties which would arise, and it was to be presumed that he had referred to the most difficult cases he could select. Let us see (said Mr. R.) if there is any difficulty. Wayne contains a little more than half of the average representative ratio; Monroe more than half; and Pike less than half the ratio. What is the consequence? Pike must be united to Wayne or Monroe, and form a district, and the other county would be entitled to a separate representation. Every county, where it was not absolutely necessary to connect with some one containing less than half the average ratio, would have a separate representation. United, Monroe and Pike would form a district; Wayne having more than half the ratio, would have a separate representation; and every county in the state, having more than half the ratio would be entitled, as a matter of right, to a separate representation; and the legislature could not refuse any county that right, unless by uniting it with some one county having less than half the ratio.

What he now said, was not in reference to the question of striking out the last part of the section, but to the argument of the gentleman from Luzerne. The incongruity which exists is between the first and the latter part of the section, and not between the fourth and the fifth sections; and thus difficulty and ambiguity would necessarily arise from the difference in the condition of things and the interests of men, contemplated by the provisions of the constitution of 1790, and those of that of 1838. Let us (said Mr. R.) look, without reference to the last parts of the section, if there be any contradiction between the section which apportions representation according to taxation, and the fifth section. The clause of the fourth section on this subject is:

“The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each.”

He would ask every member of this body if the words “the several counties” can receive any other construction than would be put on the words “every county.” When the clause says “the several counties,” it means “every county.” Therefore the gentleman from Luzerne was under a mistake, when he supposed that this did not apply to every county. Here is an apportionment of representation, in proportion to the taxable inhabitants in the several counties, which is equivalent to all the counties. This is the general principle to which we all adhere. But in regard to the fractions, it is impossible to carry out the principle to the very letter, without disregarding the county lines, because the provision cannot be literally complied with without altering the county lines. Thus it was utterly impossible to carry out the general principle to the

letter. It was necessary then to depart from the general principle, so far as to carry into effect the provision as to the fractions. He would ask the gentleman from Luzerne, therefore, to say, if there was any contradiction between the fourth and fifth sections. The fourth section establishes representation according to population; the fifth section disposes of the fractions. A modification of the general principle we find in the fourth section. It is only an exception to the general rule, founded on the necessity of the case; and, from the information he had received as to the feelings of the people, he would venture to assert that there was no county in the commonwealth but what would rather lose a fraction equal to nearly one half of the ratio, than to be connected with any other county. There was no county but would rather lose less than one half the ratio by a single taxable, than be connected with any other county. The fifth section merely disposes of the fractions, and it disposes of them in the way which is most acceptable to the people of the commonwealth.

If he was correct in this, and he was almost sure that he was, then the fifth article, as it stood, disposed of a fraction in the way most acceptable to the people. He would venture to say that there was not a gentleman on that floor who would assert that he (Mr. R.) was mistaken when he affirmed that there was not a county in the state containing three thousand taxables that would not rather have one representative alone, than three by being connected with another county.

This section provided that in all cases where a county has more than half a ratio, it shall have a separate representation, unless it becomes necessary to connect it with a county having less than half a ratio.

The legislature could not, (as was supposed by the gentleman from Luzerne) unless they violated the constitution and their oaths, deprive any small county of a separate representation, unless it had less than half a ratio.

He hoped that any motion that might be made to strike out this section would fail. It was one of the most valuable amendments that we have made. It compels the legislature to be honest. Now, that we were acting on the right of suffrage—a most important right—was it not, he asked, of the highest consequence that we should lay down a rule which the legislature could not depart from, and which would compel them to make counties according to this provision, which cuts up Gerrymandering by the roots. He hoped the motion would not prevail.

Mr. WOODWARD was very anxious to make the section as perfect as possible. He hoped that the gentlemen from Susquehanna and Philadelphia would see that the provision he now proposed would avoid the difficulty at present in the way.

Mr. W. then withdrew his former amendment, and moved to add the following to the section:

“And if any county containing less than the number of taxables necessary to entitle it to a separate representation, but more than one half of such number, cannot be united with another county to form a district, it shall be entitled to a separate representation.”

Mr. EARLE remarked that that would obtain the object he (Mr. E.) proposed.



**Mr. STERIGER**, of Montgomery, said that he did not know how to vote. If any gentleman would explain the amendments, he would thank him.

The fourth section says :

"Each county shall have at least one representative, but no county hereafter erected, shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established."

And, the fifth section says :

"Not more than three counties shall be entitled to unite to form a representative district; no two counties shall be united, unless one of them shall contain less than one half of the average representative ratio of taxable population; and no three counties shall be so united, unless two of them combined shall contain less than one half of the representative ratio aforesaid."

Then came the amendment, "and if any county, &c." He really could not understand them—they appeared to be so contradictory in themselves, as well as with each other, that he found it utterly impossible to reconcile them. The only way was to strike out the fifth section altogether, and then the matter would be rendered intelligible and correct. Although we were told that there should not be a representation according to territory, yet we found that the constitution of 1790 requires that there should be a representation even of territory.

Almost every county has a distinct interest of its own. The voice of counties that have not each a member, would be drowned, and their interests entirely disregarded. It seemed to him that great injustice would be done them. He was in favor of giving to each county now organized, one member in the house of representatives.

The amendment as it now stood was, in his opinion, a perfect contradiction. He thought it would be better to negative the section.

**Mr. FULLER**, of Fayette, said he would vote for the amendments, but with the express understanding that the convention would resolve itself into a committee of the whole on the fourth section, to strike out the words "each county shall have at least one representative," &c. He was not disposed to give the counties with a sparse population a separate representation. He thought the people, and not territory, should be represented.

**Mr. CHAMBERS**, of Franklin, said he regretted that more attention had not been paid by the convention to the amendment. It was obvious that the amendment adopted on second reading, was adopted without due consideration or reflection. That had been clearly shown by the committee of revision, and by the amendments which had since been proposed. The amendment now pending to regulate the representation of the commonwealth hereafter, was one of the highest importance.

He felt disposed, at first, to support the motion of the delegate from Luzerne, (Mr. Woodward) to strike out the fifth section, it being the one which has brought about the incongruity. And he was inclined to vote in favor of the second proposition to strike out certain lines. He thought that the amendment proposed by the delegate from Luzerne, rendered the

section even more objectionable than at first. If he (Mr. C.) understood the operation of the amendment—it was that every county possessing a ratio of three thousand and upwards, was to be entitled to a representative.

Now, he would ask if there was any good reason why two counties, one having one thousand six hundred and the other one thousand seven hundred taxables, if united, should be entitled to a representative? He thought not. What good reason could be assigned for uniting counties in this manner?

He would vote against the amendment of the delegate from Luzerne, and would leave it to the convention to say whether they thought it necessary to amend the fourth section. In his opinion, however, it was quite unnecessary. If it should be thought advisable to strike out the latter part of the fourth section, on the ground that it was calculated to remove all doubt, he would prefer voting for the motion, to introducing a section which would involve the legislature in difficulties, and would be doing injustice to many parts of the commonwealth.

Mr. FLEMING, of Lycoming, rose and said:—Mr. President, I am in favor of the explanatory amendment proposed by the gentleman from Luzerne, (Mr. Woodward) but I will first notice the provision for representation contained in the fourth section of the first article of the constitution of 1790. It is said the words in that section, to wit: “each county shall have at least one representative,” will have the same effect upon the amended constitution without being re-enacted by this convention, and unless this provision is stricken out, it will give each county *now* erected, at least one representative. I do not so understand nor construe this provision; it has reference to the counties erected in 1790 and not in 1838; and I am borne out in this construction by the language of the fourth section, immediately following, to wit: “but no county hereafter erected, shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established.” I therefore understand the word “hereafter” to refer expressly to the counties to be erected in '90 and not in '38, &c. This is certainly the proper, legal construction of the provision in the fourth section; and inasmuch as it can have no binding effect hereafter, it having subserved all the purposes intended, it must be nugatory and void hereafter, and I am therefore anxious to have the provision stricken out of the fourth section, in order to show some degree of consistency in our proceedings—but I would much prefer that the convention would re-enact the fourth section, and thereby act equitably toward the sparsely populated counties.

Now, sir, I ask the attention of the convention to the construction I put upon the fifth section, now under consideration and agreed to in committee of the whole.

This section was certainly agreed to in committee of the whole, upon very slight consideration, and without some such explanatory clause, it will effectually disfranchise several counties in this commonwealth.

The first provision is, that “not more than three counties shall be united to form a representative district,” thus far it is not ambiguous but readily understood. The remaining provisions are calculated to operate

ceedingly hard upon the small counties. The first of the two following provisions is in these words, to wit: "no two counties shall be so united, unless one of them shall contain less than one half of the average representative ratio of taxable population."

Now, sir, the effect of this provision may be to deprive a county which contains one half the ratio of taxables necessary to entitle it to a representative of any representation, whatever; for, if a district which may, by its number of taxables, be entitled to one or more representatives, shall have a larger fraction than a county having but one half the ratio, the larger fraction under this amendment, would be entitled to a representation for the fraction, and you would thus leave the counties containing one half the ratio without representation.

The last provision in the fifth section is in these words, to wit: "and no three counties shall be so united, unless two of them combined, shall contain less than one half of the representative ratio aforesaid."

Now, sir, the same argument which I have applied to the second clause of this section is applicable to this. If two contiguous counties contain one-half the ratio of representation, they shall not be connected with a third county, and, there being no provision to the contrary, if a district entitled to one or more representatives, shall have a fraction larger than such two counties, the largest fraction would be entitled to the representation, and the two counties containing the one-half of the ratio of representation would be thrown without the pale of the law, the citizens disfranchised and left totally unrepresented.

I cannot believe, sir, that it is the wish of this convention to do such manifest injustice to the small counties. I pray you, let them be represented upon some terms. We have heretofore asked a representative for each county, and have been denied; we have asked that the number of representatives be increased to one hundred and four, which has been refused; we have asked for a representation compounded of taxables and territory, with the same object in view, which met the like fate.

These several propositions have each been advocated, but we have failed to make the much desired impression upon this body. And now, sir, an attempt is made to deprive them of the right of representation they now enjoy.

I will vote for the amendment of the gentleman from Luzerne, (Mr. Woodward) because it embraces the same principle which is contained in the fourth section of this article, and will give each county, containing one-half the ratio of representation, a representative. And I now speak of the effect of the amendment, that we may not act unadvisedly upon it. If it is the wish of the convention to give a county, or counties, containing one-half of the ratio of representation, a member, in preference to a county which is entitled to one or more representatives, by reason of the number of taxables, and having a fraction larger than the small county or counties containing one-half the ratio—then I ask that it may be so stated and explained, that there may be no doubt about the construction of the section hereafter. The amendment proposed to the fifth section, will remove the danger of misconstruction. It is in these words, to wit: "and if any county, containing less than the number of taxables necessary to entitle it to a separate representative, but more than one-half of such

number, cannot be united with another county, to form a district, it shall be entitled to a separate representative."

Mr. KONTGMACHER said, the more we examine the present constitution, the more its merits become apparent, and the wisdom or propriety of our amendments become questionable.

The present constitution has been in operation for near half a century. It is a singular fact, that during all that time, no part of it was ever put in question as being ambiguous; every sentence is clear and comprehensive; but we are now actually unable to understand the amendments, which, after long discussions, have been agreed to, and adopted. He thought it probable the best way, after all, would be to strike out all your incongruous amendments, and let well enough alone.

Have we not stricken out many of the amendments we had adopted in committee of the whole and on second reading, and altered many more, so much so, that if we were to continue as long again in session, we would have hardly any of them remain. I have my doubts whether they will stand the test until the election, when the people are to vote on them, that they will probably discover that they will not be as secure in their rights and property under the amended constitution as under the old one, which has been well tried.

Mr. PORTER, of Northampton, said it was his desire that the constitution should be as free from ambiguity as it was possible to make it. The fourth section provides that

"Each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established."

Many gentlemen thought this part of the section liable to a difference of construction. Then, why, he would ask, should this convention not render it more clear and unambiguous. It disfranchises all the counties which have more than a moiety, unless they can be connected to others which have less than a half. Now the county of Cambria has one thousand nine hundred and twelve taxables; Juniata, two thousand one hundred and two; Mifflin, two thousand four hundred and eleven; Monroe, one thousand eight hundred and twenty-five; Perry, two thousand nine hundred and forty-two; Tioga, two thousand five hundred and fifty-four; Venango, three thousand and fourteen; Warren, one thousand six hundred and twenty-six; and Wayne, two thousand one hundred and twenty.

These counties, then, have little more than half a ratio allowed to a representative. The ratio is three thousand and ninety-four. The constitution of 1790 says that no county shall have a separate representation, unless they have the ratio required by law. Now, by the new section proposed by the gentleman from the county of Philadelphia, (Mr. Earle) "no two counties shall be so united unless one of them shall contain less than one half of the representative ratio," &c.

The county of Pike has less than half a ratio, having six hundred and thirty one taxables. It is at present attached to the county of Monroe—adding Wayne and Pike together, the taxables between them amount to three thousand and twenty-four, which is little short of a ratio. Where

is Monroe? She cannot be connected to Northampton, because she has a little more than half a ratio. Northampton has seven thousand six hundred and nine taxables, enough to entitle her to two representatives. But what is to become of Monroe? Why, according to the constitution of 1790 she cannot have a separate representation, nor can she be attached to the county of Northampton. It was quite certain that counties similarly situated to Monroe, and having less than half a ratio, were to be represented. The amendment of the delegate from Luzerne would obviate this. But the impression on his mind was, that it would better to strike out all in the fourth section, which says that each county shall have one representative, and that no county shall have a separate representation, unless it has the number of taxables required by law. And, he would also strike out all of the fifth section after these words :

“ Not more than three counties shall be entitled to unite to form a representative district.”

The county of Northampton was entitled to more than two representatives, and Monroe not to one. The only counties which have less than half a ratio, are Clearfield, Jefferson, M’Kean, Pike and Potter. Clearfield, which would be added to Centre, according to the present representation, would be entitled to two representatives ; and the counties of Jefferson and M’Kean would be added to the county of Warren, being contiguous. This new arrangement would not effect them. Potter could be added to Tioga. The prejudicial effect would be in excluding those that have less than half a ratio. He would not consent to give a county having only four hundred and ninety-two taxables a separate representation. Clearfield would shortly have more than half a ratio. He, for one, would not be willing that such a county should have as much influence in the house of representatives as the county from which he came. As he had already said, he thought the matter would be more simplified if the last clause of the fourth section were to be omitted, and all after the two first lines of section the fifth.

MR.—BANKS, of Mifflin said, I believe that the gentleman from Luzerne, (Mr. Woodward) and myself have both the same object in view, and it seems to me that the committee are desirous of perfecting this section if it is in their power to do so, so as to make it tally with the provision in the fourth section as they desire to have that section amended. I would suggest to the gentleman from Luzerne, the propriety of withdrawing his amendment or of so modifying it as to read that a county having a fraction over one half the ratio shall be entitled to a representative—and then to place the amendment in the fore part of the section instead of appending it to the end.

This will express, without fear of misconstruction, the desire of gentlemen to give the small counties which contain not less, but more than half the ratio of representation, a separate representation unless they can be so connected with other counties contiguous to them as to give them a representation, according to the ratio of taxables in the district. It seems necessary to provide in some way for large fractions above the half of what the ratio fixed by the legislature may be. Now, in justice to the small counties of the state, is it not right that there should be some constitutional provision so that the counties possessing more than one half the ratio of representation should, in the first place, have a representative

assigned to them. We know that, somewhere or other, the fractions must have representatives assigned to them. If a small county possesses more than half the ratio of representation, is it not right and proper that that county should first be provided for, in preference to giving a representative to a fraction in a large county? Look at the territories which are comprised within the small counties and which will be left without representation if something of the kind is not done, and then say whether it would not be better for us to give those smaller counties one representative, before we assign more representatives to the large counties. I do not desire to take away from the large counties any of their representation. All I wish is that all should be represented—that every district of every county in the state should be represented—and that a representation should no longer be denied to the small counties whilst the large counties are fully and efficiently represented.

It may be said that, in offering these remarks, I have my own county in view. As to that county, it was not according to the last apportionment, and is not at present entitled to a representative by itself. Still, however, by combining the counties of Union, Juniata and Mifflin we are fairly represented and we do not make any complaints.

These are my views in suggesting the modification I have done to the gentleman from Luzerne. The gentleman from Northampton, (Mr. Porter) has so fully expressed the opinions which I myself entertain on the question that I need not trespass longer on the patience of the convention.

As to the fourth section, if it stands as it now does, each county, according to my understanding, will be entitled to a separate representation. If it is amended by striking out, that would be another affair.

Mr. WOODWARD, said he had examined the suggestion of the gentleman from Mifflin, (Mr. Banks;) and that he (Mr. W.) was fully satisfied that that gentleman and himself had the same end in view. But he felt apprehensive that the modification suggested would not be as intelligible as the amendment in the form in which he had himself offered it. He thought his own proposition conveyed more clearly the idea which it was intended to express. So far as concerned the principle, he did not object to the suggestion of the gentleman from Mifflin.

Mr. STERIGERE said, that if the convention were to adopt the proposition of the gentleman from Mifflin, it would render the contradiction still more apparent than it would be by the amendment of the gentleman from Luzerne.

Mr. BANKS said, he had probably not made his ideas clearly understood. His desire was that the fourth section should be amended so as to strike out the following words:

“Each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative agreeably to the ratio which shall then be established.”

Mr. STERIGERE resumed.

The explanation of the gentleman from Mifflin places the matter upon a different footing. But we must take the amendment as it stands.

The amendment of the gentleman from Luzerne, as it appears to me, produces the most entire confusion, and I think that it will baffle the ingenuity of any man to say what these two sections will really be, if that amendment is adopted. The fourth section declares that each county shall have a representative. The fifth section says, that "not more than three counties shall be united to form a representative district," &c., &c. Consequently, there is no difference except as to those small counties spoken of by the gentleman from Northampton, (Mr. Porter.) And I do not think that he has put the question on a fair footing before the convention. He has urged this matter, as if the taxable inhabitants of the small counties were to remain what they were three or four years before—because it is to be recollected that the taxable inhabitants to which he refers are the taxables as taken in 1834. I should think that Jefferson county by this time amounts to half the ratio, and before another enumeration is made, all these counties may each have half a ratio.

The gentleman from Fayette, (Mr. Fuller) says that he is not disposed to be quite so liberal as I am. He thinks that in an old county, being entitled to more than one member, they may have another member on a ratio extending only to half. He must, therefore, abandon the idea of equal representation and refer to territory. Thus it seems that the principle upon which he goes, is precisely that for which I am here contending—with the single difference that so far as relates to the counties which can have no voice under either of these amendments, I am disposed to give one to them. He is disposed to prevent this representation entirely, and to give the counties which have already several members and who need it not, an additional advantage in the shape of representation.

Mr. FULLER, of Fayette, asked leave to explain. What I meant to say, continued Mr. F., was this; that the counties containing a less number of taxable inhabitants than one half the ratio, should not be entitled to a separate representation. Now, the gentleman from Montgomery, (Mr. Sterigere) states, that my idea was that the counties having a less population than half the ratio should go unrepresented. This certainly was not my intention. My idea was that the counties having a less population than over half the ratio should be united in the manner set forth in the fifth section. I take it they would thus be represented. I wish that the position I assumed in this respect should be properly understood.

Mr. STERIGERE resumed.

The explanation of the gentleman from Fayette, so far from relieving him from the situation in which I stated him to be, has fixed him faster than ever. Under his argument, the small counties would be annexed to the larger ones for all practical purposes—their voice would be entirely drowned. The small county is thus not only left without a representation of its own, but is misrepresented for the purpose of subserving the interests of the larger counties. I would rather have the representation of an individual in a distinct part of the state, where there would be no conflicting interests. Fractions have always given a member, and in some instances they have done so where they did not exceed even the tenth part of a ratio. This has been done by the legislature and I am disposed, by means of a constitutional provision, to prevent this improper apportionment. If we sanction the idea that any thing less than a full ratio is entitled to representation, we abandon the idea of representation according

to population. I shall vote against this amendment because it produces confusion, and no man can say what its true import is.

Mr. FULLER said, I regret to feel myself under the necessity of adding any thing to the remarks I have already made.

I believe that the sole object which we had in view in going into committee of the whole, was simply to adopt a provision calculated to put an end to a system which has been carried into practice in this state, and which is called *Gerrymandering*. So far as relates to the basis of representation being on the ratio of population in the commonwealth of Pennsylvania, I believe there was no difference of opinion amongst us. Now, the introduction of this fifth section into the first article of the constitution was simply intended to prevent the union, unnaturally and inconveniently, of many of the counties of the state. This I understood to be the object in view at the time it was presented. It is true that this section, as I look upon it, has more language in it than is necessary. The amendment of the gentleman from Luzerne (Mr. Woodward) appears to explain it—to my mind at least—so as to give as good a representation to every county as we can reasonably expect. A correct representation—by which I mean to say, a representation exactly in proportion to the number of taxable inhabitants can not be expected. The reason for fixing the representation as it is in the constitution of 1790, was first to give to the people a representation according to the ratio which might be fixed by law. Immediately after that, the highest fractions were to take representatives. That was not coming exactly to the point, but it was adopting a principle which came as near to it as it was convenient for the legislature to adopt.

What is the view taken by the gentleman from Montgomery? It is that he objects to this amendment. And what then? Does he point out a remedy? None at all; but he says that he is favorable to every county having a distinct and separate representation. Now, it is a fact which must be within the knowledge of every member of this convention, that some of these small counties would not have quite one-third of the population required to entitle them to a representative.

Mr. STERIGERE asked leave to explain. He had already expressly stated that, in his opinion, it would be unfair to consider the enumeration of taxable inhabitants which was taken in the year 1834, as that at which the taxables should be hereinafter fixed.

Mr. FULLER resumed,

When the gentleman from Montgomery takes the broad ground that each county should be entitled to a representative, I ask what is the condition in which we stand? Because some of the northern counties, as I have said, have not got one-third of the population required to entitle them to a representative. I cannot see any difficulty in the amendment of the gentleman from Luzerne.

In relation to the fourth section, although it is not the immediate question before us now, it is a proper subject to be brought in connection with this fifth section. I find, also, that there is a difference of opinion in regard to the bearing which the amended constitution would have on this subject. My own opinion is that the constitution as amended, if it should be adopted by the people, will be the constitution of 1838 to all



intents and purposes, and each county would be entitled to a separate representation: and thus the desire of the gentleman from Montgomery would be gratified. I do not believe that this is the wish of the convention.

Mr. MERRILL, of Union, said he would ask the attention of the convention to the position which has been assumed by the gentleman from Susquehanna (Mr. Read.) That delegate, continued Mr. M., says he supposes that the constitution, when the amendments have been adopted, will be required to be engrossed and deposited in the office of the secretary of state as a unit. Now, suppose it should turn out that the people reject the amendments. I ask the gentleman from Susquehanna, are we in that case to be without a constitution? or do the people, if they should refuse to adopt the amendments, reject at the same time the old constitution also? If this is to be the course pursued, we might find ourselves in a somewhat perplexed condition.

In relation to the question before us at this time, the object, as I understand it, is to give a full representation to any number of citizens in any county where they shall exceed half the ratio. There would be then fifty representatives. One half of the representatives of the state would be representatives of territory, and the other half would be divided among the population. Let us recollect that we have a president and vice president of the United States to elect, and state officers, and that a population of one million six hundred and seventy-six thousand, under our present ratio would give —————

The operation would be this. Every officer chosen by the state and people as the representative of the people of Pennsylvania, would have a power proportioned to the smallness of the number of people they might represent. Well, sir, I ask gentlemen whether they are willing to adopt this principle? For my own part, I do not care much about it. I do not know that it will, in its practical operation, produce a great deal of practical injustice; although there can be no doubt that in theory it is wrong. The representative will be the representative of the territory, and not of the people. This certainly is not the theory of a republican government, although in practice it may not make much difference. Then, the half ratio power might defeat the will of the people of Pennsylvania, taken as a whole. The five or six representatives who may represent one territory, may have it in their power to change the voice of Pennsylvania in the senate of the United States, against the will of a decided majority of the people of the state. Do you wish—is it the object of the members of this convention, to put it in the power of any one county to defeat the will of the people? If not, the proper course to pursue is to have a perfect representation of the people—that is to say, as nearly perfect as can be procured. These are some of the results which would follow, if we adopt this amendment. It might, and in many instances, I have no doubt that it would, defeat the will of the people upon some great state object.

It has been said that there is a system of gerrymandering going on in the state. What is the evil of that? It is one for which no remedy is provided in this amendment. It is taking one part of a district here, and one part of a district a hundred miles off, and making it into one district.

The evil is not provided for here, or, if it is, I do not see it. The true remedy would be that these districts should be separated. This would prevent Gerrymandering, as it is called; but these are matters which must be left to the legislature. There was a professor in Holland who knew so many languages that he had no vernacular language left. Let us not place ourselves in such a situation. Let us put this matter in plain English, so that all who can read may understand it. I believe that the amendment as it stands is clear enough, so far as concerns the language: but my objection is to the principle.

Mr. READ, of Susquehanna, said that he had risen for the purpose of replying to the interrogatory of the gentleman from Union who had just taken his seat, (Mr. Merrill) although he (Mr. R.) had difficulty in bringing himself to believe that that gentleman was serious in what he had said.

When I had the floor a short time since, continued Mr. R., I stated that if these amendments should be agreed to—that is to say, if the amended constitution as signed, engrossed and filed, should be agreed to, it would all of it, without reference to the constitution of 1790, take date from the years 1838 or 1839;—in other words, it would take date from the time at which it might be adopted by the people. Now, because I expressed this opinion, the gentleman from Union (Mr. Merrill) thinks proper to ask me what the result would be—whether the people, in rejecting the amended constitution, would at the same time reject the constitution of 1790; thus leaving the state without any constitution at all. Surely the gentleman could not have been serious; because he knows as well as I do, that this amended constitution, thus engrossed and filed, would, in the event of rejection by the people, amount to nothing at all; that it would have no vitality—no existence as a constitution, and that we should again fall back upon the constitution of 1790, to live under probably for fifty years to come. I hope the gentleman will be satisfied with this answer, if indeed he was serious in putting the question; which I still am very much disposed to doubt.

One word in reply to the gentleman from Montgomery (Mr. Sterigere.) He has asked whether any man can tell what the true meaning of this fifth section is. I regret that he should find difficulty in comprehending it, but I think that I can make it so plain, that he can not fail to understand it, if he chooses so to do. It means simply this:—that by the fifth section, when taken in connection with the fourth, no county in the state shall be without a voice in her legislature in some way or other—that the districts shall be made as small as it may be expedient to make them consistently with that which is the main principle of the whole thing; that is to say, that in forming a district a fraction less than one half shall be thrown away and lost, unless in one especial case; and that a fraction greater than one half of the ratio, although no greater than one vote above it, shall give an additional representative or representatives as the case may be. The matter seems to me to be so plain that I am at a loss to see how any man can mistake it. This is the best way of disposing of the fraction; and it is a rule which the legislature can not disregard for the purpose of raising a political advantage;—and it is, moreover, a just rule, because it will in all cases give a member, or an additional member to a fraction more than half the ratio, and will always

disregard a fraction less than half the ratio. And it is carrying out the principle of the fourth section in the only way in which it can be done with entire justice to all the counties, and in a manner which must be most acceptable to the wishes and feelings of the people. The gentleman from Luzerne, (Mr. Woodward) and the gentleman from Mifflin, (Mr. Banks) seem to think that the matter may be made still more plain, so far as the phraseology is concerned; and in this point of view I do not perceive that there can be any objection to the adoption of either of the amendments proposed by them. I think we should adopt either one or the other of those amendments, and that, after having done that, we should at once adopt the section.

Mr. HASTINGS, of Jefferson, moved that the committee rise, with a view of going into committee of the whole on the fourth section, in order to have that amended so as to vote understandingly on the fifth section—yeas 35; which not being a majority of a quorum, the motion was not agreed to.

So the committee would not rise.

The question then again recurring on the adoption of the said amendments,

Mr. DICKEY demanded the previous question.

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

The question was—"Shall the main question be now put?" and it was determined in the affirmative.

Mr. READ: What is the main question?

The CHAIR: On the section.

Mr. READ then said that he would appeal from the decision of the Chair. He considered the main question to be on the engrossment of all the amendments of the article.

Mr. R. withdrew the appeal.

And on the question being propounded—

Will the committee of the whole agree to the fifth section of the said article, as agreed to on second reading?

The yeas and nays were required by Mr. BELL and nineteen others, and are as follow, viz:

YEAS—Messrs. Ayres, Banks, Barclay, Bedford, Bigelow, Brown, of Philadelphia, Clarke, of Indiana, Crawford, Cummin, Curll, Darrah, Doran, Earle, Foulkrod, Fuller, Hastings, Helfenstein, Mann, M'Cahen, Myers, Read, Riter, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, White—28.

NAYS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Bell, Bonham, Brown, of Lancaster, Brown, of Northampton, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Cochran, Cope, Cox, Craig, Crain, Crum, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnel, Dunlop, Fleming, Forward, Fry, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Macley, Magee, Martin, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Nevin, Overfield, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Ritter, Rogers, Royer, Russell, Saeger, Seltzer, Serrill, Snively, Sterigera, Stickel, Sturdevant, Taggart, Todd, Woodward, Young, Sergeant, *President*—85.

So the question was determined in the negative.

A motion was made by Mr. MEREDITH,

That the committee of the whole proceed to the consideration of the amendment to the ninth section of the said article, which said amended section was in the words following, viz :

"SECTION 9. No person shall be a senator who shall not have attained the age of twenty-five years and have been a citizen and inhabitant of the state four years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state; and no person elected as aforesaid shall hold said office after he shall have removed from such district."

Which motion was agreed to.

A motion was then made by Mr. MEREDITH,

To amend the said amended section, in the sixth line, by striking therefrom the words "hold said office," and inserting in lieu thereof the word "serve."

Mr. M. said, that this amendment had been reported by the committee on phraseology. It was a mere verbal alteration.

Mr. STERIGERE thought that the amendment proposed was not a proper one. He thought that the words "hold said office," expressed the idea that was intended to be conveyed, more clearly than it could be expressed by the use of the word "serve."

Mr. COCHRAN, of Lancaster, said that the members of the legislature were not considered as holding an office, but merely as serving the people in the character of legislators. For this reason, the committee on phraseology had thought proper to make the alteration, and he hoped it would be agreed to.

Mr. BROWN, of Philadelphia, said he could see no reason why the section should not be permitted to stand in its present shape. If amended in the manner proposed, he did not think it would be so clear. The exception taken by the gentleman from Montgomery, (Mr. Sterigere) was a good one; and Mr. B. believed that the language as it now stood was correct.

Mr. PORTER, of Northampton, said that he supposed this alteration had been made by the revisory committee, in order to preserve the harmony of language—a matter which, in his judgment, was of some importance. It will be found, continued Mr. P., in regard to the representative officers of the county, that the term used is "serve."

So far as concerns officers to which persons are elected, these are termed officers. But I think no such term as "officer" is applicable to senators and representatives. In relation to them, I believe that the word "serve" is used: and the distinction, it seems to me, is a good one. I do not know how a man can hold an office if he can not serve in it. There are to be sure such things as sinecures where one man may hold the office and another may do the work. But I believe that this is not allowed in representation. If it is, it is a new thing to me. There are no deputy representatives, although there may be deputies in other offices.

Mr. DUNLOP, of Franklin, said. It seems to me to be immaterial whether we alter this section in the manner proposed, or whether we leave it as it stands now; because to serve in an office and to hold an office are tantamount. This whole clause, however—I mean the amendment made to the section as it comes to us from second reading—is, in my judgment, absurd and ought to be rejected. It says “and no person elected as aforesaid shall hold said office after he shall have removed from such district.”

I do not know why this clause was inserted here at all, unless it was to meet the case of General Sinclair of our senate—who, being a single man, or what we term a loose man, does not choose to go back to his district.

But again, sir. Suppose that the people choose to be served by a man who does not reside in his district. Why should they not have him? Why should we interpose a constitutional barrier between them and the man of their own choice? I am not able to see any good reason why we may not be as well represented as zealously and as faithfully represented by a man who lives beyond the limits of the district as by a man who lives within them, if the people choose to elect him. If a man finds it more convenient to remove from his district, why should he be disqualified on that account?

Suppose that a man resides at a tavern or a boarding house not at the seat of his district during a year, or gets married and goes off to spend a year with his father in law, why should he be prevented from serving? I see no reason why we should insert in the amended constitution any thing more harsh on this subject, than is to be found in the constitution of 1790. And I trust we shall not do so. There is no necessity for it.

Mr. BROWN, of Philadelphia, said that he could not find the word “serve” in the constitution, so far as time had permitted him to look hastily through it. Therefore, he could see no advantage which was to be gained by inserting it now for the first time. He thought that the language was sufficiently correct as it stood. The word “serve” was left alone, and had not reference to any thing else. He should vote against the change.

Mr. FULLER said, that for his own part he was not very particular as to the language. The objection raised to this amendment by the gentleman from Franklin, (Mr. Dunlop) though urged with the usual tact of that gentleman, did not, in his, Mr. F’s., judgment, carry much weight with it. What was the convenience of an individual compared with the good of the public? What had the people to do with the convenience of an individual elected to represent them, so far as that convenience involved a removal from the district which stood in constant need of his services and his attention to the interests of its inhabitants? If a man is elected to represent a particular district, is it not his duty to remain there, in order that he may be present among them and may ascertain from time to time what their wants and wishes may be. Surely, sir, it is so; and the moment he leaves the district, and attends to other business, it is proper and just that he should resign his seat. How can a man attend to the interests of those whom he is elected to represent, if he does not live among them? How can he know what their wants and wishes are? I hope that this convention will not sanction any such principle.

Mr. **HISTER**, of Lancaster, considered the section an important one; but as to the amendment to substitute the word "serve," for the words "hold office," he did not see any necessity for it. He was not for making any changes which could be dispensed with. And this amendment might lead to a dispute, in case a senator vacated his seat.

Mr. **COCHRAN**, of Lancaster, said if his colleague would inform him whether a senator held an office, he would do something towards producing conviction in his mind. Officers are commissioned; but senators and members of the legislature serve. The language used in reference to the latter is "they shall receive compensation for their services." It was thought proper to make this change for the purpose of preserving harmony throughout.

Mr. **HISTER** replied that where no advantage was to be gained by a change, he uniformly went against any change. He thought the words at present used sufficiently expressive. He took the language which was of common import as the best. We say of a senator of the United States that he holds the office of senator. Every one understands this to apply to others than those which are commissioned. There are many justices of the peace, who hold their offices, but do not serve; and he thought it better to say "hold the office."

Mr. **STERIGERE**, of Montgomery, said the right to fill offices involved the right to receive fees and emoluments. It must be so. In the constitution of the United States, it is said the president of the United States and the judges hold office. And the constitution of this state says the governor, judges and commissioners hold offices.

Mr. **M'CAHEN**, of Philadelphia county, asked for the previous question; and a sufficient number rising to sustain the call, the previous question was ordered.

It was then determined that the main question be now put.

The section, as amended, was then agreed to, without a division.

Mr. **MEREDITH**, of Philadelphia, moved that the convention proceed to consider the fifteenth section.

The **CHAIR** decided that the question was out of order, until that section shall be reached.

Mr. **BELL**, of Chester, moved that the convention proceed to the consideration of the tenth section.

Mr. **MEREDITH** withdrew his motion to consider the fifteenth section.

The motion of Mr. **BELL** having been agreed to,

The tenth section was then taken up for consideration and read as follows, viz:

**SECTION 10.** The senators who may be elected at the first general election, under the amendments to the constitution, shall be divided by lot into three classes; the seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that hereafter, one-third of the whole number of the senators may be chosen every year. The senators elected before the amendments shall be in operation, shall hold their offices during the terms for which they shall respectively have been elected.

Mr. BELL moved to amend the said section by striking therefrom the word "under," where it occurs in the second, and inserting, in lieu thereof, the words "after the adoption of," and by inserting the words "to the constitution," after the word "amendment," in the tenth line; and by striking therefrom the words, "in operation," in the tenth line, and inserting in lieu thereof the word "adopted."

Mr. BROWN, of Philadelphia, said. There is a question involved in this discussion which will influence the whole of our decisions hereafter. If we pass the amendments proposed by the gentleman from Chester, our constitution, when engrossed, will record the amendments, but without shewing in the constitution, what those amendments are. My opinion is, that after being filed, &c., the amended constitution thus filed, should read as one constitution, that it should not be made up of heterogeneous matters, one taking date at one time and one at another. I would, therefore, make the section read "under this constitution," and not "under the amendments to this constitution." It seems to me that this is the most plain and proper course. It is not these amendments which are to be signed by us, and engrossed and deposited with the secretary of state, but we are to deposite the constitution as amended when it passes from our hand. I shall certainly vote against this amendment of the gentleman from Chester, and shall, at a proper time move to make the section read in the manner I have pointed out. The amendment of the gentleman from Chester would put it out of the power of the convention to comply with the requisitions of the act of assembly, which requires that the constitution as amended, shall be engrossed and signed by the delegates, &c.; and would confine them to the amendments alone.

Mr. BELL, of Chester, said it ought to be a source of congratulation to the members of the revisory committee that they had, most unexpectedly to themselves, given rise to a discussion of great technical acumen, and to the discussion of principles, which principles have little or no reference to their report. Whether the people are to adopt the constitution as a whole, (continued Mr. B.) or whether they are to adopt or reject the amendments agreed upon to the constitution of 1790, is a subject upon which I will touch hereafter. There is no objection made to the verbal alterations of the committee, and I do not think that the gentleman from the county of Philadelphia (Mr. Brown) can object, if he will reflect a little. His objection, however, has a deeper root. He disdains any thing upon the surface. It will be seen that his objection is not to the report of the revisory committee; but his objection is to the section as reported from the committee of the whole.

Sir, the word "amendment" is properly used. Under what authority are we here? I answer, under the act of assembly—under the authority of the people of the commonwealth of Pennsylvania. From that act of assembly we derive all our authority. Without it we are nothing, nay, less than nothing. And what were we to do under that act? We were to assemble here for the purpose of agreeing upon amendments to be submitted to the people, that is to say, if we ever arrive at that consummation so devoutly to be wished for. What are we to do? Under the terms of the act of assembly providing for the call of this convention, we are to submit the amendments to the people;—and what are the people to do? Let us see.

The eighth section of the act reads as follows :—

"SECTION 8. For the purpose of ascertaining the sense of the citizens on the expediency of adopting the amendments so agreed upon by the convention, it shall be lawful for said convention to issue a writ of election, directed to the sheriff of each and every county of this commonwealth, commanding notice to be given of the time and manner of holding an election for the said purpose, and it shall be the duty of the said sheriffs respectively to give notice accordingly ; and if said election shall not be held on the day of holding the general election, it shall be the duty of the judges, inspectors and clerks, of the last preceding general election, in each of the townships, wards and districts of this commonwealth, to hold an election in obedience to the directions of the said convention, in each of the said townships, wards and districts, at the usual place or places of holding the general elections therein, and it shall also be the duty of the said judges and inspectors, to receive at the said election, tickets, either written or printed, from citizens qualified to vote, and to deposit them in a box or boxes, to be for that purpose provided by the proper officers, which tickets shall be labelled on the outside " amendments," and those who are favorable to the amendments, may express their desire by voting each a printed or written ticket or ballot, containing the words " For the amendments," and those who are opposed to such amendments, may express their opposition by voting each a printed or written ticket or ballot, containing the words " Against the amendments;" and a majority of the whole number of votes thus given for or against the amendments, when ascertained, in the manner herein after directed, shall decide whether said amendments are or are not thereafter to be taken as a part of the constitution of this commonwealth," &c.

So, continued Mr. B., if a majority of the people decide in favor of the amendments, what is the consequence ? Why, then, it is not that a whole constitution is to be adopted by the people of Pennsylvania, or a new one ; it is not that the constitution of 1790 is to be stricken from the statute book ; but if a majority of the people agree to the amendments, then, in the language of the act of assembly, the amendments are to become a part of the constitution framed, not in the year 1838 or 1839—but are to become a part of the constitution of 1790. This was the intention of the legislature, and this was the understanding of the whole people ; yes, sir, and this will be the action of the whole people.

Some of the members of this body appear to me to have fallen into a strange error. It will be recollected that this question was agitated at Harrisburg, and I thought that the construction which should be put upon the provision in the act of assembly had been there settled. I did not anticipate that any further difficulty would be raised in reference to it. Some gentlemen, however, have fallen into a strange error, particularly the gentleman from Susquehanna (Mr. Read.) And what is the whole argument ? It is founded upon the looseness of expression in the act of assembly, in the words " and when the amendments shall have been agreed upon by the convention, the constitution as amended shall be engrossed and signed by the officers thereof, and delivered to the secretary of the commonwealth."

The gentleman from Susquehanna being a legal man, does not need to be informed by me, that in putting a construction upon a statute (as in



other cases,) you must take every part of it, and reconcile, if it is possible to do so, every part of the instrument. When, therefore, the legislature declare in this act of assembly, that the amendments to be made by the convention, shall be submitted to the people, and, if ratified by them, shall become a part of the constitution as it is now; you are bound to take that with reference to the other part relied upon by the gentleman from Susquehanna, and which is that the constitution as amended shall be engrossed. Why, sir, the constitution is already engrossed, and deposited in the office of the secretary of state, so that there is no need of further engrossment of the constitution of 1790. The evident intention of the legislature was that the amendments agreed upon should be engrossed together with the constitution, in such a way as that the people might understand at a single glance what alterations have been made, or been proposed to be made, in their constitution; and the whole difficulty, as I have said, has arisen from a looseness of phraseology in the act of assembly, and upon a construction which, upon a candid examination, it will not bear. The legislature, therefore, obviously intended that we should submit our amendments to the people, and that those amendments merely should be engrossed and signed. And, sir, I take upon myself to assert that there are members on this floor who will refuse to sign a constitution which may have been engrossed entirely anew, because it would, in fact, be putting out of the statute book the constitution of 1700, to many parts of which, as we all know, no amendments have been made or offered.

So far, then, as I can see, there is nothing in the objection of the gentleman from the county of Philadelphia (Mr. Brown.)

Before I take my seat. I will call for a division of the question on the amendments proposed by myself, so that the vote may be taken separately on each. The division I propose is as follows:—

First division:—To amend the said section by striking therefrom the word “under,” in the second line, and inserting in lieu thereof the words “after the adoption.”

Second division:—To insert the words “to the constitution,” after the word “amendments” in the tenth line.

Third division:—To strike therefrom the words “in operation” in the tenth line, and insert in lieu thereof the word “adopted.”

Of the other amendments said (Mr. B.) I will speak hereafter.

Mr. STERIGERE, of Montgomery, said that so far as concerned the amendments of the revisory committee, he was of opinion that they were perfectly correct. The committee had no power to change any principle, but only to arrange the language. As to the objection which has been raised by the gentleman from the county of Philadelphia (Mr. Brown) that we would not know what were and what were not amendments, I have only to say that comparison will shew.

Mr. BROWN, of Philadelphia county, referred to the history of the conventions which had been held in the state of Pennsylvania for the purpose of amending the constitution, with a view to shew that the course which he had advocated, was the course heretofore sanctioned and pursued. He found, he said, that the convention of 1790 formed a constitution, a part of which was the constitution of 1776, expressed in the same

words, and yet that the constitution of 1790 dated as the constitution of 1790, and not as the constitution of 1776 with amendments. No question, continued Mr. B., has ever been raised on that point—nor has any thing been said condemnatory of the framers of the constitution of 1790 in reference to that particular.

The words of the law under which we have met are these:—"and when the amendments shall have been agreed upon by the convention, the constitution as amended shall be engrossed and signed by the officers and members thereof, and delivered to the secretary of the commonwealth, by whom, and under whose direction, it shall be entered of record in his office, and be printed as soon as practicable," &c. [See section 6.]

The other part of the act to which the gentleman has referred provides as follows:—"and it shall also be the duty of the said judges and inspectors to receive at the said election, tickets, either written or printed, from citizens qualified to vote, and to deposit them in a box or boxes, to be for that purpose provided by the proper officers, which tickets shall be labelled on the outside "amendments;" and those who are favorable to the amendments may express their desire by voting each a printed or written ticket or ballot, containing the words "For the amendments," and those who are opposed to such amendments, may express their opposition by voting each a printed or written ticket or ballot, containing the words "Against the amendments;" and a majority of the whole number of votes thus given for or against the amendments, when ascertained, in the manner herein after directed, shall decide whether said amendments are or are not thereafter to be taken as a part of the constitution of this commonwealth." [See section 8.]

I can not perceive, continued Mr. B., that the one section is in any degree at variance with the other. The solution of the whole matter simply is, that the amendments shall be engrossed, &c., and that if they shall be agreed upon by the people, the constitution as amended and engrossed will be the constitution of the state of Pennsylvania. And I do not well see how any other construction can be put upon the act. It is certainly intended that this should be the constitution of Pennsylvania hereafter; that is to say, the constitution as amended, and with the signatures of the members of this body attached to it.

I feel anxious that the constitution should have some symmetry, that we should comply with the expectations of those who placed this great and responsible trust in our hands—that our work should be sent out finished as a whole, and not incomplete as a part. The two constitutions must go down to all time, the one to explain the other. I hope, therefore, that the amendments proposed by the gentleman from Chester will be rejected.

Mr. EARLE, of Philadelphia county, said he could not see the slightest necessity for the adoption of the amendments proposed by the gentleman from Chester. It appears to me, continued Mr. E., that the section is perfectly clear—so much so that all can understand it—and that, as it now stands, it will answer every necessary purpose. I do not want to make any change unless it should be apparent that there is a necessity for it.

Mr. WOODWARD rose to inquire of the gentleman from Chester (Mr.

Bell) whether it was his intention to modify his motion in such a manner as to make the words "amendments to the constitution" read "amended constitution," so as to meet the views of the gentleman from the county of Philadelphia (Mr. Brown)?

Mr. BELL said, he would state in reply to the inquiry of the gentleman from Luzerne (Mr. Woodward) that, as a member of the revisory committee he (Mr. B.) had merely brought these amendments to the notice of the committee of the whole. He had acted simply as the organ of the revisory committee, and he must, therefore, stand to the amendments he had proposed.

And the question was then taken,

Will the committee of the whole agree to the first division of the said amendment, as follows, viz:—

"To amend the said section by striking therefrom the word "under," in the second line, and inserting in lieu thereof the words "after the adoption."

And it was determined in the affirmative;—ayes 68; noes, not counted.

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

And on the question,

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

To insert the words "to the constitution," after the word "amendments" in the tenth line.?

It was determined in the affirmative without a division.

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

And on the question,

Will the committee of the whole agree to the third division, as follows, viz:—

By striking therefrom the words "in operation" in the tenth line, and inserting in lieu thereof the word "adopted?"

It was determined in the affirmative without a division.

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

A motion was then made by Mr. WOODWARD to amend the said section by striking out the words "amendments to the constitution" and inserting "amended constitution."

Mr. DICKEY demanded the previous question, on which Messrs. McCABEN and BROWN, of Philadelphia, demanded the yeas and nays, when the previous question was not sustained—yeas 51, nays 54.

The question then recurred on the amendment proposed by Mr. WOODWARD.

The CHAIRMAN said the first branch of the amendment was strictly in order, but he had some doubt as to the latter branch.

Mr. WOODWARD then withdrew his amendment.

Mr. CHAMBERS moved that the convention now proceed to the consideration of section fifteen.

Mr. C. then withdrew the motion.

And, on motion of Mr. MARTIN, of Philadelphia county,

The committee rose, reported progress, and obtained leave to sit again.

The convention then adjourned until half past three o'clock.

FRIDAY AFTERNOON, FEBRUARY 9, 1838.

[FIRST ARTICLE.]

The convention again resolved itself into a committee of the whole Mr. DENNY in the chair, on the amendments heretofore agreed to in the first article of the constitution.

The third section, as amended, having been read, and no amendment being offered the committee proceeded to the sixth section, which was read, as follows, viz :

"SECTION 6. The senators shall be chosen for three years by the citizens of Philadelphia, and of the several counties, at the same time, in the same manner, and at the same places where they shall vote for representatives."

Mr. PAYNE rose to move an amendment by the introduction of a new section.

The CHAIR decided that this motion was not now in order.

Mr. READ appealed from the decision of the Chair.

[A debate took place on this appeal, in which Mr. READ, Mr. STERIGERE, Mr. MEREDITH, Mr. PAINE, Mr. BANKS and Mr. EARLE took part.]

Mr. READ then withdrew his appeal.

Mr. MERRILL, of Union, asked for the yeas and nays on agreeing to the sixth section ; but the call was not sustained.

Mr. WOODWARD, of Luzerne, said that he was very much perplexed with this irregular mode of proceeding, and he protested against redebating and redeciding every vote that had been taken on the articles.

Mr. MERRILL moved to strike out the word "three," and to insert the word "four." He asked for the yeas and nays.

Mr. FULLER, of Fayette, moved that the committee rise, report progress, and ask leave to sit again.

And on the question,

Will the committee rise ?

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

YEAS—Messrs. Banks, Barclay, Barndollar, Bedford, Binge'ow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Craig, Crawford, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Helffenstein, Hyde, Ingersoll, Keim, Kennedy, Krebs, Magee, Mann, Martin, Meredith, Merkel, Miller, Myers, Overfield, Payne, Read, Ritter, Seager, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Taggart, Weaver, Weidman, Woodward, Young—67.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barnitz, Bell, Brown, of Lancaster, Chambers, Chandler, of Philadelphia, Chauncey, Cline, Coates, Cochran, Cope, Cox, Crum, Denny, Dickey, Forward, Harris, Hayhurst, Hays, Henderson, of Allegheny,

Henderson, of Dauphin, Hiester, Hopkinson, Kerr, Konigsmacher, Long, Maclay, M'Sherry, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Scott, Todd, Sergeant, *President*—41.

So the question was determined in the affirmative.

The committee then rose and reported progress.

The question next recurred on agreeing to the amendments.

Mr. BANKS moved that the convention again resolve itself into committee of the whole on—

The CHAIR said the motion was not then in order, and that the amendments reported were for the consideration of the convention.

Mr. STERIGERE, of Montgomery, moved to discharge the committee of the whole from the further consideration of the amendments referred to them.

The CHAIR said that before that motion could be entertained, the question must be taken on concurring with the committee to strike out the fifth section.

Mr. EARLE, of Philadelphia county, moved that the said section be recommitted to the committee of the whole, with instructions to report the following amendment, viz :

“The legislature shall not unite more than three counties to form a representative district: No two counties shall be so united, unless one of them shall contain less than one half of the representative ratio of taxable population. No three counties shall be so united, unless two of them combined shall contain less than one half of such ratio; any surplus or fraction of taxables exceeding one half the ratio of representation, shall entitle the district containing it to a representative therefor.”

Mr. MEREDITH, of Philadelphia, asked if it would be in order to move that the convention concur in the amendments made in committee of the whole.

The CHAIR said it would, but that a question was now pending.

Mr. DICKEY, of Beaver, asked for the yeas and nays on agreeing to the motion to recommit.

Mr. EARLE said. I have offered this amendment in order to bring up the distinct question, whether this convention will permit the legislature to distribute representation irregularly, improperly, and for party purposes. This is one question. Another is, whether we will secure to a county of small population having one or two representatives, the same right to be represented for a fraction which the present constitution secures to the large counties. I like the manner in which the gentleman from Franklin, (Mr. Chambers) meets the proposition; he has met it fairly, openly and directly. He thinks that where two small counties exist, entitled to a member and a half or a little more, it would be proper to unite them together so as to give three members; when if they stood separately they would have four. This would be fair to the small counties, if you were to deal out the same measure to the large counties. But this is not fair to the large counties, because you never have done this under the constitution of 1790, and never can. You are forbidden to unite two large counties in this way, but when we come to the smaller counties, according to the argument of the gentleman from Franklin, then

we should unite them and cut them off of a member, and thus you find that the larger counties have a greater representation than the smaller counties. Now, the amendment which I have proposed, secures to them an equality of representation. The chances will be even, and justice will be equal. This amendment also does away with every objection made to the fifth section. It is impossible to make any objection to it in point of form as it now stands. It is explicitly this; that any district having a population beyond half the ratio, shall be entitled to a representation. It is a simple plan—and clearly in accordance with the rules of propriety and morality. And I ask the gentleman from Montgomery, (Mr. Sterigere) who is so much in favor of the small counties, seeing there is no chance of giving them a representative each, I ask him now to go for that which is the best that can be got for them. His proposition would operate like the action of a man who betrays another with a kiss, although I have no doubt that nothing of that kind was intended. Seeing, then, that he can not compass that which he is anxious to secure, all I have to say is, that if he votes against this proposition, he votes against that which is the best which the small counties can have. I shall expect to have his support in favor of my amendment.

Mr. STERIGERE said. I know that this convention is indisposed to hear any thing on matters of order, but it seems to me that we are now in a very strange condition. The question before us is, will we agree to the report of the committee of the whole, striking out the fifth section; or, in other words, will we agree to the report of the committee of the whole?

But we have now this question before us in a double point of view, according to the proposition of the gentleman from the county of Philadelphia, (Mr. Earle.) He pretends that my course here is inconsistent. At all events, I mean what I say; and when I say that I intend to vote as well against his new project as against his fifth section, he may believe that I am serious in my intention so to do. The fourth section secures a representative to every county of this state. The proposition of the gentleman produces confusion in our proceedings. Let him withdraw it; and let the convention then say, either that they will or will not concur in the report of the committee of the whole.

And on the question,

Will the convention agree to the said motion?

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

YEAS—Messrs. Barclay, Bedford, Bigelow, Brown, of Philadelphia, Clarke of Indiana, Cummin, Curll, Dillinger, Doran, Earle, Foulkrod, Fuller, Gamble, Gearhart, Hastings, Heffenstein, Hyde, Ingersoll, Martin, M'Cahan, Miller, Myers, Read, Riter, Seltzer, Shellito, Smyth, of Centre, Taggart, Weaver, Woodward—30.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Barnitz, Bell, Bonham, Brown, of Lancaster, Brown, of Northampton, Butler, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crawford, Crum, Darrah, Denny, Dickey, Dickerson, Donagan, Donnel, Dunlop, Fleming, Forward, Fry, Gilmore, Grenell, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Keim, Kennedy, Kerr, Konigsmacher, Krebs, Long, Maclay, Magee, Mann, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Overfield, Payne, Pennypacker, Porter, of Lancaster, Purvance, Reigart, Ritter, Rogers, Royer, Russel, Seager, Scheetz, Scott, Sellers, Smith, of Columbia, Snivley, Sterigere, Stickel, Todd, Young, Sergeant, President—81.

So the question was determined in the negative.

And the amendments made in committee of the whole to the said first article, were agreed to; and,

Ordered, That the said amendments be referred to the committee to be prepared and engrossed for the third reading.

Mr. BELL, said that the committee of the whole had been somewhat unexpectedly discharged from the consideration of the amendments made in committee upon second reading; and he would now, therefore, call the attention of the convention to the awkwardness in the phraseology of the twenty-sixth section of the first article, as it stood on second reading. The last sentence was in the following words:

“No law hereafter enacted, shall contain more than one corporate body.”

The members of the convention, continued Mr. B., have to sign these amendments; and I, for one, am not willing to put my signature to a clause which is not only ungrammatical, but, in some degree, insensible. I was about to move that the convention resolve itself into committee of the whole for the purpose of amending this section, but as it has been intimated to me that the requisite amendments can be made by the general consent of the convention, and without going into committee of the whole, I shall endeavor to effect my purpose in that way. I therefore, move to amend the twenty-sixth section of the article in the following manner:

By striking from the ninth line the word “and,” and inserting in lieu thereof the word “or;” by striking from the same line the word “they,” and inserting in lieu thereof the word “it;” and by striking from the thirteenth line the words “contain more than one corporate body,” and inserting in lieu the words “create, renew or extend the charter of more than one corporation.”

Mr. HIESTER said, he hoped these amendments would be agreed to. The amendment as it now stands was drawn up by the gentleman from Bucks county, (Mr. M'Dowell.) It was presented to the convention at a time when it was anticipated that the question would be taken very soon. Several gentlemen brought their propositions to my desk, and intimated that this would receive the sanction of the convention. I adopted it hastily in consequence of my confidence in the accuracy of the gentleman from Bucks. It was drawn up by that gentleman in some haste, and was not, therefore, as correct as otherwise it would have been, and did not convey so clearly the ideas which it was intended to convey. After it had been adopted, the inaccuracies at once presented themselves to my mind. I modified my original proposition so frequently for the purpose of obtaining a majority of the votes of the convention in favor of the principle itself, as to be prevented from scrutinizing the phraseology in the manner I otherwise should have done. I have thought it due to myself to say thus much.

Mr. M'DOWELL, of Bucks, said he agreed with the gentleman from Lancaster, (Mr. Hiester) in hoping that these amendments would be agreed to. I, too was aware, continued Mr. M'D., after the amendment was drafted that it was incorrect and the fact was suggested to me at the time, But I was so fearful of losing the amendment altogether, by throwing out any doubt as to its accuracy, that I determined to let it pass, although, as I

have said, I had a perfect knowledge of its errors. I know, however, that they could be corrected at a future time. I concur, therefore, in the opinion of the gentleman from Lancaster.

Mr. BELL said, that the amendments here contemplated were merely verbal. And with a view to secure favor for them, I will just remark that the alterations are recommended by the report of the revisory committee.

Mr. EARLE proceeded to make some objections to the last clause of the section, when

Mr. BELL rose and said, that as it seemed probable that some discussion would arise, he would now modify his motion by moving that the convention resolve itself into a committee of the whole, for the purpose of making the amendments indicated by him.

A motion was then made by Mr. CHAMBERS, of Franklin,

To amend the said motion by adding thereto the words as follow, viz: "and for the purpose of considering the fifteenth section of the said article."

Mr. CHAMBERS said, he would observe that the section referred to in his motion was one of the amendments which had been made to the constitution in a very important particular. The section was in the following words:—

"SECTION 15. The legislature shall not have power to enact laws annulling the contract of marriage in any case where, by law, the courts of this commonwealth are, or may hereafter be, empowered to decree a divorce."

Now, continued Mr. C., as an article of amendment under the rules of this convention, this section ought to have, and must have, three readings, unless the rules are dispensed with. The thirty-first rule declares that "all articles of amendment proposed to the constitution, shall receive three several readings in the convention previously 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."

This article of amendment of which I am now speaking (continued Mr. C.) has never had any reading in committee of the whole, nor has there been any order of the convention dispensing with that reading, and this section was submitted for the first time as an amendment, when the convention was occupied with the first article on second reading. It has had, then, only one reading, and unless we go into committee of the whole it is not susceptible of amendment. It was intended by our rules, which are, generally speaking, the rules of legislative bodies, that a matter which may have been introduced as an amendment, should be duly and carefully considered, but here is an amendment presented to the convention on second reading, no opportunity having been afforded to the members of the convention to consider or amend it again in committee of the whole. I now contend that, unless we dispense with the rule which I have read, we are bound to consider the section in committee of the whole.

Mr. SMYTH, of Centre, controverted the position assumed by the gen-



leman from Franklin, (Mr. Chambers) and thought that there was no claim upon the convention to go into committee of the whole on this section, so far at least as the requirements of the rule were concerned. If it was proper for the convention to go into committee on other grounds, that was a different matter.

The amendment offered by Mr. CHAMBERS was then determined in the negative,—ayes 44.

Mr. EARLE said that he was perfectly aware that at this late period of the session any thing he might say would be received with impatience, however favorably it would have been listened to under other circumstances. He regarded the proposed amendment as favoring exclusive privileges. Now, he was *in toto* opposed to the principle of granting exclusive privileges. He was not disposed to shape his course in any other way than as his conscience and sense of duty might dictate. He wished to establish the principle of equality, and was entirely against granting a monopoly of power and benefit to one class of individuals over another. He desired to protect the community against every thing which might secure monopoly. He understood that some of those who were in favor of the monopoly features of the amendment had been exulting that their object would be attained. In this, however, they were mistaken; but, it would if the amendment of the gentleman from Chester should pass. There was at this moment a project before the legislature of New York for the creation of a general banking law, which doubtless would receive the favorable consideration of both political parties. And, in his opinion, such a law ought to be adopted in the state of Pennsylvania. But, if this amendment should be carried, it might be construed to prevent a similar law from being passed in this commonwealth, which would be highly beneficial and desirable. He would, therefore, vote against it, even if he stood alone. He was opposed to restricting posterity.

Mr. FRY, of Lehigh, moved to amend by instructing the committee to strike out of the fourth section the following concluding clause of it:

“Each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established.”

Mr. BELL hoped the gentleman from Lehigh would not press his amendment now, as it involves a change of principle, and would embarrass his (Mr. B's.) amendment. He trusted that the gentleman would allow a vote to be taken on it first.

Mr. FRY said that he had certainly no desire of embarrassing or throwing any impediment in the way of the gentleman's amendment; he would, therefore, assent to the gentleman's wish. Mr. F. then withdrew his amendment.

Mr. M'DOWELL, of Bucks, moved to amend, so as to instruct the committee to amend the section by inserting the word “previous,” before the word “public,” in the third line, and by inserting the word “intended,” before the word “application,” in the fourth line.

Which was agreed to.

A motion was made by Mr. EARLE,

Further to amend the said motion by adding thereto the words following, viz :—

“The legislature shall not combine in one bill or law objects which, in its opinion, shall be distinct in their nature or character.”

And, thereupon, the previous question was demanded by Mr. STERIGERE.

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

And on the question,

Shall the main question be now put, was then taken, and decided in the affirmative.

So the main question was ordered to be put.

And the main question being on agreeing to the motion as amended, was then put, and decided affirmatively.

Whereupon,

The convention again resolved itself into a committee of the whole, Mr. DENNY in the chair, for the purpose of amending the twenty sixth section of the first article of the constitution, in pursuance of instructions.

A motion was made by Mr. BELL,

To amend the said section in the third line, by inserting the word “previous” before the word “public,” and by inserting the word “intended” before the word “application.” in the fourth line; and by striking therefrom the word “and,” where it occurs in the ninth line, and inserting the word “or” in lieu thereof; and by striking therefrom the word “they,” in the same line, and inserting the word “it” in lieu thereof; and also by striking from the end of the section the words “contain more than one corporate body,” and inserting in lieu thereof the words as follow, viz : create, renew or extend the charter of more than one corporation.”

Which was agreed to.

A motion was made by Mr. STERIGERE,

That the committee rise and report the amendments as instructed.

Which was agreed to.

The President then resumed the chair, and the chairman reported the said section amended to read as follows, viz :

“SECTION 26. No corporate body shall be hereafter created, renewed or extended with banking or discounting privileges, without six months previous public notice of the intended application for the same, in such manner as shall be prescribed by law; nor shall any charter for the purposes aforesaid, be granted for a longer period than twenty years. And every such charter shall contain a clause reserving to the legislature the power to alter, revoke or annul the same, whenever in their opinion it may be injurious to the citizens of the commonwealth; in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.”

And the said report of the committee of the whole was agreed to.

And the said amendments were ordered to be engrossed for a third reading as a part of the amendments to the first article of the constitution.

Mr. Fry, of Lehigh county, said it must be apparent, he thought, to all, that the fourth section up to the eighth line, provided all that was necessary to ensure a proper apportionment of the representatives, and that the other portion was quite unnecessary.

He moved, therefore, that the convention resolve itself into a committee of the whole, for the purpose of striking from the said section the words following, viz :—

“Each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it to entitle them to one representative, agreeably to the ratio which shall then be established.”

A motion was made by Mr. BANKS, of Mifflin,

To amend the said motion, by inserting in the said section after the words “one hundred” the words as follow, viz :—

“Each county having more than one half of the ratio of representation, shall be entitled to one representative, and not more than three counties shall be united to form a representative district; when a district shall be composed of two or three counties they shall be adjoining.”

Mr. BANKS said, I will not detain the convention with any argument on this subject. I believe it would be right and proper to strike out from the fourth section the words which the gentleman from Lehigh, (Mr. Fry) has brought to our notice. But if that motion should prevail, I think it would be also right to insert the words which I have offered. But unless the convention will agree that the words indicated by me shall be inserted, I can not vote in favor the amendment of the gentleman from Lehigh.

Mr. DICKEY said, I hope that the convention will not do that which they are asked to do by the gentleman from Lehigh. This principle in the constitution is well understood throughout the state of Pennsylvania, and if gentlemen will not interfere with it, the people will still continue to understand it as they have done heretofore. The delegate from Susquehanna, (Mr. Read) and other members of this convention may flatter and please themselves with the idea that they are making an entirely new constitution, but I can tell them that they are not doing so, and that they will soon find out their mistake. They will find that, after all they have said to the contrary, it is but an amended constitution. It is known to me that the gentleman from Susquehanna, (Mr. Read) has been going round amongst the members of the convention, stating that after the amendments have been submitted to the people and ratified by them, (if they should be ratified), this fourth section would receive a new construction. Now, if we do not go into committee of the whole and make these amendments, it is clear that there can be only one construction placed upon the section—that is to say, the construction which has heretofore prevailed in Pennsylvania since the year 1790, in reference to the ratio of representation.

The motion of the gentleman from Lehigh will require, I apprehend, a vote of two-thirds, without which we can not go into committee of the whole.

Mr. PORTER, of Northampton, said, I am in favor of the motion of the gentleman from Lehigh, whether the amendment of the gentleman from Mifflin (Mr. Banks) is successful or not. That some provision on the subject is necessary, seems to me to be manifest from the fact that the existing provision of the constitution of 1790 has been expressly disregarded in legislation. And I will shew three instances under the last apportionment law. Under the constitution of 1790, each county then in existence was entitled to one representative. The county of Mifflin then existed as a county, and it had not a representative by itself. The county of Venango was eighty short of the ratio, and yet in the teeth of this provision, which says that no county shall have a representative until a sufficient number of taxable inhabitants shall be contained within it, agreeably to the ratio then established, has a representative by itself. So it is with the county of Perry. It is two hundred short of the ratio, and yet it has its representative—and that, too, by the action of a legislature which is bound to support the constitution of the commonwealth as well as the constitution of the United States.

Mr. BELL, of Chester, said he would say a word in answer to the gentleman from Northampton, (Mr. Porter.) The objection which he raises, continued Mr. B. is against the action of the legislature, which action he characterises as being in violation of the constitution; for the legislature, he says has disregarded the provision of the constitution. And he is now desirous to introduce further provisions;—for what purpose? If the legislature is in the habit of disregarding the provisions of the constitution, can we, by any provision which we may adopt, bind down the unconstitutional action of that body?

The gentleman says, that in the very teeth of the provision of the constitution of 1790, the legislature have conferred a member upon those counties which were not entitled to it according to the ratio of representation, and *vice versa*. If this is the fact, what is the remedy? The matter must be taken before the supreme court of the land, and if it can not be brought there, you must appeal to the sense of honor of the legislature itself.

Mr. PORTER asked leave to explain. What he desired was to leave the legislature no discretion in the matter, and thus to take away from them all temptation to do wrong.

Mr. BELL resumed.

The gentleman proposes, then, to create a sort of *salvo* for the legislative conscience. If the legislature is composed of such materials that they will violate the constitution of the land whether the people are willing or not, I should be disposed to adopt a different course with them. If, I say, they will violate the constitution of the commonwealth, I believe that the people have the remedy in their own hands. I see nothing, therefore, in the argument of the gentleman from Northampton which should induce us to agree to the proposition either of the gentleman from Lehigh or the gentleman from Mifflin.

Mr. EARLE, of Philadelphia county, said: I should like to ask the gen-

deman from Mifflin (Mr. Banks) what the poor county of Pike has done, that he should propose to deprive her of her representation in the legislature? The county of Wayne has more than half the ratio. Monroe county is in the same condition, and is entitled to a separate member, and yet the gentleman proposes to cut off the county of Pike altogether.

The amendment which I offered and which was rejected by an overwhelming vote, covered the whole ground. It left nothing undone, nothing doubtful. I can not vote for the amendment, because it cuts off the county of Pike.

Mr. BANKS said, that unless the words as they stood at present in the old constitution were kept, or some others were inserted in their place, it would be impossible that the county of Pike and some other small counties could have a separate representation. He desired to give to every county in the state at least one representative. If his amendment should be agreed to, it might possibly be modified in some way or other so as to meet the views of the gentleman from the county of Philadelphia.

And the question on the amendment of Mr. BANKS was then taken.

And on the question,

Will the convention agree so to amend the motion?

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

**YEAS**—Messrs. Ayres, Banks, Bedford, Bigelow, Butler, Clarke, of Indiana, Cleavinger, Crain, Cummin Curll, Darrah, Foulkrod, Fuller, Gamble, Grenell, Hastings, Henderson, of Allegheny, Ingersoll, Maclay, Magee, Miller, Montgomery, Myers, Payne, Porter, of Northampton, Read, Seltzer, Shellito, Smyth, of Centre, Sterigere, Sturdevant, Taggart, Woodward, Young—34.

**NAYS**—Messrs. Agnew, Baldwin, Barclay, Barndollar, Bell, Bonham Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Coates, Cochran, Cope, Cox, Crawford, Crum, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Fleming, Fry, Gearhart, Gilmore, Harris, Hayhurst, Hays, Helffenstein, Hiester, Hopkinson, Hyde, Kennedy, Kerr, Konigsmacher, Krebs, Mann, M'Cahen, M'Dowell, M'Sberry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Scott, Sellers, Smith, of Columbia, Snively, Stickel, Thomas, Weaver, Weidman, Surgeant, *President*—70.

So the motion was rejected.

Mr. PAYNE, of M'Kean, moved

That the convention do now adjourn, which was disagreed to.

Mr. PAYNE then moved

To amend by adding as follows, viz: "and for the purpose of making the following amendment to said section, viz: 'in apportioning the representatives, each county erected before the first day of December, A. D. one thousand eight hundred and thirty-seven, shall first have one representative, and the complement of the required number shall then be apportioned among the several counties according to the number of taxable inhabitants.'"

Mr. P. said that he would briefly state a few of the reasons which had induced him to propose this amendment—although scarcely able to do it, owing to the severe indisposition under which he was laboring. It seemed to him that those delegates, who had expressed their views on the sub-

ject, regarded it as the petition of a few scattered counties, asking for a boon—a favor. They did not treat it in the light that he did—as a matter of public policy. He regarded it as a matter of vital importance to the interest, prosperity, and welfare of the commonwealth of Pennsylvania, that she would adopt such a course of policy as was calculated to encourage an increase of population, and thus render more valuable the soil of the commonwealth. If any part of the commonwealth required more of the fostering care of the convention or the legislature than others, to place it on an equal scale with the rest of the community, it was that district of country from whence he came.

It might never happen again that in Pennsylvania there should be six contiguous counties almost, it might be said, without a representation. The counties of M'Kean, Jefferson, Potter, Tioga, Venango, and Warren, are as fine a tier of counties as there is in the whole state, or in existence—i. e. as they appear on the map—covering an extent of country, two hundred and fifty miles in length, and forty miles in breadth, but which, instead of having a population of three or four hundred thousand, as it should have, and as it can very well accommodate, has now only about five or six thousand inhabitants. Notwithstanding this great unsettled domain of the commonwealth contains an immense amount—say full two-thirds of the most valuable, level land, any where to be found—it is so thinly populated, and so little cared about, that it can only be traversed with great difficulty;—in fact, travelling there has to be performed, either on horseback or on foot, notwithstanding the great road which the legislature undertook to construct through that most valuable, but most neglected portion of the state.

As an evidence of the wild and unsettled condition in which it has so long been suffered to remain, he had to traverse, in reaching his home, a distance of sixty miles through the wild woods, with but a single house on the whole route.

Was it not, he asked, only right and proper, as well as the policy of Pennsylvania, to do every thing to promote the welfare and prosperity of the district which he (Mr. P.) represented? How was it possible that one man could properly represent such an extensive portion of the state? A survey had been made for extending the canal; but the report of the engineers of that survey, had not yet been adopted. He hoped the question would be moved, before any decision should be come to, in reference to that report, whether another survey ought not to be made to ascertain the practicability of the route of the canal further north.

Suppose (said Mr. P.) we have a senator from Venango and a representative from the county of Jefferson. Well, those two counties are interested in the adoption of the report of the survey as made by Mr. Acrigg; and the other counties—four in number—desire another survey, which, if agreed upon, would militate against the interest of the counties he had just named. In what sort of a predicament would those gentlemen be placed? Why the senator from Venango would either have to act in accordance with the interests of his immediate constituents, and so also with regard to the representative from Jefferson—or else against the interests of four-fifths of the district. So that whichever way they acted, they, in fact, signed their political death-warrant.

Where, he asked, was the delegate here that would place them in that predicament? He would contend that it was impossible for any man, however able and talented, to represent in the legislature, all the important and various interests of so many counties—spread over a vast extent of territory. He would ask the delegates from the city and county of Philadelphia, whether they would not rather represent ten thousand people embraced within two or three squares, than scattered over two or three hundred miles in diameter?

He thought it was not likely they would ever get a man in that district who well knew the geography of it. One of the counties he (Mr. P.) represented, he might say, he had scarcely been in. And, he would venture to say that neither of his colleagues could tell us any thing about some parts of their districts.

He would put one more case. When the counties of Lycoming, M'Kean, and Potter, were represented together, it was in the power of Lycoming always to elect the members. But, as a matter of courtesy, however, M'Kean was permitted, by the other counties, for one or two years, to send members to the legislature. During one session a particular question arose, and the two members were doing all they could for their district, when a petition was presented from citizens of Warren praying the legislature to set off a part of that county to M'Kean. Neither of the representatives from the district, knew any more of Warren than they did of Upper Canada.

The bill brought in for that purpose would have passed,—for there was no one to oppose it,—but for a gentleman from the city of Philadelphia, who knew more about the counties than any one else. And, he induced the legislature to suspend their action until he wrote to, and heard from, the county of M'Kean on the subject. It turned out by the reply, that the people there knew nothing about it, and consequently, through his interposition, the bill was prevented from being passed.

And thus, sir, a citizen of Philadelphia better represents the counties of M'Kean and Potter than our own representatives. And I would as lief have members for M'Kean and Potter come from the city of Philadelphia as from either of these counties, so far as regards the interests of the counties in which these men are not immediately interested. Every year questions arise in which the interests of the two counties militate. It must be so, because it is impossible for a man to get rid of the interests of his own immediate neighbours, or constituents, or of himself, or to be patriotic enough to go for the interest of other counties, when those interests are in opposition to the interests of his own immediate constituents.

I find, Mr. President, that I have not strength enough to say all I would like to say, and that if I had, this convention is not now in a proper state to listen to it. I shall, therefore, say no more at this time, but will move that the convention do now adjourn.

Which motion was agreed to.

And the convention adjourned until half past nine o'clock to-morrow morning.

SATURDAY, FEBRUARY 10, 1838.

Mr. HINSTER, of Lancaster, submitted the following resolution, which was laid on the table for future consideration.

*Resolved*, That, hereafter, the convention will meet daily in the morning at nine o'clock."

Mr. STERIGER, of Montgomery, submitted the following resolution, which was also laid on the table for future consideration, viz:—

*Resolved*, That the convention will take a recess from half past one to half past three o'clock to-day."

Mr. COPE, of Philadelphia, from the committee on accounts, reported the following resolution, viz:—

*Resolved*, That the President draw his warrant on the State Treasurer, in favor of Samuel Shoch, for the sum of two thousand dollars, to be accounted for in the settlement of his accounts."

This resolution was read a second time, considered, and agreed to.

Mr. MAGEE, of Perry, from the committee to whom was referred the resolution of the 16th of May last, calling for an inquiry into the expediency of adopting constitutional restrictions upon the immigration of people of colour and fugitive slaves from other states and territories into the state of Pennsylvania, made the following report, viz:—

"That they have had the subject under consideration, and believe it to be one of deep concern to the future peace and welfare of the citizens of Pennsylvania; but inasmuch as they believe the legislature of the state have the power to enact such laws as will effect the object of the resolution in question, and while they therefore deem constitutional action thereon unnecessary, they do, most respectfully, through this body, recommend the subject to the early and sincere consideration of the legislature."

The report having been read, was laid on the table.

Mr. COCHRAN, of Lancaster, from the committee to whom was referred the amendments made to the constitution in committee, on second reading, reported as follows, viz:—

"That the word *"it,"* in the twenty-fourth line of the first section of the tenth article be stricken out, and the words *"the submission"* be inserted in lieu thereof."

The report was laid on the table for future consideration, and ordered to be printed.

#### FIRST ARTICLE.

The convention resumed the third reading of the amendments made in the first article of the constitution.

The amendments to the motion that the convention resolve itself into a committee of the whole, for the purpose of striking from the fourth section of the first article all after the word *"hundred,"* and inserting



in lieu thereof the following, viz: "In apportioning the representatives, each county erected before the first day of December, A. D. one thousand eight hundred and thirty-seven, shall first have one representative, and the complement of the required number shall then be apportioned among the several counties according to the number of taxable inhabitants," being under consideration,

The same was withdrawn.

A motion was made by Mr. PAYNE,

To amend the motion by inserting in lieu of the amendment withdrawn, the following, viz: "In apportioning the representatives, those counties erected prior to the first of December, one thousand eight hundred and thirty-seven, which may not have within their bounds a sufficient number of taxables to entitle them to a representative, shall be credited with all fractions less than the established ratios which may exist in the other counties, or with so much of them as may be necessary to give one representative to each deficient county.

Mr. PAYNE rose and said,

I am aware, Mr. President, that a motion of a similar character to this, or, at least, one that embraced the same object, was offered and was ably advocated by my predecessor on this floor. (Mr. Hamblin.) I am aware how fully capable that gentleman was to do justice to that or any other subject which he might undertake to advocate here or elsewhere. I am also certain that if he were still here in my place, he not would suffer his patriotic efforts to be baffled by a single defeat, but you would again hear his voice raised in support of this proposition.

I believe, Mr. President, that all the objections which have been made to the amendment now proposed by me, have been based upon the theoretical principle that representation and taxation are inseparably identified with each other. For my own part, I do not concede that such is the case. In theory, I grant, it appears a very plausible doctrine, but, in practice, I do not believe that it can be carried out. It never has been, and it never can be; and I defy any gentleman to point me to any instance either under the constitution of the United States, or under the constitution of any state in the Union, or under the constitution of any country in the world, where this principle has been carried out—that is to say, carried out to the extent to which it is contended for by some gentlemen on this floor.

We all know that under the constitution of the United States, every state of the Union, however small, or however young it may be, or whatever may be the aggregate amount of its population, is entitled to at least one representative in congress, and two senators. Seventeen states of this Union are represented by territory, if you please. If gentlemen will refer to Sergeant on the constitution, they will see this principle argued to their satisfaction; that is to say, that representation and taxation are not necessarily connected, and do not necessarily depend upon each other. Congress may tax the District of Columbia, congress may tax the territories, and yet they are not entitled to a representative;—but the very moment that they become states, they are entitled to two senators and at least one representative.

This principle, then, of representation according to taxation, is not carried out in any instance. And that is the reason why I modified the proposition which I offered yesterday, although that and the one now before the convention are very much alike.

I believe that in apportioning representatives under the constitution of this commonwealth, nearly the same principle should be adopted as in apportioning representatives under the constitution of the United States—that no fraction, however large, less than the ratio required, should be entitled to a separate representation upon a fraction. This is the case under the constitution of the United States, and by turning to the fifth volume of Marshall's *Life of Washington*, gentlemen will perceive that a bill was returned by him with his objections against giving representatives to fractions, and that he considered it as a violation of the constitution of the United States.

After making the best apportionment you can, credit the fractions to the smaller counties until you provide for the representation of each county now erected, or which were erected on the first of December, 1837. This is in perfect harmony with the fourth section of the constitution as it now stands, without striking out any thing. Is there any injustice in this? What would be the difference two years hence in the commonwealth of Pennsylvania, to take from the fractions a sufficient number to provide for four representatives in counties which are not at this time represented? What, I ask, would be the difference? Twenty years might elapse before some of these counties would be entitled to a separate representation, unless the legislature should do something to foster and settle them. And I ask any gentleman here whether, if he were in the legislature, he would not like to see a representative from every territory embracing within its limits forty miles, in order that it might be known what use the commonwealth could make of that portion of the state for her own good:—not what use may be made of it for the good alone of the inhabitants of that region, but for the good of the whole community.

In the remarks which I submitted last evening, I put a strong case, as gentlemen may probably remember,—that is to say, with reference to the locality of the Erie division of the Pennsylvania canal. There is a contention between persons interested in an entire Northern route, and those who contend that another route is most preferable. Franklin was fixed as the point in the survey. The citizens of M'Kean, and Potter, and Warren believe that a more practicable, as well as a nearer and a cheaper route would be through the southern part of M'Kean county by way of the driftwood branch of the ———; but, unfortunately for them, they had no representative to suggest this route. The commonwealth has an interest in it to the amount of several hundreds of thousands of dollars. At the time the subject was before the legislature, no person was there to say a word in behalf of the northern counties, except so far as it was done by the southern members. Such cases are always arising; cases where the interests of two contiguous counties are concerned. It is not uncommon here to see gentlemen sitting on the opposite side of the streets in the city and county of Philadelphia, differing as to the interests of their constituents—when, as I have said, there is nothing but a single street dividing them. For my own part, I would be willing to leave it to the people of the city and county of Philadelphia to say if they would not

give four of their representatives to supply the counties of M'Kean, Potter, Jefferson and Warren. The city and county of Philadelphia are interested in it. The land in these counties is pretty much owned by the citizens of Philadelphia, and it would be manifestly to their interest to do so; and I would as lief that these counties were represented by a man living in the city of Philadelphia, as by a man living in the same district with us, if that district embraced three or four counties. I say, I would as lief it should be so, because the interests of the several counties constantly militate against each other, whilst the representatives of the city and county of Philadelphia, whose interests would not thus be brought in conflict, would represent us impartially.

What is the history of these counties? About forty years ago, the commonwealth was in debt some five millions of dollars. The Holland company paid the debt. They bought the land of Pennsylvania, and paid her for it. She has had the use of the money; she has parted with the interest in the sale, and thrown it away, as something that was not worth touching. Sir, the state of Pennsylvania ought to have held on to that land, and to have sold it in tracts of about four hundred acres each, at the sum of twenty-six cents an acre, or thereabouts. Had the commonwealth given the same advantages to us that she has given to other parts of the country, the region of which I speak would have been by this time thickly settled. So far back as forty years ago, the commonwealth got her pay for the land in the counties of M'Kean, Potter, Jefferson, and the greater part of Warren county; whilst in some of the counties of the state having the most valuable land, it was sold for twenty-six cents per acre and less; and you will now see the representatives of those counties asking the legislature to deduct the interest which was owing to the commonwealth on that land. It is from those very counties that we receive opposition when we ask the legislature to extend its fostering care to us in the manner it has done to the other portions of the state. Other parts of the state have got their canals, and turnpikes, and rail-roads, till they were chequered over with improvements like a chequer board. They have got all that they have asked, and nearly all they can conceive that they would wish to have; and yet they would keep those who are situated nearly a hundred miles from any improvement of any kind as we are, from ever having an opportunity to ask for their rights.

Sir, this subject is a very broad one, and enough might be said upon it to make a volume as large as Purdon's Digest,—and all to the purpose. I have no disposition, however, to detain the convention with many details, knowing as I well do, how impatient they are to progress rapidly with their business, so as to bring it to a final termination by the day fixed upon for our adjournment. And I feel the less disposition to enter at any great length into the discussion of this subject, because I know the ability with which it has heretofore been treated by my predecessor on this floor. I know that he would do justice to any thing which he undertook. Believing, therefore, that what he and other gentlemen have said, is sufficient to convince any man that is willing to be convinced, and that does not wilfully and obstinately refuse to listen to the truth, I shall, without further remark, leave the question at the disposition of the convention. I hope that their decision may be such as is called for by a just and equal regard to the rights and the interests of every portion of our commonwealth.

And the question was then taken.

And on the question,

Will the convention agree to the amendment as modified ?

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

YEAS—Messrs. Banks, Bedford, Clarke, of Indiana, Cummin, Curll, Fleming, Gamble, Grenell, Hastings, Hyde, Ingersoll, Magee, Mann, Martin, M'Cahen, Myers, Overfield, Payne, Porter, of Northampton, Read, Ritter, Scheetz, Seltzer, Smith, of Columbia, Smyth, of Centre, Sterigere, Sturdevant, Taggart, Todd, White, Woodward, Young—32.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bell, Bigelow, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Chambers, Chauncey, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Cleavinger, Cline, Cochran, Cope, Cox, Crain, Crawford, Crum, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Forward, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Jenks, Kennedy, Kerr, Konigsmacher, Krebs, Long, Macclay, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Montgomery, Porter, of Lancaster, Purviance, Reigart, Riter, Rogers, Royer, Russell, Saeger, Shellito, Snively, Stickel, Thomas, Weidman, Sergeant, President—73.

So the amendment as modified was not agreed to.

And the question then again recurring on the motion of Mr. FRY,

That the convention resolve itself into committee of the whole, for the purpose of amending the fourth section by striking therefrom the words following, viz :

"Each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeable to the ratio which shall then be established."

Mr. FRY said, that before the question was taken, he wished to inquire of the Chair, whether he intended to decide that a vote of two-thirds would be required to go into committee of the whole, on the motion submitted by himself ?

The CHAIR (Mr. Sterigere, *pro tem.*) said, that the point raised by the question of the gentleman from Lehigh (Mr. Fry) had been yesterday decided by the Chair in the affirmative.

Mr. FRY resumed.

If such a decision is to be made in the present case, I shall feel it my duty to take an appeal from it. The experience which I have had in legislation has been such as to convince me, that a majority can upon all occasions go into committee of the whole, and as we are here governed by legislative rules, I think that the decision must be wrong. I will, therefore, ask the final decision of the Chair.

The CHAIR said, he could only repeat the statement of the fact, that it had been yesterday decided by the President of the convention, that a vote of two-thirds would be required to go into committee of the whole, on the motion of the gentleman from Lehigh. The Chair, therefore, felt obliged to make the same decision now.

Mr. FRY said, he would then give notice that he should, at a proper time, appeal from the decision of the Chair.

A motion was then made by Mr. HIESTER,

To amend the question of the gentleman from Lehigh, so as to strike out from the said section only the following words: "Each county shall have at least one representative, but"

Mr. HIESTER said, that he desired to say a few words in explanation of his amendment.

It is known to us all, continued Mr. H., that there is a great diversity of opinion amongst the members of this convention as to the date of the constitution, and as to the effect of incorporating the old parts of the constitution with the new. Some gentlemen are inclined to the opinion that under the section of the act of assembly which requires that "when the amendments shall have been agreed upon by the convention, the constitution as amended shall be engrossed and signed by the officers and members thereof, and delivered to the secretary of the commonwealth, by whom and under whose direction, it shall be entered of record in his office," the whole part of the whole record as filed will date back and take effect from the time the constitution was adopted. If this is so, the counties now in existence would not necessarily, under the section as it stands, get one member of the house of representatives. If, however, the contrary construction be true, that all the old parts, incorporated with the new, will take effect from the time the record is filed, it would give to every county in the state that is now created a representative absolutely. Now, I am not in favor of so doing. My opinion is that this will take effect as an entire new constitution from the time that the people shall have adopted the amendments, and this being my opinion, I have made this motion, with a view that we need not absolutely, and of necessity, give to every county a separate representation. If we strike out these words, we shall leave it optional with the legislature, according to the former part of the section, which says:

"The number of representatives shall at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each."

I am in favor of retaining the latter part of the clause, which the amendment of the gentleman from Lehigh proposes to strike out; because it has a saving clause in it which I think is good; that is to say, "that no county hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established."

To me, continued Mr. H., this seems to be a good provision, and I do not wish to see it dispensed with. It will tend to prevent the cutting up of counties. I think that the counties of this commonwealth are now of a good size, and that they should not be cut up much more; but if you have not some provision made, designing individuals will be continually agitating the question to have new counties erected, to make posts for themselves. It would give to such persons an opportunity to get a new county erected, and a separate representation as a necessary consequence. This would not be well. I hope, therefore, that the part of the section indicated in my proposition will not be struck out.

So far as regards the equity of giving a member to each county, I think that the gentleman from M'Kean county (Mr. Payne) speaks with much propriety. I believe that if we were to act upon a liberal and magnanimous policy, we would at all events not restrict each county in the state from having a representative. To the larger counties it is not so material whether they have one representative more or less in the legislature. Their wants and wishes would be sufficiently well understood, even if they had one representative less. To the smaller counties, however, it is all important that they should have at least one representative acquainted with the territory, and the wants and wishes of the people. Every thing which tends to raise up the small counties, to improve their condition and to develop their resources, would be an advantage to the whole commonwealth. I say, that a liberal policy would prompt us to adopt the principle of giving to each county a representative. And if it should be found that there are a few counties which will not in the next enumeration be entitled to a separate representation, suppose that we should adopt the plan of taking a few representatives from the larger counties. Would it not be a great advantage to the smaller counties, that they should be represented in the legislature by men who know the territory, and who know the wants and wishes of the people. They might then be enabled to get such appropriations for objects of internal improvement from the legislature, as would be calculated to increase their population as much faster as the legislature might think right and proper. I think that this would be a fair course to pursue; still, however, I would not make it imperative on the legislature to do this. I would leave it open to that body to act, from time to time, in such manner as circumstances, and the changes in the condition and the interests of the people might require.

The same object would be obtained by adopting the amendments of the gentleman from Lehigh (Mr. Fry.) It would still be left to the legislature to do as they might think right and proper; but then, at the same time, it would strike out that feature of this section which I am anxious to retain; that is to say, that each county hereafter erected shall not be entitled to a separate representation without the full complement of taxable inhabitants. I hope, therefore, that my amendment will be agreed to.

Mr. FRY said :

I am compelled to express a hope contrary to that with which the gentleman from Lancaster (Mr. Hiester) has just concluded his observations, and to say that I hope his amendment will be rejected. If it should not be rejected, the other part of the amendment will be of no use. If he could have framed his motion so as to exclude the words "hereafter erected," I do not know that I should have made any objection. I will modify my motion so as to strike out "Each county shall have at least one representative, but";—and also to strike out the words "hereafter erected".

Mr. HIESTER moved to amend the said modified motion, by retaining the words "hereafter erected".

Mr. FRY said :

I hope the motion will not be agreed to. If that should be agreed to,

it will not be necessary that the other part should be struck out; for that would bear the construction that each county must have a representative. My desire is to do justice to all the counties; by which I mean to say, that every county in the state shall have a fair representation.

**Mr. HIESTER.** In my view, it would not make it more imperative on the legislature to give each county a separate representation, by striking out what I propose, than if we struck out the whole part, as was proposed in the first instance by the gentleman from Lehigh. It seems to me that there can not be any mistake as to the construction.

**Mr. DICKEY**, of Beaver, said:

I hope that neither the amendment of the gentleman from Lehigh, nor that of the gentleman from Lancaster, will be agreed to. If it should be found that there is any ambiguity as to the construction of this sentence, the difficulty can be easily obviated by the insertion of one or two words in the schedule—which is the proper place for it. Under the construction of the gentleman from Lancaster, it is clear that the 6th section of this article would also require explanation. The schedule can explain all these things, in such a way as to leave no doubt what the true construction is intended to be.

**Mr. FULLER**, of Fayette, hoped the gentleman from Lancaster might be prevailed upon to withdraw his amendment. It appeared to him (Mr. F.) to put a new construction on the matter. If the gentleman would not withdraw it, he (Mr. F.) hoped the convention would reject it.

As to the amendment of the gentleman from Lehigh, if that should prevail, a county, though it might have within fifty or a hundred of the required number of taxable inhabitants, would still not be entitled to a representation.

**Mr. FRY** then again modified his amendment so as to stand in the form in which it was originally offered by him; namely, to strike from the said section all after the word "hundred."

**Mr. FULLER** said, he liked this better, and thought it would also answer the object which the gentleman from Lancaster had in view.

**Mr. HIESTER** said.

It will not do so entirely. It leaves the matter, it is true, optional with the legislature; but it does not prohibit the legislature from giving to counties hereafter created, and which have less than the quota of taxables, a separate representation.

**Mr. HIESTER** renewed his original amendment to strike out from the motion of the delegate from Lehigh, the words "each county shall have at least one representative," &c.

**Mr. WOODWARD**, of Luzerne, moved the previous question; which was sustained.

And on the question,

Shall the main question be now put?

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

**YEAS**—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Bedford, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Crain, Crawford, Crum, Curll, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Forward, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Helfenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hyde, Jenks, Keim, Kennedy, Kerr, Konigsmacher, Krebs, Long, Magee, Mann, M'Cahen, M'Sherry, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smyth, of Centre, Snively, Stickel, Sturdevant, Thomas, Todd, Weaver, Weidman, Woodward, Sergeant, *President*—86.

**NAYS**—Messrs. Barnitz, Bell, Brown, of Lancaster, Clarke, of Indiana, Cummin, Dunlop, Earle, Fleming, Grenell, Hiester, Ingersoll, Maclay, Martin, Merrill, Payne, Read, Riter, Sterigere, White, Young—20.

So the question was determined in the affirmative.

And on the question,

Will the convention agree to the motion, viz: That the convention resolve itself into a committee of the whole, for the purpose of amending the fourth section of the first article by striking therefrom all after the word "hundred," in the eighth line?

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

**YEAS**—Messrs. Barclay, Bigelow, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Cleavinger, Cox, Crain, Crawford, Crum, Curll, Darrah, Dillinger, Donagan, Donnell, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hayhurst, Helfenstein, Henderson, of Dauphin, Hiester, Hyde, Ingersoll, Keim, Kennedy, Long, Maclay, Mann, Martin, M'Cahen, Miller, Montgomery, Myers, Nevin, Porter, of Northampton, Riter, Ritter, Rogers, Scheetz, Sellers, Shellito, Smyth, of Centre, Stickel, Sturdevant, Weaver, Woodward, Young—53.

**NAYS**—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Barnitz, Bedford, Bell, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cope, Cummin, Denny, Dickey, Dickerson, Dunlop, Fleming, Forward, Grenell, Hastings, Hays, Henderson, of Allegheny, Jenks, Kerr, Konigsmacher, Krebs, M'Sherry, Merrill, Merkel, Overfield, Payne, Porter of Lancaster, Purviance, Reigart, Read, Royer, Russell, Saeger, Scott, Seltzer, Snively, Sterigere, Thomas, Todd, Weidman, White, Sergeant, *President*—54.

So the question was determined in the negative.

Mr. CHAMBERS, of Franklin, moved to recommit, with instructions to strike out the fifteenth section.

The CHAIR decided that the motion was not in order.

Mr. HASTINGS moved,

That the convention resolve itself into a committee of the whole, for the purpose of amending the fourth section by striking therefrom, in the first and second lines, the words "the first meeting of the general assembly," and inserting in lieu thereof the words "after the adoption of the amended constitution."

Which was disagreed to.

Mr. DICKEY moved,

That the amendments made in the first article, as amended by the committee of the whole, be referred to the committee to engross the same for the question of final passage.



**Mr. FULLER**, of Fayette, hoped the motion of the delegate from Beaver, (Mr. Dickey) would not prevail. He would ask the convention if it was their intention to give every northern county a representative, which had only six or eight taxables in it.

**Mr. DICKEY** said the gentleman from Fayette seemed to think that the convention were going to make a new constitution, when it was, in fact, only going to amend the existing constitution. If there should be any difficulty as to the construction that ought to be given to the fourth section, the committee on the schedule could obviate it. He was induced to think from the tenacity with which gentlemen urge the going into committee of the whole, that there was something which did not meet the eye. He was determined not to withdraw his motion. He thought that if the convention desired to get through with their business by the 22d of February, they must despatch it a little faster than they were at present doing. He could see no necessity whatever for going into committee. He would ask for the yeas and nays.

**Mr. FULLER** observed that the main question seemed to be, as suggested by the gentleman from Beaver, whether the constitution of 1790 as amended was to be submitted as a whole, or not. Now, this was a very important question, and he (Mr. F.) thought that it should be settled at this time. He would ask if each county in the commonwealth, as the amendments now stood, would not be entitled to a representative? Certainly, it would, unless the proper correction should be made in the schedule.

**Mr. STERIGERE**, of Montgomery, called the gentleman to order.

The **PRESIDENT** said the delegate was not out of order.

**Mr. FULLER** proceeded.

He was decidedly of the opinion that representation should be in proportion to population. He entertained no doubt that if the sections are to remain as they now stand, and no provision be made in the schedule to counteract their force, and they should go into effect in 1838, all their small counties could each claim a representative, although they might have only six or eight hundred taxables. He hoped, if the delegate would not withdraw his motion, that it might be negatived.

**Mr. HAYHURST**, of Columbia, denied that the language of the constitution might be made so definite as that no mistake could possibly occur; but he was in favor of the motion to refer the article to be engrossed because the Chair had decided, and perhaps rightly, that it would require a vote of two-thirds to go into committee of the whole. After this decision, it was utterly useless to waste any more time in discussion. He had prepared an amendment which would prevent all possible mistake. He hoped, therefore, that we would shortly vote for the amendments on their final passage. And, on Monday, he would move a resolution to instruct the committee on the schedule to put the rule of 1790 in the constitution—which would prevent all ambiguity. If there was a majority against the motion, we must submit; but, if not, all the better. And, when the committee should come into convention, the same majority that sustained the instructions would sustain the amendments, and thus the matter would be finally settled. This was not the mode in which he should have proposed to settle it, but it was the only one left open to us at this time. He had reported this section to five disinterested men for their opinions as to

what should be the rule, and three were in favor of adopting the year 1838, and two for 1790. He hoped the amendments would be ordered to be engrossed.

Mr. EARLE inquired of the Chair, whether if these amendments were engrossed, it would be in order to re-commit them for a particular purpose?

The PRESIDENT said he thought not.

Mr. EARLE said. Then I suppose that the gentleman from Beaver, (Mr. Dickey) can not get at the previous question in a regular manner, except by the will of the convention. I, therefore, submit the following motion.

To amend the said motion by striking therefrom all after the word "that," and inserting in lieu thereof the words "the convention resolve itself into committee of the whole for the purpose of amending the fourth section of the first article, by adding to the end thereof the words 'any fractions exceeding one half the ratio, shall entitle the district containing it to a representative therefor.'"

The PRESIDENT decided that it was not in order to amend a motion to refer the amendments to the committee to engross the same for the question of final passage.

From this decision, Mr. EARLE appealed.

The PRESIDENT decided that the appeal was not in order, as the appeal was not addressed to the Chair.

From this decision Mr. EARLE appealed.

And on the question,

Will the convention sustain the appeal?

It was determined in the negative.

The question then recurring on engrossment for final passage;

Mr. M'CAHEN said, he hoped that the motion to engross for a final passage would not be agreed to, in the condition in which the article stood at the present time. It had been admitted by a respectable number of the members of the convention, that there existed some ambiguity in one of the sections of the article, and surely something was due to the opinions of those gentlemen. He trusted that in their anxiety to get through, gentlemen would not consent that any of the amendments should be engrossed for a final passage, until they were put in a form as nearly perfect as possible.

And on the question,

Will the convention agree to the motion, viz: That the amendments to the first article as amended, be referred to the committee to engross the same for the question of final passage?

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

YEAS—Messrs, Agnew, Ayres, Baldwin, Banks, Barchy, Barndollar, Barnitz, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Chandler, of Philadelphia, Chauncy, Clapp, Clark, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Crain, Crawford, Cummin, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Dunlop, Fleming, Forward, Foulkrod, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Hiester, Hopkinson, Jenks, Kennedy, Kerr, Konigsmacher, Krebs, Long,

Mann, Martin, M'Sherry, Meredith, Meskel, Myers, Newin, Overfield, Payne, Porter of Lancaster, Purviance, Reigart, Ritter, Royer, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Shellito, Sterigere, Stickel, Thomas, Todd, Weaver, White, Woodward, Sergeant, *President*—81.

**NAYS**—Messrs. Bedford, Chambers, Cleavinger, Crum, Curll, Donnel, Fry, Fuller, Gamble, Henderson, of Dauphin, Hyde, Ingersoll, Keim, Maclay, Magee, M'Cahan, Merrill, Miller, Montgomery, Porter, of Northampton, Read, Rogers, Smith, of Columbia, Smyth, of Centre, Snively, Sturdevant, Taggart, Young—28.

So the question was determined in the affirmative.

And the said amendments were accordingly referred to the committee to engross the same for the question of final passage.

The amendments to the second article of the constitution, as amended on second reading, were then read the third time.

The report of the revising committee in relation thereto, was then read in the words following, viz :

“That they find the amendments to the second article correctly printed, with the exception of the word “up” in the sixth line of the eighth section, which they recommend to be stricken out as superfluous. The remaining sections of the said second article are submitted as they stood on the printed files.”

A motion was made by Mr. BELL.

That the convention agree to the said amendment by unanimous consent.

• Mr. STERIGERE insisted that the language of the section was right, without any alteration. It was the language of the constitution of the United States and of other constitutions. He thought the gentleman should withdraw his motion.

Mr. BELL said. After this, I shall despair of procuring the unanimous consent of this body to any proposition, however manifest its propriety may be. I suppose we shall be reduced to the necessity of going into committee of the whole on every thing.

I modify my motion, therefore, to read as follows ;

“That the convention resolve itself into committee of the whole, for the purpose of amending the amendments in the eighth section, of the second article by striking from the sixth line, the word “up.”

Which motion was agreed to.

The convention, therefore, resolved itself into a committee of the whole, Mr. DENNY in the Chair, for the purpose of making the amendment.

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

That the committee rise, and that the chairman report the amendment agreeably to instructions.

The PRESIDENT then resumed the chair and the chairman of the committee of the whole reported the said amendment agreeably to instructions.

And the report of the committee of the whole was agreed to.

And the amendment to the eighth section as amended was agreed to ; and.

*Ordered*, That the amendments to the second article be referred to the committee to engross the same for the question of final passage.

The amendments to the third article of the constitution, as amended on second reading, were read the third time.

The report of the revisory committee in relation thereto, was then read in the words following, viz:—

That in consequence of the several amendments introduced at different times; and on motions of different delegates, into the first section of the third article of the constitution; the composition of the section has assumed a somewhat awkward shape, and requires for its improvement, in this particular, some transposition of phraseology.

The committee, therefore, recommend that the section be made to read as follows :

# ARTICLE THIRD.

**SECTION 1.** In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this state one year, and the election district where he offers to vote, ten days immediately preceding such election, and within two years paid a state or county tax, which shall have been assessed at least ten days next before the election, shall enjoy the rights of an elector. But a citizen of the United States, who had previously been a qualified voter of this state, and removed therefrom and returned, and who shall have resided in the election district and paid taxes as aforesaid, shall be entitled to vote after residing in the state for six months. Provided, That white freemen, citizens of the United States, between the ages of twenty one and twenty-two years, and having resided in the state one year, and in the election district ten days as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

The remaining sections of the third article not having been altered by the convention, are not referred to the committee.

A motion was made by Mr. BELL,

That the convention resolve itself into committee of the whole, for the purpose of making the amendments suggested in the said report of the revisory committee.

Which said motion was agreed to.

And thereupon,

The convention resolved itself into committee of the whole, Mr. DENNY in the chair, for the purpose of making the said amendments.

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

That the committee rise, and that the chairman report the amendments agreeably to instructions.

Which motion was agreed to.

The PRESIDENT then resumed the chair, and the chairman of the committee of the whole reported the first section of the third article agreeably to instructions.

And the report of the committee of the whole was agreed to, after having been

On motion of Mr. STERIGERE,

Amended by unanimous consent by striking therefrom, in the ninth line, the word, "for."

A number of motions and modifications of motions were offered in relation to the said first section by Mr. M'CAHEN, of Philadelphia county, which were finally reduced to the following :

That the convention resolve itself into committee of the whole, for the purpose of amending the amendments made in the first section of the said article by striking therefrom in the second, third and fourth lines, the words "and in the election district where he offers to vote ten days immediately preceding such election;" and also by striking therefrom, in the last clause thereof, the words "and in the election district ten days as aforesaid."

Mr. DUNLOP hoped that the convention would not consent to go into committee of the whole. We are going to investigate a principle, continued Mr. D., which has been already fully investigated and settled. We shall thus encourage and stimulate other gentlemen to submit other propositions, and where they will terminate no man can foresee. Look at the unanimous modifications which the gentleman from the county of Philadelphia, (Mr. M'Cahen) has made to his proposition, before he finally settled down upon that which is now before us. It is manifest, from the gentleman's own course of providing, that he does not himself know exactly what we are to go into committee for.

He first submitted one motion, and then another—altering them as fast as any delegate suggests an alteration to him. This is no way to get through with our business; we may stay for an indefinite length of time and never be nearer to the end. If we are to go into committee of the whole, and again to lay open all those principles which we have adopted after so much discussion and so great a lapse of time, let us in the first place, repeal the resolution fixing on the twenty second of February as the day of our final adjournment. I hope that every gentleman here is satisfied by this time that we have done all in our power in relation to the principles which are to characterize our amendments to the constitution, and that they will not again consent to cast every thing loose again by going into committee of the whole. At all events if we want to take that step, I trust that the motion to that effect will at least come from some one who can satisfy the convention that he has given the matter some consideration and attention, and not from a gentleman who was under the necessity of amending his motion several times, not himself knowing what he wanted or what he would have.

Mr. MERRILL, of Union, very briefly opposed the motion.

Mr. M'CAHEN thought that if a delegate saw that he could make a section more perfect, it was his duty to propose an amendment.

Mr. C. then withdrew his amendment.

Mr. STERIGERE moved to amend by striking out the word "and" before "having resided," &c.

Mr. COCHRAN, of Lancaster, objected to the proposed amendment, not believing that the sentence would be rendered ungrammatical by retaining the word.

And the amendments to the said section, as amended were agreed to: and,

*Ordered*, That they be referred to the committee to engross the same for the question of final passage.

#### FIFTH ARTICLE.

The amendments to the fifth article of the constitution, as amended on second reading, were read the third time; and,

*Ordered*, That they be referred to the committee to engross the same for the question of final passage.

#### SIXTH ARTICLE.

The amendments to the sixth article of the constitution, as amended on second reading, were read the third time.

A motion was made by Mr. BELL,

That the convention resolve itself into a committee of the whole for the purpose of amending the amendments made in the third section of the said article on second reading, that the said section may read as follows, viz :

“SECT. 3. Prothonotaries of the supreme court shall be appointed by the said court for the term of three years, if they so long behave themselves well. Prothonotaries and clerks of the several other courts, recorders of deeds and registers of wills, shall, at the times and places of election of representatives, be elected by the qualified electors of each county, or the districts over which the jurisdiction of said courts extends, and shall be commissioned by the governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until their successors shall be duly qualified. The legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person. Vacancies in any of the said offices shall be filled by appointments to be made by the governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid.”

Which was agreed to. Whereupon,

The convention resolved itself into a committee of the whole, Mr. DENNY in the chair, for the purpose of making the said amendments.

Mr. REIGART moved, that the committee rise, and that the chairman report the amendments agreeably to instructions.

Which was agreed to.

The PRESIDENT resumed the Chair, and the chairman reported the third section of the said article agreeably to instructions.

And the report of the committee of the whole was agreed to.

And the amendments to the said section as amended were agreed to; and,

*Ordered*, That they be referred to the committee to engross the same for the question of final passage.

#### SEVENTH ARTICLE.

The amendments to the seventh article of the constitution, as amended on second reading, were read the third time.

**Mr. EARLE** moved,

That the convention resolve itself into a committee of the whole, for the purpose of amending the fourth section of the said article, by adding to the end thereof the words "the legislature shall not grant any exclusive privilege whatsoever."

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by **Mr. EARLE** and **Mr. REIGART**, and are as follows, viz:

**YEAS**—Messrs. Ayres, Butler, Cummin, Curll, Darrah, Dillinger, Earle, Keim, Mann, Martin, Miller—11.

**NAYS**—Messrs. Agnew, Baldwin, Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cope, Cox, Crain, Crawford, Crum, Denny, Dickey, Dickerson, Donagan, Donnell, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Hyde, Ingersoll, Jenks, Kennedy, Kerr, Konigsmacher, Krebs, Long, Maclay, Magee, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Read, Ritter, Rogers, Royer, Russell, Saeger, Scheetz, Sellers, Seltzer, Shelito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, Weidman, White, Woodward, Young Sergeant, *President*—95.

So the question was determined in the negative.

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

That the convention resolve itself into committee of the whole for the purpose of amending the fourth section of the seventh article, by striking therefrom, in the second line, the word "appropriating" and inserting in lieu thereof the word "taking;" and by striking therefrom in the third line, the words, "it is," and inserting in lieu thereof the words "for public;" and by striking from the end of the section the word "appropriated," and inserting in lieu thereof the word "taken."

**Mr. PORTER** said: If I can get the attention of the convention for a few minutes, I think I shall be able to demonstrate to their entire satisfaction, the propriety and correctness of the proposition which I now offer. Neither by the constitution of the United States, nor by the constitution of the commonwealth of Pennsylvania, has ever any right existed to take the private property of one individual and to give it to another individual or set of individuals for their private use, and I hope I shall not live to see the day when such a doctrine will be countenanced either by the constitution or the laws of the land.

Heretofore, whenever the legislature has authorized a corporation to take the private property of an individual, and to appropriate it to works of internal improvement,—for these are the only instances in which it is allowed—it has been only tolerated when the improvement was for the benefit of the public. In other words;—that although the corporation has a right to take the tolls accruing on that improvement, still that the public should be granted the use of it on payment of toll.

When this section was last up before us, I voted against it, because I found then, as I do now, that if it was adopted, the inference might be

drawn that private property may be taken, and given to the use of a private corporation created for private purposes only. I am sure that this was not so intended, and therefore it is that I am opposed to this amendment. Then the legislature will only have the power to grant the private property of individuals to corporations, in those cases in which the public will have an interest;—such, for instance, as a canal; a public rail road; a bridge, or navigation—or any improvement of which the public should be granted the use on payment of a stipulated toll. As the section now stands, it seems to me that the inference might be drawn that this convention sanctioned the idea that the legislature might take private property for private use. The distinction is now well settled, that the right to take private property, exists only in those cases where the public will have an interest.

Mr. WOODWARD, of Luzerne, said: I do not suppose there is any gentleman here who is disposed to take the property of a private individual and give it to another individual, or to a corporation, for its own private use. And if this amendment now before us—I mean the fourth section—which denies the power to take any property without compensation, should have the effect to give the legislature that power, it would certainly be a very unfortunate circumstance. I do not think it would be so. The corporations for which private property can be taken, are turnpikes, rail roads, canal companies, bridges and the like; and if the gentleman from Northampton (Mr. Porter) will look to the acts of assembly incorporating them, he will find that the legislature inserts a provision that the said companies shall have power to occupy such land as may be necessary for THEIR PURPOSES. The question whether these are private or public corporations, is a different matter; and I believe our courts have decided that all such corporations are of a public character. The legislature are now habitually giving to these companies, power to take real estate for their purposes.

Well, sir, if corporations of this kind are created hereafter, the legislature must have the same power to take private property for public use. Will you say in the constitution that the legislature shall not have the power to take private property for public use? The object is, simply to make the language intelligible to the people. And will the people understand you, if you tell them that the legislature shall not have the power to take private property for public use without compensation. They will not understand you at all. Be assured they will not. The courts have trouble enough in doing it. I would rather say what is exactly true, that when you charter a company for a thousand years, you give that company power to take the land for *its* use. It is for the use of the company; but it is also, for many purposes, for the use of the public; but still it is the company which, under the act of assembly, takes the property to be used for itself and for the public. This is the literal truth in relation to the matter. Now, if you retain the words "*its use*," what will be the understanding of the constitutional provision? Will it be even understood by any legislature that they may take away private property and give it to another individual?

Mr. PORTER, of Northampton, said, he would modify his motion by striking out therefrom that part which related to the words "*its use*."

Mr. WOODWARD. That obviates all the difficulty, and I will agree to the motion.



Mr. BANKS, of Mifflin, said he was of opinion that this amendment would not prevent the legislature from appropriating private property to any use although the language intended they should not.

Mr. MEREDITH, of Philadelphia, regretted that the gentleman from Northampton had modified the section in the manner he had done. If we strike out the words "its use," then we leave a public body to apply to its use, *private* property. He did not suppose that there was any one in this convention who would advocate the taking of private property for public use.

Mr. PORTER said that he was very unfortunate. In the shape in which he had offered his amendment, it did not meet the approbation of the delegate from Luzerne, (Mr. Woodward) who he believed was the author of the section.

Mr. WOODWARD said: "No."

Mr. PORTER said, that he did not apprehend that the striking out of the words "to its use," would be followed by the consequences stated by the gentleman from Philadelphia, (Mr. Meredith.) With regard to what had fallen from the delegate from Mifflin, he would say that the provision he (Mr. P.) had proposed, gave authority to the legislature to delegate power, if they should think proper, to a corporation to take private property for public use, on condition that they make compensation to the owners of it, or give proper security therefor. He did not think that a corporation could take property for their private use. It could not be done. But, the government, in virtue of its sovereignty, might take property for its use, because, *quo ad hoc*, its use is for the public use. This was the law, as was to be found in all the decisions made on this subject; and, in no case had it been more elaborately gone into than in the case cited some time since by the delegate from Luzerne (Mr. Woodward) of "Bonaparte vs. the Camden and Amboy rail road company." In that case, the principle was laid down by the court, that if an improvement was strictly a monopoly—if it was for the private use of the corporation—they would have no right to take the property of an individual. The court also settled another principle, and that was—that a corporation is private, although it be authorized to construct an improvement, in which, when completed, the public have an interest.

He believed that the word "appropriating" would be better changed to "taking." He would therefore modify his motion, so as to instruct the committee to make that change, and also to omit the words "to its use."

Mr. WOODWARD said that he was willing to vote for the amendment of the gentleman from Northampton, except in so far as the word "taking" was connected. He could not approve that term, and hoped it would not be inserted. There was no power here to pass a law that private property shall be taken for the public use.

Mr. STERIGERE, of Montgomery, thought the amendment was very well as it now stood, and could not be made more acceptable. We had now provided that no man's property could be taken for public use, without compensation being made; while, as to private use, it was provided that it could not be taken unless in payment of damages. To change the words to "public use" was unnecessary, as the amendment might be construed simply that property could be taken for *private* use, without this

security. That would, in his opinion, be the construction given to the amendment. He reiterated his hope that the delegate from Northampton would allow the amendment to remain as it now stood.

Mr. MEREDITH said, he regretted that the gentleman from Northampton would not accept his suggestion not to withdraw his proposed amendment in the words "its use." He (Mr. M.) would feel it his duty to move to amend the gentleman's motion, so as to obtain, if possible, the insertion of the words "public use," in lieu thereof. He was not willing to recognize by any clause in the new constitution, the right to take private property against the will of the owner, without saying also that it is not to be taken for public use. Now, he would ask how the constitution would stand, if this section was to be left in the manner the delegate from Northampton (Mr. Porter) proposed. Why, it would stand precisely as the gentleman from Montgomery said it would. Is it our intention to submit such a proposition to the people?

Mr. PORTER, of Northampton, said he would accept the modification.

Mr. MEREDITH resumed, then I will finish the few observations I was submitting, as briefly as I can.

The legislature never had a right under the old constitution, to take private property for any but public use. They took it for high ways; but that was for the public use. But if the amendment of the gentleman from Northampton should not prevail, what would be the consequence? The legislature may authorize a rail road through the commanding parts of the country, and may give the absolute monopoly of the line to a company. I am sure none of us intend that this should be so, and, therefore, I would attach to every clause that speaks of private property, the words "for public use." I hope the amendment will be agreed to.

Mr. STURDEVANT, of Luzerne, said: This section of the seventh article was offered by myself, from the circumstance that in the section of country in which I reside, there have been many complaints of private property having been taken by private companies for their own use, and not for the use of the public.

I will call the attention of gentlemen to the tenth section of the ninth article of the constitution of 1790; the latter clause of which is in the following words:—

"Nor shall any man's property be taken, or applied to public use, without the consent of his representative, and without just compensation being made."

This, sir, is the provision of our constitution, but it has not been found strong enough to save my constituents from much trouble. For instance; a man having a coal mine, gets up a company, who procure a charter with the privilege of making a rail road through a neighbour's farm, in order to enable them to carry the coal to market. The object of this corporation, therefore, is solely for the benefit of the individual or individuals composing the corporation. The public have no manner of interest in the matter.

These cases, sir, have occurred repeatedly. I know that a hundred of such instances might be cited—cases occurring in the coal valleys of this region of country. Thus private individuals have their private property cut up and destroyed, merely for the purpose of giving to some other indi-

vidual or set of individuals an opportunity to take their coal to market. Private and small rail roads have been built; bridges have been constructed, and no compensation has been granted, except that amount of compensation which the individual might be disposed to allow before a jury appointed for the purpose of examining the subject.

I hope, therefore, that a constitutional provision will be made by which private property shall not be taken in such cases as these, where private property can not be said to be taken for public use, but merely for private use. These cases are numerous, and they have been oppressive from the time since the incorporation of companies of this kind first commenced; and the moment that you strike out the word "its" and insert the word "public" in lieu, I shall feel it to be my duty to vote against the whole section.

A motion was made by Mr. SHELLITO,

That the convention do now adjourn,

Which was agreed to.

And the convention adjourned until half-past nine o'clock on Monday morning.

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### MONDAY, FEBRUARY 12, 1838.

Mr. HAYHURST, of Columbia, submitted the following resolution, viz:

*Resolved*, That the committee on the schedule be instructed to inquire into the expediency of reporting a clause, declaring that all sections in the constitution to which no amendment shall have been made, shall be construed and continue to have effect as heretofore, and as if the constitution of 1790 had never been altered or amended.

Mr. HAYHURST moved that the convention do now proceed to the second reading and consideration of the above resolution, which was agreed to.

Mr. HAYHURST said, if the convention would listen for a moment, he would explain why he had offered this resolution. He pledged himself not to consume three minutes. He had offered it for the purpose of removing any ambiguity or double meaning which may attach to any part of the constitution. It was of so much importance how eminent jurists would construe its clauses, but they must have a construction which would be plain to the people at large. He had consulted with five persons as to the construction of parts, and had found three deciding one way and two another way. Since then he had been in consultation with others, and had found differences of opinion. He wished the subject to be referred to the committee on the schedule. This was the course he preferred, as an amendment would be drawn up more methodically, if it were done by a committee. If he was compelled to introduce an amendment, it might be inserted in an improper place, or drawn up in an exci-

ted state of feeling, and thus might fail of the object. If it go to a committee it will have calm consideration, and be introduced with a proper regard to accuracy of language, as it will be under the cognizance of men better skilled in legal phraseology. He hoped the resolution would be agreed to, in order that a meaning would be given to the constitution, which would set at rest every doubt on the subject. After the convention had decided not to permit the small counties to have a separate representation, construction may give it to them. He was not prepared to say they should not have a separate representation, but if so, let the convention declare it. He wished the matter to remain as it was provided for in the old constitution.

Mr. READ, of Susquehanna, expressed a hope, that the resolution would not pass. He was of the opinion that it would lead to doubt and uncertainty.

Mr. STERIGER, of Montgomery, thought it a novel course, after having adopted several clauses, to declare that they do not mean what the words import that they do. He did not think that the convention was disposed this morning to go into this matter, and that the better course would be to postpone the whole subject. He concluded with moving to postpone, for the present, the further consideration of the resolution.

Mr. M'SHERRY hoped the resolution would not be postponed, but that we should act on it.

Mr. HAYHURST reminded the convention, that it was within a few days of the time of adjournment, and expressed a hope that the resolution would not be postponed.

Mr. STERIGER then withdrew his motion to postpone.

Mr. HAYHURST explained, that he had been foiled in every attempt to get at his object, when the article was under consideration. He fell in with every plan, but the rules had defeated him. The course he now had taken was not a favorite with him, but it was such as was only left for him to take.

Mr. FLEMING, of Lycoming, said he knew no reason why the convention should pass this resolution at this time. He did not think the convention was prepared to give such instruction to any committee.

Mr. STERIGER moved to commit the resolution to the committee appointed to prepare and report a schedule to the amended constitution.

The question being taken, this motion was agreed to.

Mr. WOODWARD, of Luzerne, said he was instructed by the committee on the schedule to move, that when the committee adjourn this morning, it adjourn to meet to-morrow at the usual hour.

The question being taken, this motion was agreed to.

Mr. HIBSTER, of Lancaster, submitted the following resolution :

Which was ordered to lie on the table for future consideration, viz :

*Resolved*, That five thousand copies in the English language, and two thousand five hundred copies in the German, of the constitution as amended, be printed in pamphlet form, for the use of the members of this convention.

## LATERAL RAIL ROADS.

Mr. PORTER, of Northampton, from the committee on the ninth article, to whom was referred the petition of sundry citizens of Luzerne county, on the sixth of November, on the subject of the act of the fifth of May, 1832, entitled "an act regulating lateral rail roads," made the following report:

Which was laid on the table, and ordered to be printed, viz :

*The committee on the ninth article of the constitution, to whom, on the 6th of November last, was referred the petition of sundry citizens of Luzerne county, on the subject of the act of the 5th of May, 1832, entitled "An act regulating lateral rail roads," REPORT :*

In the concessions of William Penn to the purchasers, executed in England on the 11th July, 1681, and before he or the adventurers had sailed for this country, it provided that "a certain quantity of land or ground plot shall be laid out for a large town or city in the most convenient place upon the river for health and navigation, and every purchaser and adventurer shall by lot have so much land therein, as will answer to the proportion which he had bought or taken up upon rent: but it is to be noted that the surveyors shall consider what roads or highways will be necessary to the cities, towns, or through the lands. *Great roads from city to city not to contain less than forty feet in breadth, shall be first laid out, and declared to be for highways, before the dividend of acres shall be laid out for the purchasers:* and the like observation shall be had for the streets in towns and cities, that there may be convenient roads and streets preserved, not to be encroached upon by any planter or builder, that none may build irregularly to the damage of another. In this, custom governs."

By this it will be perceived, that it was intended first to lay out the streets of the cities and towns and the *great roads*, before the lands were sold to those who desired to purchase or occupy. On arriving here, it was found that there were insurmountable difficulties in carrying this project into practice; and accordingly a new arrangement was made, which has been followed in all the grants of land made by the proprietaries and the commonwealth from that day to this, to wit: to allow six acres in every hundred to every grantee, without price or rent, as an allowance for roads and highways. This received a legislative sanction as early as the year 1700, and again in 1711, and by repeated acts since passed.

This six acres per cent. was agreed, on the one hand, to be granted, and on the other received in lieu of what might be taken for public roads and highways, whether the requisitions for those purposes should exceed or fall short of that quantity. "In this plan there was evidently a chance that the purchaser might be either a gainer or loser in the event, as it was then and would continue for a long time uncertain how much of each man's land would be found necessary for such public roads." "Although in this early arrangement there might be a chance that certain purchasers might be obliged to contribute more than six per cent. to the roads, yet it might possibly have been foreseen that scarce any instance of that would occur without an equivalent likewise accruing to the purchaser, from the

vicinity of such public roads to their buildings and improvements."—  
(*Per Shippen, C. J.*, 3 *Yeates*, 372; 6 *Binney*, 513.)

The allowance for road and highways was inserted in every original grant, and no matter how the estates might be subsequently subdivided or sold, notice was conveyed to every such purchaser in the grant from the proprietaries or state government, that it was so granted and so received. The subsequent legislation on the subject of roads and highways, in cases of county roads, allowed payment to be made to individuals for any *improvements* which might be destroyed in laying out and opening county roads; and subsequently by the act of 1802, and the supplementary and additional acts on the subject, compensation is authorized to be made for the land itself taken for the public roads. This is, to be sure, not in accordance with the provisions of the grants, but as it was a relinquishment by the public to individuals, it was a subject perfectly within the power of that public, to do with as they pleased. Still, as regards state roads, or other great public highways, the law remains unaltered, that for the land itself taken, the person holding it has no right to be paid, because compensation has already been made to him, or those under whom he claims, by the allowance of six per cent. for which the public never received a cent.

The law is well settled that the public may either exercise this power itself or delegate the power to a company created for the purpose, allowing them to take certain tolls as a recompense for the expenditure in the construction of the road. The supreme court in the case of *M'Clenachan v. Curwen*, (3 *Yeates*, 373; 6 *Binney*, 514,) say, "We cannot, therefore, consider the legislature applying a certain portion of every man's land for the purpose of laying out public roads and highways without compensation, as any infringement of the constitution—such compensation having been originally made in each purchaser's particular grant. But it is objected that even if the legislature might do this themselves, yet they could not grant the right of doing it, to individuals or a corporate body for their own emolument, so as to deprive the inhabitants or travelers of the free use of the road, by imposing tolls or other restrictions in the use of it. To this it may be answered, that such an artificial road, being deemed by the legislature a matter of general and public utility, and considering that it was not to be effected but at a considerable expense, and that the expense could not be defrayed, nor expected to be defrayed in the ordinary way, by the inhabitants of the several townships through which the road was to run, they devised this mode of accommodating the public with such a road at the expense of private individuals, who, from a prospect of deriving some small profit to themselves, might be induced to do it. It was immaterial to the public whether it was done by a general tax, to be laid on the people at once, or by the gradual payment of certain specified sums by way of tolls on those who used the road only; the latter being considered as the most equal mode of defraying the charge of making and keeping such road in repair. For although every man has a right to the free use of a public road, yet every member of the community may be taxed for making that road in any manner that the legislature may think reasonable and just."

The roads of the province were divided into three kinds—first, those called in the act of 1700, "the king's highways," or "public roads,"

which were laid out by the governor and council: these were usually called the *great provincial roads*.

Second. The roads or cartways leading to such great provincial roads, laid out by order of the justices of the county courts after the return of viewers, that the same were necessary for the convenience of the public: such parts of these roads as ran through any man's *improved ground* were to be paid for out of the county stock.

Third. Private roads, likewise laid out by order of the county court, on the application of any person for a road to be laid out from or to their plantations or dwelling places, to or from the highway. The improved grounds through which these roads run, were directed to be paid for by those, at whose request, and for whose use the same were laid out.

From the year 1700 to the present time, there has been provision by law for opening private roads, giving a man the means of ingress and egress to and from his lands and the public road or highway; in other words, prescribing the mode in which a right of way, which exists from necessity, shall be designated and secured. To the exercise of this right there can and ought to be no objection, as it is one growing out of the necessities of society.

The question as to rights on our rivers has been before our courts in various shapes. In the case of *Carson v. Blazer*, (2 Binney, 475,) it was held; that the riparian owner had no exclusive right in the stream of the Susquehanna, but any person might fish therein if he did not draw out on the shore, which belonged to the riparian owner. In the case of *Uebeloth v. the Lehigh Coal and Navigation Company*, (7 Hazard's Register, 292,) Judge Huston, in his charge to the jury, says, "The state may improve our navigable streams itself, or permit companies or individuals to improve them for the use of the public or themselves, authorizing them to be compensated for so doing by the tolls to be received;" thus putting them on the same footing as the supreme court had previously placed turnpike roads. Again, he says in the same case, "Along all the rivers, almost, there is a strip of land between the bank and low water, which is covered when the river is up, but which, as it falls, is left bare, &c. This is a peculiar kind of property. The owner of the land bounding on such a stream, has a right to use it to a certain extent, until the state chooses to claim and use it, or authorize others to do it, for the purpose of navigation. The owner of the adjacent ground has a right to fish opposite to and draw out upon it; perhaps to take the wood off it. But were he to build a wharf or make a wingwall, which, as the river rose, would offer any obstruction to the navigation, he could be indicted and convicted of a nuisance, and be compelled to abate it. The property in the land between high and low water is a curious kind of right. It is a qualified, not an absolute one. It is better than that of any one else, but always subject to the superior right of the state. For the swelling on such land, (for purposes of navigation,) the owner of the adjacent soil is entitled to no damages, because the land does not belong to him. For the strip of land, said by the surveyor to be two rods wide and upwards of eighty rods long, along the river, and which is alleged to be flooded, if it be not below the bank, but above it, the plaintiff would be entitled to compensation in damages: I understood the witness say the lines run to low water mark. You were on the ground and understood what is meant by the term bank;

for what is below such bank, you will allow nothing; but for any that may be above, you will allow what is right."

"It is a matter of no consequence what the plaintiff paid for his land. The true rule is, what was the plaintiff's land worth; what would it have sold for before the dam was erected? What is it worth? What would it sell for after the dam is erected, and the works in operation?

"In settling the amount of damages, the law requires, and so does reason too, that you should take into consideration any advantages which the plaintiff may have derived, or may derive from the construction of the works of the Lehigh coal and navigation company. If the general rise of land, or any part of it, is or can be distinctly traced to that cause, you are bound to take that circumstance into consideration. If facilities are afforded him thereby, which are of value to him, they should be considered. If advantages are derived to the country generally, in which he participates, all these things are to be considered. If he has received an advantage on the one hand and an injury on the other, both are to be taken into consideration. You cannot allow for the injury without estimating his advantages also." This principle is also settled by the supreme court in *Thoburn v. the Schuylkill navigation company*, (7 S. & R. 411,) in which the court say, "That in estimating the damages, the jury are to value the injury to the property at the time the injury was sustained, without reference to the person of the owner or of the state of his business; and the measure of such damage is the difference between what the property would have sold for as affected by the injury, and what it would have brought unaffected by such injury."

The subject of the rights to lands bordering on rivers, was also before the supreme court in the case of the *Commonwealth v. Shaw*, (14 S. & R. 12,) and in *Shrunk v. the Schuylkill navigation company*, (14 S. & R. 71.)

The result of all the decisions gives the owner of the shore the exclusive right to the use and occupancy of that shore, and of the right of landing and drawing out on and at the same.

The spirit of all our institutions, and the language of our constitutions, both of the United States and the state, forbid the legislature from taking one man's property to give it to another; and in the case of private roads, the right of way, over the soil merely, is granted, not any right in the soil itself. This, as has been observed, has grown out of the necessities of society, and has been so long practiced, as to be considered part of the terms of the grant of every tract of land. In the cases of incorporated companies constructing a rail road or canal, these works when constructed are for public use, and therefore may, on the authorities cited, be considered in the same light as if the act had been done by the commonwealth itself. The public, for public convenience, may undoubtedly take private property: that is understood in all grants;—and compensation must either have been made therefor to the original grantee, or must be provided for to the holder of the property.

That hardships do occur to individuals, under the rules adopted by our courts, for the assessment of the damages sustained by the construction of works of internal improvement, is no doubt true, and yet the rules adopted for the admeasurement or assessment of such damages, are, undoubtedly, the true general rules on the subject.



In the matter which has been submitted to the committee, the petitioners complain that the act in question confers upon the persons authorized to make the rail road, the power to take possession of the road and the soil within its limits forever, and they complain that the act is unconstitutional:

First. Because it is not a general law extending over the whole state, but is restricted in its operations to the counties of Lycoming, Luzerne, Northumberland and Schuylkill.

Second. That it precludes and debars the oppressed from resorting to the higher tribunals of justice to obtain redress.

Third. That it takes away the rights and property of one citizen without his consent, and vests the same in another for his own private purposes and pursuits, contrary to the stipulations in the grant of the land by the commonwealth, and in violation of the provisions of the bill of rights.

They complain further, that by the proceedings, as far as yet had under the act, it has been construed as taking away not only the soil necessary for the road, but also the necessary landings on the Susquehanna.

The act which has elicited the petition, was passed on the 5th of May, 1832, and authorizes the owner or owners of land, mills, quarries, coal mines, lime kilns, or other real estate in the vicinity of any rail road, canal, or slack water navigation, made or to be made by any company, or by the state of Pennsylvania, and not more than three miles distant therefrom, to make a rail road thereto over any intervening lands; and after marking the course thereof through such intervening lands, doing no damage to the property explored, to apply to the court of common pleas of the proper county, setting forth the beginning, courses and distances, and place of intersection of the main rail road, canal, or slack water navigation, the court are thereupon to appoint six viewers to decide upon the necessity and usefulness of the same for *public or private use*, and to report what damages will be sustained by the owner or owner of the intervening land by the construction and use of such rail-road. This report, if unappealed from, is to be confirmed or rejected by the court. Each party has the liberty of appealing therefrom within twenty days, when the cause is to be put to issue, and placed first on the trial list, at the next regular term of the court, and to be there tried and determined by the court and jury, and the verdict so rendered and *the judgment thereon shall be final and conclusive, without further appeal or writ of error*. The jurors are to take into consideration the advantages to be derived by the owner or owners of the land passed, by such rail road.

After the decision, the party asking for the road may, on payment of all the costs that have accrued, abandon the further prosecution of the road. No such road to exceed in breadth twenty feet, nor to pass through any burying ground, place of public worship, nor any dwelling house or out buildings, without the consent of the owner thereof. The mode of construction, bridging, &c. is pointed out, "and the right of property in the said rail road, shall be vested in him or them, his or their heirs and assigns, who have subscribed the petition for the said rail road, and whose funds have been contributed and paid for the construction thereof, in such just proportions, as each contribution and payment shall bear to

the whole amount expended in the formation and completion of the said rail road and the satisfaction for damages for lands and materials appropriated thereto." The road to be jointly and severally enjoyed and used by the proprietors thereof; but the ground is not to be broken for the construction of such rail road until the damages assessed be paid or tendered, except in cases of the parties entitled being unknown. Notice of the intended application to the court is to be given to the parties interested, and the right is granted to enter upon the adjoining ground for materials to construct the road, after a rate of compensation shall have been settled in the manner directed. The proprietors of the rail road are to keep an account of the expenditure, and within three months after completion, to file a full statement and account thereof, on oath, in the common pleas of the county, to the end that the commonwealth may at any time take the road on paying the principal money expended in the construction of the road. The seventh section provides, "That the said rail road may and shall be used by any person or persons transporting any thing thereon, in such cars, wagons and vehicles as are adapted to and used thereon by the proprietor and proprietors of the said rail road or their agents, and no others; he or they using the same, paying four cents per mile for each ton weight of the article transported thereon; and on all single articles weighing less than a ton, it shall be lawful to charge and receive an advance not exceeding twenty per cent. on the rate as above established."

The act proceeds to give further directions to the construction of bridges or causeways—limits the time for bringing suits for penalties—imposes penalties for wilfully injuring or obstructing such roads—limits the operation of the act to the counties of Lycoming, Luzerne, Schuylkill, and Northumberland, and concludes with the following thirteenth section:

"That the legislature reserve the right to repeal or alter this act either in whole or in part, as may respect any rail road constructed under the provisions of this act."

The rule seems to be well settled, that it is an incident to the sovereignty of every government that it may take private property for public use, of the necessity or expediency of which the government must judge; but the obligation to make just compensation is concomitant with the right. (Vattel, 112; Rutherford, 43; Burlem, 150; Puffendorf, 829; Grotius, 333; Constitution of Pennsylvania, art. 9, sec. 10; 5 Am'ts Const. U. S; 1 Bald. 220.) But the legislature has no right to take property from the lawful owner and appropriate it to the private use of another.—(1 Bald. 222-3.)

The construction of a road, canal, or rail road, by a private corporation, or an individual, does not make the road, canal, or rail road a private one, if the public have the right of passage thereon by paying a reasonable, stipulated uniform toll. Its exaction does not make its use private. If the public can pass and repass and enjoy its benefits *by right*, it matters not whether the toll is due to a public or a private corporation. The true criterion is, whether the objects, uses and purposes of the corporation are for public convenience or private emolument, and whether the public can participate in them *by right* or only *by permission*.—(1b. 222.)

There could be little doubt that the act of assembly in question would be unconstitutional and void, were it not for the provisions in the seventh section authorizing any person to use it on paying a stipulated toll, and the provision in the sixth section authorizing the state to take the improvement at cost: And whether these provisions would justify proceedings under it, where the rail road from its point of commencement being on the private ground of an individual, and in such a position that it could only be used by such an individual, is a matter which may at least admit of doubt. On this subject the committee do not express an opinion.

The objection that this act is confined in its operation to a few counties, would not be an objection to it on constitutional grounds. Such legislation has been practised for more than a century: witness the acts for preventing swine running at large, the mechanics' lien law, &c. There may be good reasons too, in point of expediency, for such enactments in certain cases, all of which are proper subjects for the exercise of legislative discretion.

So, too, with that part of the law which prohibits taking a writ of error to the supreme court. If this be a grievance, and the committee think it is, the redress is to be sought in the action of the legislature, upon that part of the act.

The act vests no *soil* in the proprietor of the road; it vests merely the road and the use of it in such proprietor; and if the right has been abused in taking landings on the basin, which are not so granted, the party has full redress at law. So that on the whole, the committee do not conceive that it is necessary for this body to take any action on the subject, by the insertion of any provision in the fundamental law of the state.

They therefore offer the following resolution:

*Resolved*, That the committee be discharged from the further consideration of the subject.

Mr. WOODWARD, from the committee to prepare and report a schedule to the amended constitution, to whom were referred the inquiries when the amendments to the constitution should be submitted to a vote of the people, by what officers the election should be conducted, in what form and manner the amendments should be voted on, and when they should go into effect if adopted, made report as follows, viz:

That they have had these subjects under consideration and (reserving the time when the amendments should go into effect, for a provision in the schedule hereafter to be reported,) they recommend the adoption of the following resolutions:

*Resolved*, That immediately after the final adjournment of the convention, the President shall issue a writ of election, dated the day of the final adjournment, and directed to the sheriff of each and every county of this commonwealth, agreeably to an act of assembly, passed the 29th day of March, A. D. 1836, entitled "An act providing for the call of a convention to propose amendments to the constitution of the state, to be submitted to the people thereof for their ratification or rejection," commanding notice to be given of a special election to be held in the several townships, wards and districts of the respective counties, on the first Tuesday of June next, for the ratification or rejection, by the people, of the amendments to the constitution. And the said writs of election shall direct at least thirty days notice to be given of the said election, in the manner provided by law for giving notice of the general elections of this commonwealth. And they shall further direct that the said election shall be held in the several townships, wards and districts of each county, by the judges, inspectors and clerks who conducted the last gen-

eral election; and that if any of the said judges, inspectors or clerks shall not attend at the proper time and place to conduct the special election hereby provided for, the qualified voters of the proper township, ward or district shall choose a judge, inspector or clerk in the manner that is now provided by law in like cases at the general elections of this commonwealth.

*Resolved*, That on the first Tuesday in June aforesaid, it shall be the duty of the judges, inspectors and clerks of the said special election, in each of the townships, wards and districts of this commonwealth, to receive from citizens qualified to vote, written or printed tickets labelled on the outside "Amendments," and to deposit them in a box or boxes to be for that purpose provided; and those who are favorable to the amendments, may express their desire by voting each a printed or written ticket or ballot, containing the words "For the Amendments," and those who are opposed to the amendments, may express their opposition by voting each a printed or written ticket or ballot, containing the words "Against the Amendments."

Mr. WOODWARD, on behalf of a minority of the committee to prepare and report a schedule to the amended constitution, made report as follows, viz:

The undersigned, a minority of the committee to prepare and report a schedule to the amended constitution, recommend the adoption of the following resolutions instead of those recommended by the majority:

*Resolved*, That immediately after the final adjournment of the convention, the President shall issue a writ of election, dated the day of the final adjournment, and directed to the sheriff of each and every county of this commonwealth, agreeably to an act of assembly passed the 29th day of March, A. D. 1836, entitled "An act providing for a call of a convention to propose amendments to the constitution of the state, to be submitted to the people thereof for their ratification or rejection," commanding notice to be given of an election to be held in the several townships, wards and districts of the respective counties, on the second Tuesday of October next, (being the day for holding the general elections of the commonwealth,) for the ratification or rejection by the people of the amendment to the constitution. And the said writs of election shall direct at least thirty days notice to be given of the said election, in the manner provided by law for giving notice of the general elections of the commonwealth.

*Resolved*, That on the second Tuesday of October next, it shall be the duty of the judges, inspectors and clerks of the general elections in each of the townships, wards and districts of this commonwealth, to receive from citizens qualified to vote, written or printed tickets labelled on the outside "Amendments," and to deposit them in a box or boxes to be for that purpose provided by the proper officers; and those who are favorable to the amendments, may express their desire by voting each a written or printed ticket or ballot containing the words "For the Amendments," and those who are opposed to the amendments, may express their opposition by voting each a printed or written ticket or ballot, containing the words "Against the Amendments."

GEO. W. WOODWARD  
EPHRAIM BANKS,  
HIRAM PAYNE

Which were read and laid on the table; and,

On motion of Mr. M'SHERRY,

Ordered to be printed.

Mr. COPE, from the committee on accounts, reported the following resolution, viz:

*Resolved*, That the President draw his warrant on the State Treasurer in favor of Daniel Barnes, binder of the English and German Journals, for the sum of eight hundred and thirty dollars, in full for a balance which will be due to him for binding said books.

And on motion,

The said resolution was read the second time, considered and adopted.

## SEVENTH ARTICLE.

The convention resumed the third reading of the amendments heretofore made on second reading, in the seventh article of the constitution.

The question pending was on the motion, viz: That the convention resolve itself into a committee of the whole, for the purpose of amending the fourth section of the said article, by striking therefrom, in the second line, the word "appropriating," and inserting in lieu thereof the word "taking;" and by striking therefrom, in the third line, the words "to its," and inserting in lieu thereof the words "for public;" and by striking from the end of the section the word "appropriated," and inserting in lieu thereof the word "taken."

Mr. DUNLOP, of Franklin, suggested that the convention had better resolve itself into committee of the whole to amend the section generally. He would make that motion if the gentleman from Northampton, (Mr. Porter) had no objection.

Mr. STERIGERE, of Montgomery, hoped the motion would be agreed to. He thought it would be well to insert the words "for any purpose," in lieu of the words "its use," which would embrace both public and private. He was of opinion that the convention had better go into committee for general purposes.

Mr. PORTER, of Northampton, said the objections urged by the gentleman from Montgomery, went to show that private property could be taken for public use. It could be taken for nothing else; and that was the reason why he accepted the amendment suggested by the gentleman from the city of Philadelphia, (Mr. Meredith.)

Mr. STERIGERE remarked that if the fact were so, there were a great many unconstitutional laws. He could refer to several giving companies the right to the exclusive use of roads. Private companies have both used and destroyed private property; and although bound in their charters to make compensation, they have failed to do so, because of their insolvency or some other reason.

Mr. DUNLOP observed that the gentleman from Northampton had said nothing in relation to his (Mr. D's.) proposition. His idea was that we should say that no corporation shall be empowered to take private property. Mr. D. then moved to go into committee for general purposes.

The PRESIDENT said, it would be better to divide the motion so as to end with the word "commit."

Mr. DUNLOP asked for a division accordingly.

Mr. INGERSOLL hoped that the convention would agree to commit generally. It was a very important subject.

Mr. FULLER, of Fayette, said that if the motion of the gentleman should prevail, we would be out to sea again. He was opposed to the motion. Before going into committee of the whole, gentlemen ought to know what they were then going to do. He thought that no corporate body should be allowed to take the property of any individual without making compensation. The section was in the following language:

"The legislature shall not invest any corporate body with the privilege of appropriating private property to its use, without requiring such

corporation to compensate the owners of said property, or give adequate security therefor, before such property shall be appropriated."

Now, a corporation is a private concern, and the taking of property, as the section now stands, would be for private use.

Mr. AGNEW, of Beaver, was in favor of the first branch of the motion. The section, in his opinion, required more amendment than had been suggested, and so gentlemen would find on examination. An act which was passed in 1832, authorizing the construction of lateral rail-roads, had given rise to this provision. The law was supposed to be unconstitutional; but the committee on the ninth article had reported that it was not unconstitutional. If the gentleman from Fayette would examine the act in question, he would ascertain that it relates to individuals, not corporate companies. Persons who own lands have rail-roads, and they do injury to the property of individuals through which they may pass.

Now, the amendment does not embrace this case. It applies only to corporate bodies, and not to the case which is contemplated. And I apprehend that the gentleman from Luzerne who drew up the section, (Mr. Sturdevant) and who has its success very much at heart, will find, if he will look closely at it, that it does not provide for the case of which so much complaint has been made.

For this reason, therefore, it seems to me that the convention will find it proper to go into committee of the whole for the purpose of amending the section, and I trust that we shall do so. Of one thing, however, I feel very confident; and that is, that the section, if allowed to remain in the shape in which it now appears, will fail to answer the purpose which it is designed to effect.

Before taking leave of the subject, I will call the attention of gentlemen to the act of May 5th, 1832, which is entitled "an act regulating lateral rail-roads." The first section of the act holds the following language:—

"Section 1. If any owner or owners of land, mills, quarries, coal mines, lime-kilns, or other real estate, in the vicinity of any rail-road, canal, or slack-water navigation, made or to be made by any company, or by the state of Pennsylvania, and not more than three miles distant therefrom, shall desire to make a rail-road thereto over any intervening lands, he or they, their engineers, agents, and artists, may enter upon any lands, and survey and mark such route as he or they shall think proper to adopt, doing no damage to the property explored, and thereupon may present a petition to the court of common pleas of the county in which said intervening land is situated, setting forth his or their desire to be allowed to construct and finish a rail-road in and upon the said route, and the beginning, courses and distances thereof, and place of intersection of the main rail-road, canal, or slack-water navigation, which shall be filed and entered on record in the said court, whereupon the said court shall appoint," &c. &c.

The act (Mr. A. continued) then goes on to invest the right of way in the person, his heirs and assigns, not in the body corporate, but having reference only to individuals and not to corporators: for it is declared by the third section of the same act that the right of property in the said rail-road, shall be vested in him or them, his or their heirs and assigns who shall have submitted the said petition for the said rail-road, and

whose funds shall have been contributed and paid for the construction thereof," &c.

These are the reasons, continued Mr. A., which induce me to urge that the convention should go into committee of the whole, and there amend the section. I concur in the opinion which has been expressed by the gentleman from Northampton, (Mr. Porter) that the provisions of the section as it now stands, might lead to some difficulty. Unquestionably it never could have been the intention of the framers of the constitution of 1790 to give to the public the right to take private property for private use. On this point, I take it for granted, there can be no difference of opinion amongst us. And the gentleman from Fayette, (Mr. Fuller) is obviously mistaken in his view, when he says that because an individual or corporation which takes the property is private, that, therefore, the use ought to be private. I do not subscribe to this opinion. The object may be public, although the means taken to accomplish it may be private. An individual, or a private corporation, may be authorized to construct bridges or other works, and yet the works themselves may be of a public character—such as the people themselves are interested in. It is only another means taken by the commonwealth of doing certain acts for the public benefit—doing them through individual enterprise, capital and skill;—but the nature of the act itself is public. Now, there is a clear distinction here. I agree with the gentleman from Northampton, that the word “appropriate,” and the words “to its use” might lead to some misconception as to the right of the commonwealth herself. There is some ambiguity here. Where a company appropriates a thing, we mean that it takes it to its own use. I dislike these expressions, and would be glad to see them changed, because they differ from the language of the constitution of 1790. What is the language of the tenth section of the ninth article of the constitution, to which reference has several times been made in this and in a former discussion upon the same subject. It says:—

“Nor shall any man’s property be taken or applied to public use, without the consent of his representatives, and without just compensation being made.”

This is the language of your bill of rights; and there is nothing in the constitution of 1790 which gives a colour to the notion that the public have a right to take private property for private use. Nor, at the same time, is there any thing there to be found which says, in express terms, that property shall not be taken in that manner, but from the tenor of the instrument, the unquestionable inference which we should draw is, that it shall not be so taken; because it lays down those rights which are inherent and indefeasible, and afterwards expressly provides that private property may be taken for public use, so as not to leave an implication that property can be taken for private use. It is my conviction that this section as it now stands, might lead to the implication that persons could take private property for public use. We have indeed been told, in the course of this debate, that any one who was acquainted with the causes which gave rise to the introduction of this section as an amendment to the constitution, could give no construction to it except that which the convention intend it should bear. Well, this might be so. I do not doubt that the members of the convention understand what they intend to enact;

that is to say, they do not intend to confer the right to take private property for private use. But this is not the point to which it is our duty to look. So far from leaving any thing doubtful, any thing which may tend to mis-construction, and, therefore, to difficulty, it is our duty to anticipate, and to guard against any difficulty which might hereafter arise in reference to all the amendments which we may make to the constitution. A judge before whom a case might be brought, might decide that it was not the intention of the convention to extend the public rights in this respect; yet we must take into view the fact that the decision may not be speedily made, and that it may be made under such circumstances as to affect the issue to a considerable extent. The legislature may go on step by step. After the lapse of twenty years, valuable rights may have been acquired under laws which go to the very verge of the constitutional provision, and when at last the legislature does overstep the boundary, rights may have vested in purchasers, and thus the interests of the parties might be affected to a great extent. Much embarrassment, difficulty and loss might follow. The court will hesitate long before it attempts to reverse these laws.

Under all the circumstances, then, it seems to me that this section, in its present form, will introduce a new rule, and that hereafter, in the course of time, when rights have been vested under certain laws, the court will feel itself in a very difficult situation when called upon to decide, as it may be, that these laws are unconstitutional.

Mr. DUNLOR, of Franklin, said. I will claim the attention of the convention for a few minutes. I wish I had a steam-whistle such as we have seen used on rail roads, or that I had a voice of thunder or something of that kind, so that I might have a chance to make myself heard. As things are now, I almost despair of being heard even by my immediate neighbors. The confusion in the hall is so great, and we have become so indifferent to the business before us, that we do those things which we ought not to do, and we leave undone those things which it is most essential that we should do. A day or two ago, we passed a portion of the amendments to the constitution which ought not to have been passed; and I hope that the members of this convention may be prevailed upon to give at least as much attention to what they are doing as to save from ridicule the clause we have passed, and which was passed in a great hurry. No gentleman ought to be in a hurry in forming a constitution—it is about the last piece of business in which he should suffer himself to act from excitement, haste or impulse.

But I say that this clause was passed in a hurry;—and that we are again in a hurry at this time, so much so as scarcely to know what we are about, or whither our constitutional legislation tends.

By the constitution as it now stands, people can take private property for their own particular uses. I am sure that the gentleman from Fayette (Mr. Fuller) will not be willing to go home, and tell his constituents, in answer to their inquiries, that it was his intention, or the intention of this body, that private property should be taken for private use. The constitution expressly says: "Nor shall any man's property be taken, or applied to public use, without the consent of his representatives, and without just compensation being made."



Now, authority which a corporation has to take private property, is based upon the principle that it is taken not for the use of the corporation, but for the use of the public; because it is expressly forbidden that one man's property shall be taken for the private use of another man, or for the private use of any set of men. Sir, it is absurd to assert such a principle, and yet we actually have embodied it in the amendment which we have passed to this seventh article. What are its terms?

"SECTION 4. The legislature shall not invest any corporate body with the privilege of appropriating private property to its use, without requiring such corporation to compensate the owners of said property, or give adequate security therefor, before such property shall be appropriated."

Can the legislature, continued Mr. D., appropriate property to the use of a corporation? Undoubtedly so, if the appropriation be for a work which is for the public use. But the clause which I have read contains no restriction. It implies that the legislature can take private property for the use of the corporation, whether it is public or private—whether it is to be used in a public manner or for the use of a private corporation alone. Does the gentleman from Fayette desire to go home, and to tell his constituents that he has given his vote for such a clause as this? I do not think he does. What will the judges say? They will say that we intend to change the whole face of the law, and to confer upon corporations the right of taking private property for private use.

What says the gentleman from the county of Philadelphia, (Mr. Brown) who is so fond of taking a little cut at myself? I got a corporation, it is true, though I never made any use of it. But suppose that I had done so, and that I had pursued and executed the law. Could the legislature confer the right upon me to take my neighbor's property, because I wanted it for my own use? Will the gentleman from Fayette, when he goes home to his constituents, advocate such a doctrine as this? I think he will scarcely have the boldness to do so. And yet this very clause now before us, would justify or seem to imply that we have opened a new power to the legislature, and given them a power which was so grossly complained of in the constitution of 1770. I hope that we shall go into committee of the whole upon this section, and make the necessary alterations in it. Why should we be afraid of going to sea, as the gentleman from Fayette says? Go to sea upon a single section! Sir, the apprehension is groundless; and if it were not so, any thing is preferable to sending out this section in the imperfect form in which it stands at present.

The gentleman from Mifflin, (Mr. Banks) has suggested to me an amendment which, with a little modification of my own, would answer, I think, every purpose.

[Mr. D. here read the amendment which was, in substance, that the legislature should not authorize any corporation, nor any individual to take private property except for the use of the public, and upon compensation being made before the property is taken.]

The act of May 5, 1832, continued Mr. D., gives a sort of general right to persons who run lateral rail roads, to take private property. The legislature will of course judge, whether the work be for public use or not. The legislature will confer the right to take private property for works

which are for the use of the public, and it would be right so to construct them as to require the parties to make compensation before the property is taken.

W<sup>r</sup>. WOODWARD, of Luzerne, said. I do not see that it is necessary to go into committee of the whole generally, for the purpose of getting at this amendment. I do not see the necessity of again embarking on the sea. If the gentleman from Northampton. (Mr. Porter) is not willing so to modify his amendment as to meet the views of the gentleman from Franklin, (Mr. Dunlop) and the gentleman from Mifflin, (Mr. Banks) let us negative his amendment.

I do not, however, concur in the opinion which has been expressed that the section as it comes to us on second reading, would introduce any new rule in this commonwealth, or would imply the right to take private property of one individual and confer it upon another. It is not designed upon the face of it to bear that construction, and I do not perceive how any court could put such a construction upon it. The words of the first part of the section are :

“The legislature shall not invest any corporate body with the privilege of appropriating private property to its use,” &c. These are merely words of description. Heretofore, the law has been that corporations might take property and that compensation should be made subsequently, as the legislature might choose. Now, this amendment is designed simply for the purpose of introducing a new rule as to the time and the manner of the compensation. For the purpose of introducing a new rule, it is said, in the way of description and inducement, that “the legislature shall not invest any corporate body with the privilege of appropriating private property to its use.” Would any of the learned gentlemen themselves who have spoken in the course of this discussion, would they, I ask, if sitting in a court of justice, hold that this provision overturned the constitution of 1790—that it overturned the decisions of our courts, and introduced a new rule of property? I think this would be a new construction, of which we need have no fear.

If, therefore, the convention should refuse to go into committee of the whole, I do not think that evils which are apprehended by the gentleman from Franklin, (Mr Dunlop) would come upon us; nor shall I be afraid to meet my constituents if I should give my vote in favor of the section as it now stands. This being the case, I do not regard it as a matter of so much importance that we should go into committee of the whole for the purpose of amending the section. I am desirous, however, to remove every well founded doubt, and to make our constitution intelligible and certain beyond the possibility of misconstruction. And believing that the amendment suggested by the gentleman from Mifflin, (Mr. Banks) will remove all doubts in relation to the section, I hope that the amendment of the gentleman from Northampton will be negatived, and that the proposition of the gentleman from Mifflin, will be introduced. But why should we go into committee of the whole without special instructions, and allow this subject to be hawked at all the day, or it may be, all the week—and when probably, in the end, the result might not be satisfactory? I hope we shall not do so.

Mr. MEREDITH said. Before we go into committee of the whole, I should prefer to ascertain, if we can possibly do so, precisely what in-

structions are to be given the committee. I should prefer this to going into committee of the whole generally; and I do so for the reason which has been urged by the gentleman from Luzerne, (Mr. Woodward) and also for an additional reason, which I will state. I allude to the experience we have had in committee of the whole upon the first article. We went into committee of the whole, it will be recollected, for the purpose of making certain amendments; but when there, we found that we were not restricted, and we were compelled to rise somewhat in haste, and to leave an important matter in the fifteenth section entirely untouched. My own opinion is, that if we feel any disposition to economise our time, we had better not go into committee of the whole generally.

As to the proposition of the gentleman from Northampton, (Mr. Porter) it seems to me to be the very one which is wanting. Since we have settled down upon the principle that these corporators shall pay or secure payment beforehand, all we have to do is to couple with it the sacred principle that property is to be taken for public use.

In answer to the remarks of the gentleman from Fayette, (Mr. Fuller) I will say that there is no case in which the legislature has authority to authorize a corporation to take my private property or your private property, Mr. President, and occupy it themselves for their own use; although they may do it for the purpose of constructing rail roads, canals, bridges or other works of improvement in which the public have an interest. And I am sure there is no gentleman here who would deprive the legislature of this latter power.

We ought to hold the principle that the legislature shall not take private property, unless it is taken for the public use; but it would be a melancholy state of things to authorize the legislature to take the property of one man for the private use of another.

I never have understood upon what principle the lateral rail road law was passed—although the law itself contains a clause that every body may use these lateral rail roads, if they do so in accordance with the wishes of the proprietors of them. And for this reason, I suppose that the legislature thought that the property was taken for the public use. Still I can not regard this in any other light than as a special power.

[The confusion in the hall at this point of Mr. M's. remarks was so great, as almost to drown the voice of the speaker. After pausing a few moments, Mr. M. proceeded.]

I fear, Mr. President, that we are thinking more of our own biographies, than of the business of the public. I will proceed, however, with such success as I may.

It appears to me that if we adopt the proposition of the gentleman from Northampton, (Mr. Porter) we do all that the section is susceptible of. We maintain the principle that property taken is to be for the public use; and we deny the principle that the legislature has the authority to authorize any individual or corporation to take private property for his or their own use; and we do not admit into the constitution any phrase which will authorize such a construction even by implication. I think that in granting these lateral rail roads, and in suffering a man's private property to be taken for them without his consent, there is a stretch of power. It would be thought monstrous that one owner of land within six feet of

the street, should be authorized to take the property of his neighbor without his consent, until such time as the judges would assess the damages. There is not a man who has any real estate in the commonwealth, who has not upon his immediate borders some land which he would like to possess, if he could, and the possession of which might be attended with considerable advantage to him. But is this any reason that we should introduce, by implication, the monstrous principle of giving the right to take private property for private purposes? Sir, it destroys all the soundness and security of property. Is a man who owns some property, and desires to run an alley through the property of his neighbor—is he, I ask, to be authorized to take that property without the consent of his neighbor? Surely, it cannot be the intention of any member of this body to sanction so iniquitous a doctrine. And yet this is the principle which, under the section as it now stands, we are about to establish.

Now, the gentleman from Luzerne, (Mr. Woodward) tells us, that no court would ever put such a construction upon the section, and I admit that if we were to place this clause immediately after that clause of the ninth article which relates to private property, it would not be so likely to receive such a construction. But we have put in a distinct clause, in another article.

On the other hand, sir, there are gentlemen here who have declared that unless this term “for public use” be put in, they believe that the constitution will authorize the taking of private property for private use, under the authority of the legislature. It is not enough to say that, under a strict construction of the constitution hereafter, there can be no such misconception. There may be judges, under the new tenure of office, who will brave the legislature, and say that this is the true construction. We are making a fundamental law which ought to be plain and obvious to every man; which ought to apply itself not only to the legal accumen, but to the common sense of every man. And I ask whether, when the people see that the terms “for public use” are omitted, they will not be alarmed; and whether they will not believe that, in adopting the section as it now stands, we have deprived them of a security. I think we ought not to do so. I shall oppose doing it, and I shall go in favor of the motion of the gentleman from Northampton. I trust, therefore, that the first branch of this motion, and also the subsequent branch, will be agreed to.

Mr. INGERSOLL said. I conceive that as this clause now stands, it is extremely faulty in principle, and worse than ambiguous in phraseology, and I must vote against it altogether. So much opposed am I to it as it now stands, that I have put my sentiments on this subject in the form of a protest in order that I may show what, according to my judgment, is right to be done.

Whether this convention goes into committee of the whole or not, is a matter of indifference to me, except that I suppose we should have more liberty in committee than we can hope to have in convention.

How stands the subject matter? At all times and, I believe, in all countries—but certainly in that country which boasts of a Magna Charta, and from which we derive most of our laws and customs—no private property can be taken for public use without its equivalent. I know that this is the law of France, that it has been so, not only under the charter

but at all times. I have always understood this to be the law of Turkey that the government should not dispossess a man of his property without something in the nature of compensation. On the other hand, there is a counteracting principle that the public security is the supreme law, and that private property may be taken for public use, by compensation rendered. These are the laws here and every where.

But, sir, the march of public improvement in this state, sometimes over-stepping the bounds of private right and touching often upon the principles of constitutional law, has gone into every man's possessions through the instrumentality of corporate bodies. I do not say whether this is right or wrong. I am not sure, for I have not made up my opinion on the subject. Such, however, is the fact, that at this time, a large proportion of the public improvements of this state—nay, five of the large navigable streams of this state, have been improved, and are in a great measure owned by corporate bodies.

What is a corporate body? It is nothing more, in relation to private rights, than an individual unincorporated; and a great error prevails from the idea that there is something different in this respect. A man in a corporation or out of a corporation, is the same being in relation to private rights.

Our public improvements, then, are carried on in a great measure by corporate bodies—the state availing itself of their capital and individual enterprise—and devolving upon them a certain portion of the rights and powers of the state—and amongst these, the power to enter upon any man's possessions, if necessary, and to take from him so much as may be necessary to carry on a work of public improvement.

The gentleman from Fayette, (Mr. Fuller) has said that all these corporations are private corporations. I do not know how this is. Since our adjournment on Saturday, I have read the case of the Camden and Amboy rail road company. I was myself engaged in that case as lawyer, although I did not argue it. The mind of the judge upon that occasion was in doubt, whether such corporations were public or private corporations; and I believe he came at last to the conclusion that they are private corporations with a public aspect. It is not for us to settle these things. We must conform, and endeavor to overcome all doubts. My object is to prevent any corporation upon whom the state may devolve a portion of the power of the state—to prevent any individual or set of individuals from having the right to enter upon any man's property, not only without compensation, but without compensation being first made or secured to be made. The difficulty, then, I think, into which we have been led, has arisen in consequence of the hasty adoption of the principle springing entirely from a local complaint.

The gentleman from Luzerne, (Mr. Sturdevant) has truly told us, that there is great reason to complain in his own county, of some of these short rail-roads that pass over a little distance from one spot to another, and which are private property. I agree with the gentleman from the city of Philadelphia, (Mr. Meredith)—and I would even go much further—that no legislature has the power to authorize persons to enter upon private property for private purposes, whatever the nature or character of those persons may be. But the difficulty here arises from our

laying down a rule for a local purpose, when we should take into view the whole state at large.

He understood the object of the convention to be to prevent any corporation, or individual—for his own part he wished to prevent the state—from entering upon any man's property, and taking possession of it without the legislature being authorized by the constitution to require that compensation shall be made to the owner. This was the law which prevailed all over the world—that a man shall be either paid in advance, or have compensation secured to him, before his property is entered upon. Now, what would be the consequence of the adoption of the proposed provision? He agreed entirely with all that had fallen from the gentlemen on the other side, (Mr. Agnew and Mr. Meredith) that if this provision should be incorporated in the constitution, it would lead to the assumption of a power by corporations which they had heretofore never dreamed of—that is to take private property, where ever they pleased, under the colour, or guise of its being for the public use. This would be the consequence, unless the words “to its use” should be stricken out. The provision did not contemplate the case of an individual; and why separate individuals from communities? There had lived an individual in this community, if authority had been given him, who possessed wealth sufficient to have carried on many of the great internal improvements of the state. And why, (Mr. I. asked) should he not be as well authorized as corporations. There was one gentleman, at least, if not many, in the city of Philadelphia, if empowered by the legislature, who might enter upon a man's property, under pretence of its being for the public use, as was done by corporations. He wanted the provision to extend to individuals as well as to corporations. He could see no reason why it should not be. What he desired was, to confine the taking of land, or other property to the public use, and not to private use. And, he wanted to guard individuals so that they shall be paid in advance, or have compensation secured to them. This was his objection to the clause, in principle. As he had already observed, it was artificial, ambiguous, and very imperfect in language. Why not insert, instead of this proposed provision, one to this effect—that no law shall authorize the taking of private property by any corporation, or individual for public use, without compensation being first made to the owner. He should have preferred that this provision should be connected with the tenth section of the ———— article, but he understood that was irrevocably disposed of. He thought that fewer words might be used to embrace the idea intended, viz : that no property shall be taken by any corporation, from any individual, or corporation for the public use, unless compensation be paid in advance, or be secured to him or them. He believed that such a provision would meet the public sentiment, and prove highly beneficial. As the provision at present stood, he should feel himself reluctantly compelled to vote against it. But, if an amendment of this kind could be inserted, in a less exceptionable shape, then he would have no objection to vote for it.

After a few remarks from Mr. MERRILL, of Union, very indistinctly heard—

Mr. DUNLAP withdrew his motion for a division. He believed that all would agree to the amendment proposed by the delegate from Northampton.

Mr. STURDEVANT, of Luzerne, would suggest to the delegate from Northampton, (Mr. Porter) to amend the amendment by inserting after the word "body," in the second line, the words "or individual;" and by inserting after the word "corporation," in the forth line, the words "or individual."

Mr. DENNY, of Allegheny, was opposed to the amendment, because he considered that the legislature have no right to give any corporation authority to take private property. He admitted that the legislature themselves have the right to take it, under certain conditions, for the public use. It was a proper right too. But he thought the public would never consent that the legislature should give this right to a corporation. We call rail roads private improvements, for the benefit of individuals; and they are not for the public use, according to the meaning of the constitution. Those are not public improvements which we can take only by purchasing. No individual can cross a bridge, or travel a turnpike road without paying; therefore they are not public. The tolls do not go into the public treasury. If any of these companies are fortunate enough to have a surplus, it goes into their own treasury, and not into the public treasury.

That alone is public which every one has a right to use. Individuals may buy the right of companies. If the revenue goes into the public treasury, the works do not belong to individuals, but to the public. They are public improvements applied for the public use and benefit. He thought that there ought to be some modification of the amendment. But he would be better pleased if the whole section were to be stricken out.

Mr. PORTER modified his motion to amend the fourth section, in accordance with the suggestion of the delegate from Luzerne, (Mr. Sturdevant.)

Mr. STERIGERE moved

Further to amend the motion by striking from the fourth line the word "compensate," and inserting in lieu thereof the words "make compensation to."

Which was agreed to.

And the motion as amended was agreed to.

Whereupon,

On motion of Mr. PORTER, of Northampton,

The convention resolved itself into a committee of the whole, Mr. DENNY in the chair, for the purpose of amending the fourth section of the seventh article, as follows, viz: By inserting the words "or individual," after the word "body," in the second line; by striking from the third line thereof, the words "to its," and inserting in lieu thereof the words "for public;" by inserting, in the fourth line thereof, after the word "corporation," the words "or individual;" by striking therefrom the word "compensate," in the fourth line, and inserting in lieu thereof the words "make compensation to;" and by striking from the sixth line thereof the word "appropriated," and inserting in lieu thereof the word "taken."

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

That the committee rise, and that the chairman report the amendments agreeably to instructions;

Which was agreed to.

The **PRESIDENT** then resumed the chair, and the chairman reported the amendments to said section agreeably to instructions.

And the said report of the committee of the whole was agreed to.

And the section as amended was agreed to.

**Mr. EARLE**, of Philadelphia county, moved,

That the convention resolve itself into a committee of the whole, for the purpose of amending the fourth section of the said article, by adding to the end thereof the words as follow, viz: "It shall be the duty of the legislature to enact general laws, by which equal rights and privileges in relation to banking shall be extended to all citizens who shall give sufficient security for the payment of such notes as they may lawfully issue."

Which was disagreed to; and,

*Ordered*, That the amendments to the said article, as amended, be referred to the committee to engross the same for the question of final passage.

The amendments made on second reading, in the tenth article of the constitution, were read the third time.

**Mr. STERIGERE**, moved.

That the convention resolve itself into a committee of the whole for the purpose of making the following amendments, viz: By striking from the fourth line, the words "of the two houses," and inserting in lieu thereof the word "house;" by striking therefrom the words "at least three months distant," in the seventeenth and eighteenth lines: by striking therefrom the words "who shall vote," in the twenty-first line, and inserting in lieu thereof the word "voting:" by striking therefrom the word "it," in the twenty-fourth line, and inserting in lieu thereof the word "they;" by inserting the word "submitted," after the word "be," where it occurs the second time in said twenty-fourth line; and by inserting the words "or against," after the word "for," in the twenty-fifth line.

**Mr. S.** said that the words "at least three months distant" meant nothing at all—were entirely useless and unnecessary, because it was not said distant from what time.

A motion was made by **Mr. DICKEY**,

Further to amend the said motion by adding thereto the words as follow, viz: "And that said committee be instructed to amend said article by striking from the twelfth and thirteenth lines thereof the words "a majority," and inserting in lieu thereof the words "two-thirds."

**Mr. DUNLOP** said. I wish the gentleman from Beaver (**Mr. Dickey**) had reserved his proposition until another occasion. The amendments of the gentleman from Montgomery (**Mr. Sterigere**) appear to me to be proper, but they are merely verbal. Not so with the proposition of the gentleman from Beaver. That involves an important question of principle, and we shall be mixing the two propositions together. For instance, if the motion of the gentleman from Beaver should prevail, those who are opposed to the principle of two-thirds would vote also against the verbal amendments of the gentlemen from Montgomery.



For my own part, I am in favor of the amendment of the gentleman from Beaver; but that being a question of principle, I hope he will allow the sense of the convention to be taken upon it by itself.

Mr. DICKEY said. I should not have moved the amendment at this time, had it not been for one reason, strong enough as it seems to me. I do not see that the verbal amendments of the gentleman from Montgomery will be embarrassed by it. If we go into committee of the whole with instructions, it is merely an act of instruction; and it will be a very easy matter to call for a division of the question.

I do not think that the principle involved in my amendment—that is to say, the principle of a bare majority or of two-thirds, was settled by a full convention when it was last before us, and I am inclined to the opinion that if all the members had been in their seats the result would have been different. In this, however, I may be mistaken. At all events, I want now to have the sense of the convention, whether they will substitute two-thirds for a majority of the second legislature which is to have the power to submit these amendments to the people.

I repeat that to the gentleman from Franklin (Mr. Dunlop) who expresses himself in favor of the principle of my proposition, that all embarrassment in relation to the verbal amendments may be obviated by calling for a division. I will myself call for a division of the question.

Mr. DUNLOP said. I am not satisfied with the manner in which the gentleman from Beaver (Mr. Dickey) meets the objection I raised. Does not the gentleman know, that if the committee of the whole is instructed to make amendments, they must be made; that they must all be made or none. And thus, as I said when I was up before, we are to instruct the committee of the whole to make an amendment upon a matter of verbiage, and an amendment upon a matter of principle, and those who are against the two-thirds principle would thus be made to vote against changing the phraseology of these amendments as they ought to be changed; or else we must go into committee for the purpose of considering, and not under special instruction to make a particular amendment. I wish that we had all got our biographies fully written out. I am afraid that the gentleman from Beaver has not heard any thing I have said, as he seems to be engaged in writing his name in an album.

Mr. DICKEY said, he would withdraw his amendment for the present, but with the intention to renew it when the question on the other amendments should have been taken.

Mr. DARLINGTON said. There are two other verbal amendments which ought also to be made. They are these:—Strike out from the fourth line the words “of the two houses,” and insert the word “house;”—and by inserting the words “or against” after the word “for,” in the twenty-fifth line.

Mr. STERIGERE said, he would accept the modification.

Mr. EARLE said. One of the amendments of the gentleman from Montgomery (Mr. Sterigere) proposes to strike out, in the seventeenth and eighteenth lines, the words “at least three months distant.” It seems to me that it is nothing more than reasonable, when we are providing that the secretary of the commonwealth shall publish the amendments three months before the election of the second legislature, and when we

are providing that he shall publish them after they have been adopted a second time by the legislature,—it seems to me, I say, only reasonable that there ought to be some time allowed to the people to consider them before they are called to vote finally upon them. I think it is a matter of ordinary prudence, while we are careful to restrict the legislature as to the mode in which they shall submit the amendments, that we should also require a reasonable time to elapse after the amendments shall have been agreed on by the legislature, for the people to reflect upon them, that they may finally vote with a full understanding of what they are doing. If it is proper to interpose any guard at all in relation to the mode of action, this is as necessary and as proper as any. The gentleman from Montgomery (Mr. Sterigere) does not understand the meaning of the words “at least three months distant.” This is strange. It seems to me that there is no child in the city or county of Philadelphia but what would understand it. I do not know how they talk in his neighbourhood. “And if in the legislature next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, the secretary of the commonwealth shall cause the same again to be published in manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner and at such time, *at least three months distant*, as the legislature shall prescribe.” These are the words. In what respect are they unintelligible? I can not see it. I think it is necessary to have some restriction in this respect.

As to the distinction which the gentleman from Montgomery draws between the words “who shall vote” and the words “voting thereon,” it is a criticism which I should never have thought of making. It is a question of tweedledum and tweedledee, and I shall say nothing about it. The word “shall,” however, is proper. I think the words “shall vote thereon” are better than voting thereon—although I never should have thought of striking out either the one or the other.

So far as regards the proposed amendment in the proviso, I think it is immaterial. But I should like to have the question taken, separately, as to the words “at least three months distant;” for that, as it strikes me, is an important provision. I ask, therefore, for a division of the question.

Mr. STERIGERE said. The gentleman from the county of Philadelphia (Mr. Earle) does not seem to regard it as any compliment to my understanding, that I can not attach any definite meaning to the words “at least three months distant,” knowing, as we all do, the depth of that gentleman’s knowledge, I should thank him to inform the convention to what the word “distant” refers;—that is to say, to what time or thing. Three months distant from what? I think he might have condescended to enlighten us on this point, if, as he says, the meaning of the term is so clear that any child in the city or county of Philadelphia would understand it. He should bear in mind that we have not all been gifted with talents and intelligence so great as his own, and that when our less comprehensive understandings are at fault in placing a correct or definite construction upon subject-matters before us, it would not be in any respect derogatory to his dignity to step forward and throw light upon our darkness.

I repeat that, so far as I am able to see, the term “distant” has no

reference to any thing. There is nothing under the sun with which it has any connexion

And the question being then taken,

Will the convention agree to the first division of the amendment, with the exception of that striking from the seventeenth and eighteenth lines the words "at least three months distant?"

It was determined in the affirmative.

So the first division of the amendment was agreed to.

And the question then recurring,

Will the convention agree to the second division, viz: To strike from the seventeenth and eighteenth lines the words "at least three months distant?"

Mr. REIGART said, he would suggest to the gentleman from Montgomery (Mr. Sterigere) to modify his amendment so as to strike out the word "distant," and insert in lieu thereof the words "next preceding the election."

Mr. STERIGERE having declined to accept this modification,—

Mr. REIGART inquired of the Chair whether it would be in order to move this as an amendment.

The CHAIR said it would not be in order.

Mr. REIGART, of Lancaster, called for a division of the question, to and with the word "months."

The PRESIDENT said that the motion was not then in order.

Mr. REIGART then moved to amend by striking out of the eighteenth line the word "distant," and to insert "preceding the election."

Mr. EARLE said he understood the word "submitted," in the fifteenth line, referred to the vote of the people. The amendment proposed by the gentleman from Lancaster would consequently destroy the sense of the section. But, the amendment that he (Mr. E.) had offered would render it perfectly clear.

Mr. REIGART withdrew his amendment.

Mr. HASTINGS, of Jefferson, moved to amend the motion by adding the following, viz: "And that the committee of the whole be instructed further to amend said article by inserting after the word "representatives," in the second and third lines, the words as follow, viz: "In the year one thousand eight hundred and fifty, and at the expiration of each succeeding term of ten years thereafter," and by striking out all after the word "published," in the tenth line, to the word "and," in the fifteenth line.

Mr. H. said,—

Mr. Chairman: This is an amendment I had prepared, and intended to have offered while this article was under consideration on second reading; but after making several fruitless attempts to obtain the floor, my prospects were cut off by the call of the previous question. This, sir, is all the apology I have to offer for thus trespassing on your time at this late hour. I will, therefore, ask the attention of the convention a few moments, while I give my reasons for offering it. I believe, sir, if some

such provision as this is not adopted, the question of altering and reforming the constitution will be agitated at every annual election: and eventually, at every session of the legislature, members from different parts of the state will come prepared with their various projects or propositions of reform, to offer, and each claim an equal right to be heard, and have their propositions considered; and by this means the state will, in all probability, be compelled to keep up a perpetual legislature at the expense of the people.

I believe that the amendments we have made, and are about making, will cost the people of the commonwealth enough to satisfy them for at least ten years. But, sir, if the people should not be satisfied, and should wish an immediate alteration, this amendment will not prohibit them from calling another convention (such as we are,) to alter and amend the constitution in any manner they may see proper. But I do not fear that result, nor do I fear the action of the people on any amendment the legislature may propose; but where, I ask, is the necessity, or what will be the particular advantage of this continual legislation on constitutional reform! Sir, if this amendment is rejected, I would not at all be surprised to see members who now occupy a seat on this floor, pressing forward to a seat in your legislative halls for the express purpose of offering, advocating, and carrying through the legislature many of the numerous propositions that have been here offered, and rejected by this convention. And others who have here acted the conservative, and opposed all the amendments we have made, may be elected for the purpose of having the constitution altered back to what it originally was in 1790. Again, I am exceedingly anxious to have the experiment fairly tried how the tenure of the judiciary for a term of years will operate, before that part of the constitution can be altered. I want to know whether making the judges accountable will have a tendency to make them dishonest or incapable of filling their offices with honor and integrity.

I want to see whether the people can't elect and re-elect as good justices of the peace as have been generally appointed by the governor. Sir, if this proposition should be agreed to, the legislature will then know that they have nothing to do with the constitution until the year 1850, and the people will know at what session the legislature will have the power to submit amendments for their adoption or rejection, and they can then elect such men as they believe will carry their wishes into effect.

I wish gentlemen to bear in mind that we have cut out a great deal of work for the legislature, in addition to the ordinary business of that body. Sir, I wish it distinctly understood that in offering this amendment I have no interested, selfish or sectional feelings on the subject. I have no other feelings at heart than that of the general prosperity of the people of the commonwealth;—that I believe it entirely a matter of economy and state policy, and I firmly believe that, if adopted, it will in ten years save enough money to make a hundred miles of canal or rail-road. I do hope the convention will, as I do, see the necessity of agreeing to this amendment.

I ask for the yeas and nays.

A division of the amendment was called for by Mr. MEREDITH, the first division to be as follows, viz: By inserting after the word "representatives," in the second and third lines, the words as follow, viz: "In

the year one thousand eight hundred and fifty, and at the expiration of each succeeding term of ten years thereafter."

Mr. EARLE said, he hoped the gentleman from Jefferson, and others, would look well to the principles of this amendment. It was, in his opinion, unsound, because it proposed either to deprive the people of the enjoyment of their natural and inalienable right to alter the constitution when they should think fit, or to drive them to violent and extraordinary measures, as the only means of altering it, at certain times, when the necessity of alteration might be deeply felt. Alterations made under the spur of excitement occasioned, by the consciousness that they must be then made, or no convenient opportunity will occur for years to come, as well as alterations made in an irregular and unprescribed manner, will be less likely to be moderate and judicious, than those made under a system, like that reported by the committee on future amendments, accessible at all times, but involving great caution and deliberation in the process.

We have only to recur to our own history, to show the pernicious tendency of the principle now proposed to be introduced. The old constitution of Pennsylvania, made in 1776, provided a mode of amendment through a council of censors, to propose and publish amendments, and then a convention, chosen by the people, to act upon such propositions. This method involved considerable caution and safeguards against rash innovation, and against alterations of the government in violation of the popular will. But, unfortunately, this opportunity of amendment occurred but once in seven years; and this circumstance was made the pretext for the violent act of the legislature of 1789, by which it caused a convention, as well as for the acts of that convention itself, in altering the constitution, without giving the people any opportunity, directly or indirectly, to pass upon the question of adoption or rejection of the alterations.

If gentlemen will examine the bill of rights, as now existing, and as we propose also to retain it in the constitution, they will observe its declaration, that the people "have at all times an inalienable and indefeasible right to alter, reform or abolish their government, in such manner as they may think proper." Now, it strikes me as somewhat inconsistent, in profession, to make such declarations, and at the same time provide that what we have fixed upon as the proper and convenient mode for the exercise of this power of changing the government by the act of the people, shall only be put in use once in ten years. The inevitable tendency of such policy, is to produce violent revolution. When the people feel the need of a change, and see in your constitution the assertion of their right to make such change, whenever they may deem fit, they will not always wait five or nine years, for the opportunity of doing it in a particular mode. They will be likely at some time to resort to other means, which may raise a storm in which there will be danger of the wreck of the ship of state. Search all history, and you will find the prominent cause of violent revolutions, both those which have, and those which have not terminated in despotisms, has been the feeling of the people, that they were loaded with shackles, like those which you now propose to put upon them; and that they could get relief only by violent remedies.

If you make the constitution and laws at all times subject to the con-

trol of the people, through a prudent and cautious mode of exercising their power, expressly pointed out and regulated, you produce a trebly advantageous effect. First: You make the people contented in the consciousness of their power and authority. Second: You check the rash propensity to change, by the consciousness that you can make a change when you please, and hence there is no urgency for doing it hastily or inconsiderately. Third: You secure the people against the dangers of despotism, which always attend the making of changes in an irregular and undefined manner.

To give to the people the sovereignty, with a peaceable and orderly mode of its exercise at all times, is the most certain, if not the only method, to preserve peace, order, and republican government. All history shows, that the attempts to combine the opposites of the government of the people, on the one hand, and the chaining down of the people on the other, have introduced discord, and ended in failure.

He would call the attention of the convention to the case which arose under the United States constitution, of the contested election in congress between Jefferson and Burr, for the presidency. No man among the people had intended to vote for Burr, as president: yet under the provisions of the constitution, as framed originally, congress had a right to choose him; and there was actually a tie vote between him and Jefferson, on many ballots. This led to the adoption of the amendment, by which the mode of election was changed. How unreasonable would it have been, that the people, having perceived and felt the defect, should have been obliged to submit to it for ten years longer, before they could obviate it. Had congress actually chosen Mr. Burr, it might have produced a bloody revolution, especially if there had been no mode provided for a prompt change of the constitution. Such provision would have been in that case, as in many others which might arise, the best safeguard against commotion and civil war.

And if we examine the history of the republics of Southern America, we may find, among the prominent causes of revolution and disorder, the fact, that their constitutions, while they profess to give the sovereignty to the people, actually withhold it from them, through long terms of office, and through obstacles thrown in the way of quiet changes in the form of government, as the people may desire them.

Would the gentleman from Jefferson go so far as to say, that however much the people may suffer from defects in the constitution, they shall not be at liberty to remove them, until a certain distant period of time? What is this but the doctrine of monarchy—the doctrine that the people are not capable of self-government? Some gentlemen, unwilling to put the matter on this ground, have alleged that much inconvenience might be felt by the people, from giving permission to the legislature frequently to submit propositions for amendment. He (Mr. E.) did not apprehend any difficulties of this sort. All history—all experience shows, that the people and their representatives are more disposed to submit to inconveniences while sufferable, than to make rash changes in their constitutions. If you give the mere majority of the legislature the power to alter the constitution at pleasure, without submitting the change to the ratification of the people, there would be, I admit, great danger; for all experience proves the general disposition of the majority, in such select

bodies, to abridge the rights of the people at large; but when it is requisite that the propositions for amendment shall pass both houses of two successive legislatures, and then be ratified or rejected by a vote of the people themselves, the real difficulty will be found, not in the proposing of too many alterations, but in the omission to propose those which ought to be made. The legislature will not submit anti-democratic alterations, because they will know that the people will reject them: they will not often submit democratic changes, unless driven to them by the urgency of the people's demand—for legislative bodies are rarely inclined, of their own will, to make such alterations. The experience of our sister states, where changes can be at any time proposed, shows that there is no danger of their too great frequency. In Rhode Island, where the constitution may be changed at any time, it stands precisely now as it did one hundred and fifty years ago: In New Jersey, where the alteration may be at any time made by the legislature, there have been but two changes, and those inconsiderable ones, in the space of sixty years.

Self-conceit—the imagining of themselves to be wiser than any who would come after them (said Mr. E.) was the besetting sin of representative bodies, like this convention. Hence, they were apt to endeavor to prevent posterity from exercising the same right of change which they exercised themselves. For us to adopt this proposition, would be a manifestation of this conceit in us. It would be, in effect, to declare that this single body, on a matter in which it was without experience, was wiser than the combined wisdom of two senates, and two houses of representatives, enlightened by experience. We would suppose ourselves capable of introducing wisely, into this constitution, features which we have never tried: but that the concurrent judgment of four legislative bodies, chosen by the people, as we have have been chosen, would be incompetent to decide, after actual experiment, whether those changes had worked so well as to preclude the expediency of suggesting to the people further modifications. Being satisfied that the proposition before the convention was alike unreasonable and pernicious, he hoped it would fail.

Mr. PORTER, of Northampton, could not give his vote for the amendment of the delegate from Jefferson. He concurred, for once, in what had fallen from the gentleman from the county of Philadelphia (Mr. Earle) in regard to the amendment. He, like him, was averse to tying up the hands of the people. If they should think the constitution required amending before 1850, or at any other time, they ought not to be debarred from having their wishes carried into effect.

Mr. HOPKINSON said, he understood the gentleman from the county of Philadelphia to say, that the legislature of New Jersey passed the amendments to their constitution themselves. The amendments were not submitted to the people.

Mr. EARLE explained, that he had said the people of New Jersey had altered their constitution by an act of the legislature. His (Mr. E.'s) first impression was, that the legislature did it themselves without asking the consent of the people. In the state of Rhode Island, where the legislature is almost omnipotent, the constitution has not been altered at all.

Mr. BROWN, of Philadelphia county, said, that he had observed the other day, that the legislature of New Jersey submitted the amendments to the people. The learned judge (Mr. Hopkinson) says they did not

submit them. He (Mr. B.) was entirely opposed to the amendment, because it looked to the introduction of new principles into our government, and was an improper interference with the rights of the people. He saw no necessity, whatever, for going into committee of the whole, and opening the whole subject anew. He believed that a majority of the convention was satisfied with what had already been done. All that now remained to be done was, to make verbal amendments. He fully coincided with the gentleman from Northampton, that the people ought to be left free and at full liberty to make amendments to their constitution whenever they may deem them necessary.

Mr. REIGART, of Lancaster, said that if any one thing was more apparent than another, it was a feeling on the part of the people of Pennsylvania to obtain stability and security for their institutions. It struck him that the gentleman from Jefferson (Mr. Hastings) had given more attention to this important subject than most gentlemen had done. He approved of the amendment, and thought it would have the beneficial operation described by the delegate. It would prevent the subject of amendments from being everlastingly agitated, and would keep out of the legislature political demagoguism. If the proposition should be adopted, as he sincerely hoped it would, the legislature would be spared from being annually pestered and worried about making amendments to the constitution.

He thought the gentleman from the county of Philadelphia had fully illustrated the propriety of adopting this amendment, by the instance he had cited in relation to the contest between Burr and Jefferson. The constitution of the United States had then been fourteen years in operation, and required alteration. Now he would ask if this constitution could be fairly tested without ten years' experience. There were no petitions presented for amending the constitution of Pennsylvania of 1790, until eighteen or twenty years after its adoption.

Looking, then, at these effects, he could not but think that the amendment of the delegate from Jefferson must strike every reasonable mind as being one that should meet the approbation of this body. One of the good effects that would result from its adoption would be, to prevent political demagoguism in the legislature by any party. Besides, it required at least the time allowed by it, to test the operation of the constitution. The people would then be safe from the machinations of political demagogues, and their fundamental law would be undisturbed.

Mr. BROWN said, that he did not like to hear this everlasting cry of political demagoguism. He did not understand it. Who, he asked, were these political demagogues? Were all the people of the commonwealth of Pennsylvania political demagogues? Had they lost their judgment and reason, and called for reform when it was not needed? He repeated, that he could not understand it. He was at a loss to define what was meant by this everlasting distrust of the people, and desire to keep them out of the hands of political demagogues. He believed that the people were able to take care of themselves, without any constitutional amendment to that effect. He could not see any danger of amendments being adopted which would operate to their danger, & in opposition to their welfare, because none could be adopted except by the people themselves.



and not by their agents, as the argument would seem to imply. He therefore did not wish to prevent them from making such alterations in their fundamental law as they might deem necessary.

I do not like (said Mr. B.) this perpetual distrust of the people. It does not look well. If they are unfit to govern themselves, all the constitutional clogs which you can pile up one on another, will not prevent them from going to destruction. No constitution will make a people free, if they are unworthy or unfit to be free. My desire is that they should enjoy their liberty as they have heretofore enjoyed it. I am not for compelling them to groan for ten years under evils which they can not remedy. Let the people be the judges of the action of this new government. If it should be found to work well, my word for it they will have no desire to change it; and if it works not well, they ought to change it without waiting ten years, ten months, aye, sir, even ten days. I, for one, am willing to trust the people at any and all times; and I trust that this convention will not now begin anew, and go again through the whole principles of government.

Mr. CURLL, of Armstrong, said. The case of the state of New Jersey has been referred to. In relation to that, I will say that I had the honor of a seat in the legislature of New Jersey in the year 1807 or 1808. There was no clause in the constitution providing for future amendments. It has been stated here that the legislature of New Jersey took it upon themselves to amend the constitution—some say by submitting an amendment to the people—others say, that the legislature passed it without even submitting it to the people.

Now, the fact of the matter is, that the constitution of the state of New Jersey never has been amended in a single line or word. The legislature did indeed pass a law explaining a certain section in that constitution, in reference to the elective franchise. That explanation happened to meet the views of a majority of the people. They acquiesced in it, and I believe it has remained so up to this day. Beyond this, the legislature has never done any thing.

Mr. HIESTER said, it must be evident to every gentleman present that the convention would not now consent to go back and change the most important principles which had been adopted. It was to be recollected also that the convention had agreed to adjourn over until to-morrow morning, in order to give the committee on the schedule time to make their report. It was important that the convention should get through with this section before they adjourned for the day; and as the usual hour had already arrived, he would call for the immediate question.

Which said motion was sustained by the requisite number of delegates rising in their places.

And the question being taken,

Shall the question on the said amendment be now taken?

It was determined in the affirmative.

And on the question,

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

By inserting after the word "representatives" in the second and third lines, the words as follow, viz :

"In the year one thousand eight hundred and fifty, and at the expiration of each succeeding term of ten years thereafter."

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

**YEAS**—Messrs. Barndollar, Bonham, Brown, of Lancaster, Carey, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Cline, Cochran, Crum, Darlington, Tenney, Dickerson, Dunlop, Gamble, Hastings, Hays, Henderson, of Dauphin, Kerr, Konigsmacher, M'Sherry, Meredith, Merkel, Myers, Pennypacker, Porter, of Lancaster, Reigart, Royer, Scott, Snively, Thomas, Weidman, White, Sergeant, *President*—35.

**NAYS**—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Bedford, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Coates, Cope, Crain, Crawford, Cummin, Cunningham, Cull, Darrah, Dickey, Dillinger, Donagan, Donnell, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Helffenstein, Henderson, of Allegheny, Hiester, Hopkinson, Hyde, Ingersoll, Jenks, Keim, Kennedy, Krebs, Lyons, MacLay, Magee, Mann, Martin, M'Cahen, Merrill, Miller, Montgomery, Nevin, Overfield, Purviance, Read, Ritter, Rogers, Russell, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Woodward—78.

So the first division of the said amendment was rejected.

And the question then recurred on the second branch of the said amendment, viz :

By striking out all after the word "published" in the tenth line, to the word "and" in the fifteenth line ;

And, being taken, it was decided in the negative.

So the second division of the said amendment was also rejected.

A motion was made by Mr. STERIGERE,

Further to amend the said motion by adding thereto, "That the committee of the whole be instructed to amend the said article as follows, viz :

By striking therefrom the word "distant," in the eighteenth line, and inserting in lieu thereof the words as follow, viz : "after being so agreed to by the two houses."

The question on said amendment was called for by Mr. STERIGERE and twenty-nine others rising in their places.

And on the question,

Shall the question on said amendment be now put ?

It was determined in the affirmative.

And the motion so to amend was agreed to.

A motion was made by Mr. DICKEY,

Further to amend the said motion by adding thereto the words as follow, viz :

"And that said committee be instructed to amend said article by striking from the twelfth and thirteenth lines thereof the words "a majority," and inserting in lieu thereof the words "two-thirds."

On which motion, Mr. DICKEY demanded the immediate question, but withdrew the motion on the suggestion of Mr. MEREDITH.

Mr. MEREDITH said, that he was not present in the convention when this

tenth section was adopted on second reading. Since that time, however, he had taken the pains to refer to the constitutions of the several states of the Union, and, amongst others, to the constitution of the state of Michigan which was the latest that had been adopted, and which had been held up here as the beau ideal of democracy and republicanism. I do not find (continued Mr. M.) that the people of that state have thought fit to leave their frame of government at the mercy of a mere majority of two successive legislatures, so as to put it to the vote of the people.

The amendment of the gentleman from Beaver, (Mr. Dickey) requires an affirmative vote of two-thirds of the members of the second legislature.

Now, I would ask, continued Mr. M., whether in the state of Pennsylvania, we are about to render our fundamental law less secure or enduring than it is even in the state of Michigan—whether we are about to put it more into market than has been found necessary in any one of the states? I do not mean to speak of political demagogues, or to say any thing which would imply that there is a difficulty in the minds of the people, or that a majority of the people are at any time disposed to turn themselves into political demagogues. But I do say that to place the fundamental law of the land in such a condition as to make it the subject of continual excitement, would be productive of results as bad as if the people were composed of demagogues.

There is no measure which is obnoxious to party outcry, for which, under this clause, an immediate proposition will not be made to prohibit such a measure by the introduction of a clause into the constitution; and instead of having what we ought to have, a secure and enduring fundamental law, I am afraid if we take the clause in its present shape, we shall have propositions to change the constitution as often, and almost as easily, as to lay down a measure of ordinary legislation. Look at our own experience in this body. What do we learn from that? Have we not found that the greater part of our time has been occupied in attempts to make propositions a part of the fundamental law of the land—propositions, I say, which a majority of the members of this convention have determined it is not proper to introduce into it, but which ought to be left to the temporary legislation to which they belong? Has not this been notoriously the fact from the first meeting of the convention down to the present time. I can appeal with perfect confidence to a majority of the gentlemen around me to sustain this assertion.

What would be the consequence of the prevalence of a party majority? What would be the consequence if that should put it out of the power of the same majority to force a change of the fundamental law of the land? What had we seen here in regard to party outcries? Had we not seen time after time, weeks of the session consumed in debating propositions, upon which almost every member of the body was agreed, and which it was conceded ought not to be made a part of the fundamental law? What, then, were we to expect in future? And, after having expended so much time on subjects of trivial moment, and having come to subjects of the highest magnitude—of the greatest importance, as for instance, the bill of rights, we were told that there was not time to consider it! Yes! so much time had been wasted in the discussion of party questions of the day, that when we reached the bill of rights it was forthwith indefinitely postponed. Why, he asked, were we about to place Pennsylvania, hith-

erto steady in her policy, steady in her republican principles—why place the whole of her laws in the arena of the party politics of the day? What end was to be answered? He was entirely at a loss to know what necessity there was for it. or, what was to become of any of the rights of the people, if this should be carried out. Change in the fundamental law ought not to be made on trivial or light grounds. And while the right was renewed to the people to alter their constitution, the attainment of that object ought not to be rendered too easy, and accomplishable by mere party cries. We ought to know that our government was framed with a view to protect the minority of the people against the violent and overbearing conduct of the majority, should it happen to be of that character. He contended that the operation of the amendment would be to give the majority time for reflection—to hold back their hands when about to oppress their fellow citizens. It would give them time to deliberate and afterwards time to act. Why, he asked, was it that by the constitution of the state of Michigan a vote of two-thirds was required to submit amendments to the people to authorize the call of a convention. Why was it that the commonwealth of Pennsylvania should place herself in this new and unheard-of attitude? Why are we to give a territorial government, or rather, a new state erected out of it, and which must have been ignorant, of course, as to the proper manner in which a government ought to be founded—this great advantage over us in regard to the stability and security of their institutions? And, to go further; why were we, instead of setting an example of steadiness, of trust, and confidence in ourselves, holding up an example the reverse, and the belief that a republican government was to be sustained only by having its fundamental forms—its bill of rights, placed at the will of the mere majority of the day?

Without concluding, Mr. M. gave way to

Mr. DUNLAP, of Franklin, on whose motion the convention adjourned until half past nine o'clock to-morrow morning.

TUESDAY, FEBRUARY 13, 1838.

Mr. WOODWARD, of Luzerne, moved that the committee appointed to prepare and report a schedule of the amended constitution, have leave to sit this morning during the session of the convention, which was agreed to.

Mr. MEREDITH, of Philadelphia, submitted the following resolution, which was laid over for future consideration :

*Resolved*, That when the amendments shall have been engrossed, each amendment shall be distinctly read, and the question put upon it.

Mr. HIESTER, of Lancaster, moved that the convention proceed to the second reading and consideration of the resolution read on yesterday, as follows, viz :

*Resolved*, That five thousand copies in the English language, and two thousand five hundred copies in the German, of the constitution as amended, be printed in pamphlet form for the use of the members of this convention,

The question being taken, the motion was agreed to.

The resolution being under consideration, Mr. HIESTER modified it to read as follows, viz :

*Resolved*, That twelve thousand copies in the English language, and three thousand in the German, of the existing constitution, and the like number of copies, in each language, of the amended one, be published side by side in pamphlet form : the parts proposed to be stricken out of the existing constitution to be printed in italics, and the amendments proposed by this convention to be printed in small capitals, in connexion with the parts retained of the old constitution ; for the purpose of distribution by the members of this convention, and that the committees on the English and the German printing, are hereby authorized and required to contract for said printing to be done under their supervision and direction.

Mr. HIESTER said he had submitted this resolution yesterday at the request of several gentlemen, and had hastily endeavored to call the attention of members to it. The resolution was now presented in a modified form, and such as he hoped would prove acceptable to the majority. There should be a goodly number of the amendments printed, so that they may be comprehensible to the people. This publication would be universally referred to as the common standard, being printed under the supervision of a committee. He had filled the blank with twelve thousand and three thousand, because he did not consider that in a document of such importance the expense of three or four hundred dollars was any object.

Mr. STERIGERE, of Montgomery, considered the subject as one deserving of some reflection. We ought to consider this subject well, as it is one which concerns all. To give time for consideration, he moved to postpone the resolution until to-morrow.

Mr. SHELLITO, of Crawford, said this resolution was introduced yesterday morning, and ought to be disposed of. We could not make a better use of the people's money than by applying it in this way. He saw no sufficient reason for the postponement.

Mr. HIESTER said it was all very plain, but if it was the wish of the

convention to postpone it, he had no objection, although he could see no good reason for it.

Mr. STERIGERE then withdrew his motion to postpone.

Mr. DENNY, of Allegheny, suggested the necessity of inserting some provision for the transmission of these pamphlets by mail. The franking privilege will have ceased after the members shall have left this city, and before the copies could be printed.

Mr. HIESTER said this could be provided for hereafter.

Mr. DARLINGTON, of Chester, had also a suggestion to offer as to the German copies of the constitution. The copies ought to be sent abroad according to the character of the population : the German copies to the Germans, and the English copies to the English.

Mr. HIESTER thought this might be done by an arrangement between the members themselves.

Mr. CURLL, of Armstrong, said the only difficulty with him, was as to the supervision, after the adjournment of the convention, when the functions of the committee on printing will have ceased.

Mr. STERIGERE said it seemed to be intended to print these copies as our bills are printed, and which are liable to be misunderstood.

Mr. HIESTER explained that the proposition was to print the old constitution on one side of the page, with the parts stricken out in italics, and the new constitution on the other side, with the parts inserted printed in small capitals.

Mr. STERIGERE : The resolution does not say so, and it may lead to misapprehensions.

Mr. HIESTER : It was submitted to practical printers who thought it proper.

Mr. DICKEY, of Beaver, moved to postpone for the present the further consideration of the resolution. He was not at present prepared to vote for the pamphlet form. The newspapers seemed to him to be the best vehicle. The pamphlets would only be circulated among favorites.

He asked for the yeas and nays on his motion ; and they were ordered.

Mr. DUNLOP, of Franklin, thought it advisable to let this matter lie over for the present. The resolution required the printing of 3000 copies in German. It would require a skilful translator. Every word should be critically correct. There would be some difficulty to get at an understanding of some of the English words so as to render them into correct German. There may even be a doubt as to the meaning of the original language.

Mr. PORTER, of Northampton, thought it would be proper to take time for reflection. There was an error of translation in the Chronicle, where the word "emanation" from the people, was translated *ausmaugering*. The error was never corrected.

Mr. FORWARD, of Allegheny, said he would be well pleased to obtain a postponement. He did not know that these pamphlets are necessary. Where were they to go ? They would be of no use. The newspapers was the proper mode. Did the gentleman from Lancaster rely on this as the medium of information ? Some portions of the state would be

neglected, and this would be great injustice. Did the gentleman suppose that the editors of the public press would not publish the amendments? If they are to be printed in German, it should be done under proper supervision. The distribution of these documents would do no good. There would be more regard to favoritism than to justice.

Mr. HIESTER wished this publication in aid of the newspapers. How was it to come out in the newspapers? In the city, to be sure, the amendments might all appear in one paper. But in the country, they must, of necessity, be divided. Some will print them in one form, and some in another. Thus they would not be made intelligible to all. He wished a correct standard to be sent out, to be handed from one citizen to another at public gatherings, and at vendues, the people will see them, and will draw them out and compare and discuss them. We are about to give to the people legislative power, in some degree, and the subject on which they are required to act, ought to be fully comprehended by them. As to the expense of printing and circulating these documents, he did not regard it as deserving of consideration, when the object was to give the people information on so important a subject.

Mr. CHANDLER, of Philadelphia, said he thought it advisable that the motion to postpone should be agreed to. He believed that the Chairman of the committee on printing intended to call the committee together in relation to this very subject, and to-morrow morning, probably, at the furthest, they would be able to communicate the result of their opinions. The convention would then be better able to act. The act of March 29th, 1836, provides that the constitution, when amended, shall "be printed, as soon as practicable, once a week in at least two newspapers published in each county in which two or more newspapers are printed, and in all the papers in each county where not more than two are printed, and in at least six newspapers in the city of Philadelphia," &c. This seems to me (continued Mr. C.) to be one of the very best modes that could be adopted of giving that publicity to the amendments which is certainly necessary to enable the people to vote understandingly upon them. No man is held to be innocent of the commission of a crime, because he does not know that it was a crime, and yet there are very few laws which are printed for the general information of the people. There will be an emulation amongst public printers to disseminate the amendments which we may make to the constitution. It will be their duty to do so; and each will advocate those which suit him best. I think, therefore, that the best means of publishing the amendments, are those pointed out in the act. At any rate, we had better wait until the committee on printing have considered the subject, and we shall then see what they recommend as the best plan to be pursued. For these reasons, I am in favor of the motion to postpone for the present.

Mr. CUNNINGHAM, of Mercer, said it would, he thought, be better to postpone the further consideration of this resolution until to-morrow, because, by that time, the gentleman from Allegheny and the gentleman from Beaver would see that a certain amount of these amendments ought to be published in pamphlet form. For my own part, continued Mr. C., I have no idea of leaving the amendments to be circulated by printers alone. We all know the inaccuracies which take place in the printing of public documents. I saw lately in Harrisburg, in an edition of the Gov-

error's Message which was published in pamphlet form, an error where the sum of one million of dollars was put down at one thousand—and these pamphlets are circulated all over the state. There was also another error; and one of the members moved that these pamphlets should be withdrawn; and another edition of the message had to be printed.

Now, I have no idea that printers, and compositors, and those little mysterious beings about whom so great a mystery hangs, and who are commonly known as "printers' devils," should have our amendments in their hands, and issue them in such form and under such haste as they may think proper. We have taken up much time in putting our amendments into a proper form. Ought we not also to see that they are printed in as correct shape as we passed them, letter for letter. Should we leave this matter to the hurry and discretion of printers, who may cut the amendments up in detached forms to suit themselves, and who, in addition to the inaccuracies which might creep in, might also change the whole form of the amendments. If we agree to print them in pamphlet form, we should see that they are correctly printed. They ought to be officially examined, and if mistakes are made at all, they will at least be copied in the newspapers precisely as we have made them. Who can correct the proof sheet? The secretary of the commonwealth can not do it, and thus every printer would be left to correct it for himself, unless we do that which it is our duty to do—that is to say, take the task of correction upon ourselves. Some printers will take one amendment, and some another, according to their prejudices; and thus the amendments will get out before the public in a form which we do not design.

I hope that the resolution of the gentleman from Lancaster, (Mr. Hies-ter) will be agreed to, but I am desirous to postpone action upon it until to-morrow. We can then act more understandingly.

Mr. FLEMING, of Lycoming, said. I think that the provision made for the publication of these amendments, by the act of March 29, 1836, is better calculated to answer the object we have in view than probably any other mode which can be devised.

The sixth section of the act contains the following provision :—

"When the amendments shall have been agreed upon by the convention, the constitution as amended shall be engrossed and signed by the officers and members thereof, and delivered to the secretary of the commonwealth, by whom, and under whose direction, it shall be entered of record in his office, and be printed, as soon as practicable, once a week in at least two newspapers published in each county in which two or more newspapers are printed, and in all the papers in each county where not more than two are printed, and in at least six newspapers in the city of Philadelphia: *Provided*, That in each county in which there is a German paper printed, said paper shall be selected by the secretary as one of the papers in which the amended constitution is to be printed until the day of the election that shall be held for the adoption or rejection of the amendments submitted."

Now, unquestionably, continued Mr. F., this plan is calculated to give general information throughout the state as to the amendments. I do not see what more effectual course we could adopt. As to the misplacing of a word, or the omission of a cross to a *t*, or the dot to an *i*, the people



will understand it. They will not be misled by trifling errors of that kind. They will get the thing sufficiently well done, and in such a manner as that they will have no difficulty in comprehending it. This printing of twelve thousand copies in pamphlet form is not calculated to answer the object in view. It would only give a copy to about one-twentieth of the voters in the commonwealth. Where are all the others to get their information? Through the newspapers. Then the publication of the amendments in the newspapers, will give all the necessary information, and I hope, therefore, that the resolution will not be agreed to.

And on the question,

Will the convention agree so to postpone?

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

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Bell, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Cleavinger, Cline, Cope, Cox, Crum, Cunningham, Curll, Darlington, Dickey, Dunlop, Fleming, Forward, Fuller, Gamble, Gearhart, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Hyde, Kennedy, Konigsmacher, Lyons, Maclay, Magee, Martin, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Read, Royer, Russell, Saeger, Seltzer, Serrill, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Thomas, Todd, Weaver, White, Young, Sergeant, *President*—68.

NAYS—Messrs. Banks, Bedford, Bigelow, Bonham, Clarke, of Indiana, Coates, Crain, Crawford, Cummin, Darrah, Denny, Dickerson, Donagan, Donnell, Horan, Earle, Foulrod, Fry, Gilmore, Grenell, Hiester, High, Ingersoll, Jenks, Keim, Krebs, Long, Mann, Miller, Myers, Nevin, Overfield, Reigart, Riter, Ritter, Scheetz, Sellers, Shellito, Sill, Stickel, Taggart—41.

So the motion to postpone was agreee to.

#### TENTH ARTICLE.

The convention then resumed the third reading of the amendments made in the tenth article of the constitution on second reading.

The question recurring on the motion that the committee of the whole be instructed further to amend the said article by striking therefrom, in the twelfth and thirteenth lines, the words "a majority," and inserting in lieu thereof the words "two-thirds."

Mr. MEREDITH said, that at the time the convention adjourned yesterday, he was making some observations on the subject of this amendment. He had, however, come to a close; and as the gentleman from Lycoming (Mr. Fleming) who was originator of the amendment, was now in his seat, he (Mr. M.) would not say any thing further, at least for the present.

Mr. FLEMING, of Lycoming, then rose and said :—

Mr. President :

I was not present in the convention when this question, or one of a similar character, was under discussion some days since; and I was, therefore, prevented at that time from giving some of the reasons which induce me to prefer that the vote of two-thirds of the members of the

second legislature should be required, instead of the vote of a bare majority. Having now an opportunity presented to me to express my sentiments, I will do so in as brief a space of time as possible.

I do not know what the knowledge or the experience of other gentlemen may have taught them, but so far as my own extends, I believe it has never, in any country or under any form of government, been made a matter of boast that frequent changes should be made in that form of government, whatever it might be. And I do not believe that it is, or ever has been, the wish of the people of Pennsylvania to place the form of their government, which has been purchased at so dear a price, in such a situation that it may year after year be changed in its whole character—in short, that every essential feature of it may be changed in a single year.

What are the provisions of the section as agreed to in committee of the whole? In the first place, it provides that the action of a majority of the members of the two houses shall be sufficient to claim and require the action of the successive legislature upon such proposition as may have been suggested by their predecessors in relation to a change in the constitution of the commonwealth. Upon a bare suggestion! No matter how the suggestion originates. The people are not asked to make application; they may have no hand in it. The whole matter may originate in the senate or house of representatives, and if either or both branches act upon any such suggestion, and it should be agreed to by a majority of the legislature, their successors are bound to consider it:—and if a bare majority of the second legislature agree to the provisions thus suggested by the first legislature, then the proposed change is to be submitted to the people, and, if agreed to by them, is to become a part of the constitution of the commonwealth. Now, it is to be remarked that there is no action required on the part of the governor. It is not made even as difficult to procure a change in the constitution as it is to procure the passage of the most inconsiderable and trifling law. You procure every act of assembly that is passed by the legislature, with more difficulty than you will have to surmount all obstacles, and to procure an entire change in the constitution of the country.

Now, I ask gentlemen on this floor, on whom rests the responsibility of this matter now,—I ask them to say, whether it is proper, whether it is right, whether it is the desire of the people of the commonwealth, that their constitution should be made subject to changes year after year—changes which are to be accomplished with more facility, as I have said, than they can procure the passage of the most trifling act of assembly. If an act of assembly is passed by a bare majority of the legislature, it is at the same time to be borne in mind, that the action of the governor is necessary before that law is binding. But is there any thing of that kind here? Not at all. A bare majority is sufficient.

The legislature can not pass a single act independent of the executive, except by a vote of two-thirds. But here in altering the frame of government—the constitution of the country—that which we all look to for the stability of our institutions, and the permanence of our existence as a state—that constitution which is the pride of our people, and the only safeguard of our liberties and rights—that sacred instrument, I say, may be altered by a political legislature of some cast or other, under the vote

of a bare majority, on the suggestion of some individual, who, probably, in his own imagination, may have been injured in court by the judiciary department of the government. He may have been injured, as he supposes, by the executive branch of the government; and, the legislature being thus clothed with the sole power of agitating the question—with the sole power of suggesting alterations,—if this amendment as it now stands is to be strictly adhered to, there is no remedy for the perpetual evil and excitement that may result, unless perchance the people should rise in their strength and demand a new constitution, which will not subject them to similar evils.

How, then, does the matter stand. If we pass this section in its present form, do we not throw the whole power and authority of the government into the hands of one branch of that government, which, according to the principle by which we profess to be governed, ought to be disposed of its three distinct branches, with separate and independent powers. By adopting this section, we substantially take away every portion of the executive and judicial branches of the government, and place it in the hands of a bare majority of the legislature;—a body which may be composed of men brought in under circumstances of great political excitement, and at a time when the members may not be in a condition to go into a calm and dispassionate consideration of the fundamental laws of the country. If it is necessary that we should erect any barriers against this too great facility of changing the powers of the government, and changing the form of the government itself, then I ask the members of this convention to put something that will be substantial in the way of that facility; and when gentlemen undertake to tell me that this end will be accomplished effectually by requiring the assent of a bare majority of the legislature, I answer that, in my judgment, they are vitally mistaken. I tell them that it is an easy and a trifling matter, as every man of any experience knows, to get up an excitement in this commonwealth that would be strong enough to work an entire change in every branch of the government. Under an excitement of such a character—an excitement got up to gratify political or private feeling,—a legislature may be called upon to act, and a bare majority of that legislature is enabled to wrest from the executive, or to wrest from the judicial branches of the government, the powers which are legitimately theirs, and are to claim the exercise of those powers for themselves.

Now, I would desire to see something of a substantial and an enduring character placed in this provision, pointing out precisely the manner in which we are to prepare the amendments hereafter. I would like to see something like unanimity of action. If the facility in the change is to be so great, I say I would at least like to see some provision inserted that would require something like unanimity of action on the part of the legislature, before this power should be exercised. Is it advantageous to the people,—is there an individual within the sound of my voice who will pretend to say, that it is advantageous to the people when they are living under a just government, under which they have prospered, under which their rights are respected, where their liberties are secured, where every thing that is near and dear to them in life finds defence and protection;—will any individual say, that it is advantageous to such a people that frequent changes should be made? Will the people derive any

benefit from such changes ;—are we called upon by any considerations of expediency or policy ;—are we called upon by any consideration of regard to the interests and the welfare of the people of Pennsylvania, to throw open this constitution, so that popular action may be had upon it in a single year,—under circumstances, it may be, of great political excitement, and without any regard to the stability or the character of the government under which we live ? Sir, I think not—I believe not. If this two-thirds principle, as some gentlemen call it, is too severe, why require the action of the second legislature at all ? If we are to lay the constitution completely open, if we are to have no checks and no barriers of any description before an amendment may be submitted to the people, why call upon two successive legislatures to act ? Why do not gentlemen who are in favor of the action of two successive legislatures, and of the subsequent action of the people, why do not they carry out their principle still further, and say that a majority of a single legislature (for that would be emphatically submitting it to the people,) shall be all-sufficient to work an entire change in the form of this government ? To be consistent with themselves, they should do this, and nothing short of this. For my own part, I do not like to see these half-way proceedings. I ask gentlemen to go the entire length of the principle which they profess to take as the rule of their conduct. They tell us that to require the vote of a majority of two successive legislatures will be a sufficient check against sudden or improper change in the constitution. Why, how will this be, practically ? What, I say, will be the practical effect of such a proposition ? Will there be any more protection in the two legislatures than in the one ? Not a particle. It will not be so in its practical operation. They may pass their resolutions on the subject, and they will then be laid on the table without giving rise to any of the deep reflection which gentlemen suppose they will receive during the vacation. Then, if the succeeding legislature happen to be of the same political complexion as the former one, we may calculate as a matter of course, that they will renew the action upon these resolutions, and that they will then propose the amendments to the people for their ratification.

Will it, I again ask, be an advantage to the people to lay the fundamental law of the government at the feet of the legislature ? Will it be any advantage to the commonwealth that it should be agitated year after year, upon the action of a bare majority of the legislature—of a majority which, probably, may consist of but a single individual member, upon questions so vitally important to our well-being as all such questions must be ? Are we to be doomed year after year, and every year after the adoption of our amendments to the constitution, to see new constitutional questions, and provisions submitted to the people, and discussed and agitated from one end of the commonwealth to the other ?

Sir, I trust that this convention is not prepared to take any such a step as this. I trust that there is decision and firmness enough in the members of this body, to refuse to lay this important instrument open to the action of a bare majority of the legislature of this commonwealth so that they may agitate the public mind at all times, and be submitting endless amendments for the ratification of the people. If there should hereafter be any important principle in the government which calls for a change,—if any error is committed by this convention which needs to be rectified—if it

becomes necessary that the action of the people should be had upon the action of this convention to re-model any provision, or to correct any error into which we may have fallen, or to carry out more explicitly the principles which we have laid down or may hereafter lay down, there can not be a reasonable doubt that two thirds of any honest legislature might be found at any time willing to act upon the subject. And I, for one, do not wish to see the constitution of Pennsylvania thrown open in such a way, that new members of the legislature may set up a new policy of government, that they may make new suggestions to the people carrying out the strings of liberty to a greater extent, for the sake of their own peculiar aggrandizement. I do not wish the power to given to such men to agitate the people, on some trifling five-penny bit of a proposition, which they may use as a hobby on which they may ride into popular favor, and thus advance their own peculiar views.

Sir, this facility of change, depend upon it, does not tend to the honor of any country, and, least of all, to a country such as ours. We boast of the stability of our government. It never has been, and I hope it never will be, a matter of boast with the people of America, that they have a great facility of change. I repeat, it can not add to the dignity or the honor of any country to have this free and frequent power of change within their reach, year after year. And if I understand the honest yeomanry—if I understand the honest people of this commonwealth, they do not wish that this convention, by any action on its part, should extend this facility to them.

Sir, I have been grievously mistaken in my estimate of the character of the men of Pennsylvania, if they desire such a gift at your hand. And when we are told that the march of civilization and improvement is onward, and that, therefore, we must have the whole of this instrument thrown open to popular action; that we must act upon the quintessence of democracy, and place our constitution in such a condition that the lovely doctrine of democracy may have full and perfect sway: I say to gentlemen that the people have never asked any thing of this kind;—I say to gentlemen that the people have never asked that their constitution should be made the object of political bickering and strife year after year until the end of time. Where is the man who has been an observer of the action of the people of Pennsylvania;—where is the man who has been an observer of the course of policy pursued in the different branches of government for a few years past—who does not know that one of the great difficulties to be overcome in this commonwealth, is, to settle the people down—to have them satisfied to procure a constitution that is as nearly perfect as possible—with as little agitation as possible, and to endeavor to fix the affection of the public and steadfastly on that constitution. I know that the disposition to raise constitutional difficulties and to argue constitutional questions, is abroad in our land; I know that the disposition to argue constitutional rights has been the hobby of certain men in this commonwealth for years gone by. I know that constitutional questions are raised day after day as to the rights of individuals in cases where, in fact, the constitution has nothing at all to do with the matter. I am well satisfied in my own mind, that if you leave this provision thus open to the action of the legislature, you will not find a single session of the legislature pass away in which there will not be found some man who understands

the constitution of the country, as he supposes, better than the members of this body now congregated have. You will have your young men of twenty-three and twenty-five years of age, and, probably also men of much maturer years, prepared at all times to suggest to the people some new-fangled idea in relation to the constitution of the country.

Is it then advisable, I again ask, to leave the matter thus open? Is it not in effect asking the legislature to come forward year after year, and correct the errors into which it may be supposed we have fallen in this body? The provision is predicated upon the ground that our whole proceedings are defective. I, for one, do not believe that they are so. I believe that, so far as this convention has acted, it has acted understandingly and wisely, and that our action will not need revision in so short a space of time as some gentlemen seem to anticipate.

Mr. President, I have made these observations from a sense of duty, but without any hope that they will be the means of changing a single vote. I felt desirous to explain the reasons which induce me to prefer the action of a two-thirds majority before any future amendments shall be submitted to the people. And I have done this, as I have said, without the most faint expectation that I shall be so fortunate as to change the mind of any one member of this body. I am aware that I have not presented my reasons as forcibly as other gentlemen might have done; but they are, nevertheless, reasons which, to my mind, are sufficiently strong to justify me in adopting the amendment I have referred to, in preference to any other suggestion on the subject which I have yet heard on this floor. I believe that the protection proposed by it, is a protection which we ought to throw around the people of Pennsylvania.

Mr. BROWN, of Philadelphia county, said: It is with much reluctance and regret, Mr. President, that I throw myself on the indulgence of the convention at this time. But I do so, because I think that the question now before us, is fully as important, if not more important than any which we have discussed since the first commencement of our labors. I will, therefore, ask the attention of gentlemen for a few moments, whilst I present to their consideration, as briefly as I can, some views which have occurred to me.

I declare I sometimes feel myself at a loss to understand what is the actual condition in which the business of this convention is placed. I did think that we were about to bring our labors to a close. I had thought that at least some principles had been determined and some questions settled, and that they were not to be everlastingly beginning and ending, yet never terminating, in the manner in which they seem to be now. One fact we may look upon as certain—that is to say, that we will never get through our business, if every question which has been decided and settled by the vote of this body, is thus to be brought up again, simply because, as gentlemen say, they were not present in the convention, when the previous discussion took place. And if gentlemen will persist in making long speeches, without expecting that a single vote will be changed by them;—if they will argue all these questions over again, without the hope of changing a single vote, it is manifest that we shall not finish our business by the twenty-second day of this month; no, sir, nor by the twenty-second day of the next month, nor, for ought I know, in twenty-two years from this time. There is something not right in this course. If a mea-

sure is passed when a member who may be opposed to it is attending the supreme court when he should be in his seat—if that member should again come in, and finding the friends of the measure absent, and its opponents present, should again call it up and procure a contrary action upon it—if, I say, measures are thus to be called up again and again, if they are to be first decided in one way and then in another, as the friends or the opponents of them, may be absent or present, when do gentlemen suppose that the business of this convention will ever be brought to a termination? Not in our generation most certainly.

The question before us, however, is of a very important character, and I will treat it as being so.

It has been said that we are about to make the fundamental law of Pennsylvania more uncertain and fluctuating, more open to perpetuate changes and alterations, than that of any other state in the Union. This is a grave declaration, and requires to be supported with satisfactory proof of its accuracy, before it is taken for granted, and set up as a rule and guide for the action of this convention.

It is true that in the constitutions of two or three states of the Union, the principle advocated by the gentleman from Beaver, (Mr. Dickey) is to be found. But by the constitution of a majority of the states, amendments can be made with greater ease than they can under this amendment. Even in the constitution of the state of Michigan, certain parts of which have been read by the gentleman from the city of Philadelphia, (Mr. Meredith) I find a second amendatory clause which provides, that two-thirds of one legislature without any action on the part of the people, have a right to propose to the people of Michigan to call a convention.

I suppose all that we want is to enable the people of Pennsylvania to procure amendments to the constitution, without driving them to do that which they have already been driven to do in two instances—that is to say, without calling a convention—a mode which, for many reasons, is not desirable. I take it for granted that we are about to adopt some provision which will render unnecessary a resort to this objectionable mode of procuring remedies for those evils, of which the people may from time to time complain.

We have been told also, that this disposition to change is dangerous in itself—that we ought not to agitate the people—that the fundamental law of the land should be made as stable and enduring as possible. I find laid down in a work here—the Declaration of Independence—something that will give us a better solution of the principle involved, than, I think, is elsewhere to be found. It is contained in the following words:—

“Prudence, indeed, will dictate, that governments long established should not be changed for light or transient causes; and accordingly all experience has shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.”

If governments are not to be changed for light and transient causes, the best security against such changes is in the people. It is among them that we look for stability, while we are attempting to guard the constitution against young politicians and aspiring demagogues, it is for the people themselves to pass on the labors of these politicians and demagogues; to

approve or reject them, to send them back to the halls of legislation, and prevent the adoption of all changes which they decided to be unnecessary and uncalled for. If the people shall be in favor of the amendment, it is, *prima facie*, evidence that the people approve these young politicians and demagogues. Where is their authority to deny the validity of these amendments, if so agreed to by the people?

If we are to change the majority to two-thirds, as proposed by the amendment, we ought also to require a vote of two-thirds in the first legislature. But if a majority of the people cannot have the amendments which they require made, because of the necessity for a vote of two-thirds, public agitation will never cease. This is the best course which could be devised to produce agitation; and if this two-thirds principle be introduced, agitation will never cease. The best way to stop agitation, is to support the amendments, to be proposed and presented to the people, and let the people accept or reject them as they may think proper. If either one, the agitation will cease. While you attempt to obstruct the people, there will be agitation. And the greatest benefits have been produced by agitation.

The gentleman from Lycoming (Mr. Fleming) says that the amendments should not be finally adopted by a vote of less than two-thirds. Where could he obtain a vote of two-thirds on any one of the amendments? We are putting a seal on our own acts when we say that it shall require two-thirds of the legislature to pass the amendments. It was, in his view, a lovely principle that the majority should rule. In this consisted the essence of all republican institutions. It was a lovely principle, and he would never consent to erect a barrier between it and the people. Here or elsewhere, the majority of the people should rule, either by themselves or their agents. Gentlemen had argued as if the people themselves did not act in the matter, and that therefore, they would require stronger guards against injury to the rights of the people. But this was a false ground. He would not give the agents of the people the power of final action on fundamental law.

In support of the position he had taken against the introduction of the amendment, he referred to a portion of the constitution of Maryland, to show that the two-thirds principle was not to be found there. Yet in that state alone there had been more complaints than in any other government. But there had been no agitation there, in consequence of the omission of the principle, but every thing had gone on regularly and quietly. Nor did he apprehend that any danger of agitation was likely to occur here. The two-thirds principle, introduced here, would be ridiculous in its operation; as it would be in the power of a small portion of the senate, at any time, to prevent any amendments from being adopted. The action of the people on the fundamental law would thus be defeated, if opposed by twelve members of the senate. He would go for nothing which could put it out of the power of the people to make amendments. Rather than that the two-third principle shall be adopted, he would vote down the amendment altogether, and leave it to the people to call conventions when and in what manner they might think proper.

He trusted we are not to continue to agitate these questions for ever, and he was surprised at the source from which this discussion had been sprung upon us; and now that we were approaching the close of our labors, he trusted we should go on regularly with the business before us, with-



out the introduction of any new motions which could have no other effect than uselessly to consume the time of this body.

Mr. MEREDITH, of Philadelphia, rose, disclaiming any desire to protract the debate. He hoped the gentleman who appeared to act as the head of the reform party, could be brought to desire a stable form of government, if we are to have any government at all. The gentleman seemed to think, that because the gentleman from Bucks was not here, this subject ought not to have been touched. Although he (Mr. M.) respected the gentleman from Bucks highly, he could not but regret that he had fallen into such company, by whom he had been led to vote strangely, and not on conservative principles. But this proposition was not brought forward by any one who was now absent. And was it intended to insinuate that the gentleman from Beaver brought the proposition forward because the gentleman from Bucks was absent? Gentlemen were very frequently absent. It had been long since we had a full vote here; and he desired to know, whether, if this question had once been rashly decided, it was not competent to us to reconsider the decision. He wished to know, and he had not yet heard, among all the reasons which had been offered, on what ground it is that the ordinary rights of the people are to be thrown into the arena of politics.

He had heard an eulogium on young members, but he had yet to learn that the proper mode of preserving the sacredness of our institutions was to throw into the political arena, those principles on which they rest. If a proposition was made to do away with the trial by jury, would it be pretended that this great question should be left to be decided according to party and political faction in the legislature, and thus that our citizens should be put in peril of being deprived of this right. As to the constitution of Maryland, he would say, as far as his knowledge enabled him to speak, that it had not left the rights of the citizens with so slight a guard as this majority principle; and, in answer to what had been said on this subject by the gentleman from the county of Philadelphia, he would refer him to the provision which was a part of the provision from which the gentleman had read. What is the eastern shore of Maryland? It is a distinct and separate interest, having six members in the senate, while there are nine from the western shore, thus securing to the minority, that nothing can be done to effect the rights of the eastern shore without a majority of two-thirds. Gentlemen seem to have forgotten that all bills of rights are framed for the protection of the minority. Why are bills of rights made but for the stability and security of the rights of every citizen?

There is no other reason, except that there are certain sacred principles which the majority who hold the governing power voluntarily divest themselves of; because upon a calm and dispassionate examination, they find that these are principles which always ought to be held sacred. It is a voluntary tying up of their own hands from the power of doing wrong. It is a voluntary offer to the minority, that if they will remain as members of the community, and give their interests and their talents to the support of it, they shall have certain rights of which they shall not be deprived. This is the whole *rationale* of written constitutions; and when you cut away this, you might as well leave the whole matter to the legislature, and give to them at once the right to abolish the trial by jury—to abolish the bill of rights, or to do with it as we ourselves have done with

it—that is to say, postpone it indefinitely as a matter which we had not time to think upon. And this is to be done here—such is the condition to which our commonwealth has been reduced—this is to be done here, in Pennsylvania; in that state which has always been the most steadfast among the steadfast—a state which for fifty years, so far as the majority is concerned, has gone on, and is still going on well and prosperously under her ancient constitution. This, I say, is to be done by us who come here by the votes of a minority of the people of this commonwealth; for it is not to be forgotten that, upon the question of the call of this convention, there were forty thousand votes short of the number of votes which were taken on the election of governor, and which election happened on the same day. Forty thousand votes short of the number voting for governor! And we, who have stepped in by this minority vote—we, who have come in by accident—from what cause I do not care—we have seen that in this instance, when there was no active political strife, the constitution of the country, the rights of the citizens, the bill of rights itself could not be regarded as of sufficient importance to procure the exercise of the energies of either party. No, sir; the bill of rights has been left to go by default. I take the judgment for both parties. But when we are torn by dissensions, when we can not even exclude the cries of party from this body, when we are compelled to give our time to the consideration of party questions—so much so that we have not time left to consider the bill of rights itself—is this, I ask, a condition—is this a state of mind in which we should throw all our rights into the ordinary arena of political excitement?

I look upon this amendment, taking the section in the form in which it now stands, as one of the most dangerous that has been adopted, and I, for one, will raise my voice against the adoption of it. If unfortunately it should be adopted, I feel an entire conviction that there never will be an end to questions affecting the constitution of the land. It needs only that any active politician, who has no other means by which he can make himself popular in his county—it needs only, I say, for such a man to undertake to shew discontent with the constitution as it stands, to attack it; to shew that there is some principle of our republican government which is not convenient for the party at the time—to show, if you please, that the representatives of the people are not to be trusted, and that it is anti-republican for them to exercise any control over the government;—to shew, if you please, as we have occasionally heard, that it is the executive alone who represents the whole people, and that it is to him alone that we are to look for the exposition of their will, because he comes in by the general will, while the representatives and the senators come in by local votes. Are we to run this risk? Are we to jeopard every thing on a political cry? Are we to have the legislature turned into the mere registrars of the edicts of the executive? Sir, I, for one, will never run the risk, be the course of other gentlemen what it may.

I do not desire that this subject should be left to the action of the people, in the sense in which the section, as it now stands, proposes that it should be. I want to place the matter beyond the reach of political excitement and political strife. I want to know whether we can, or can not, trust ourselves to say that some principles are sacred and ought to remain inviolable. I have been taught to believe that there are such, and that

they are contained more or less in perfection in the constitution under which we now live. I want to leave them sacred. I want to hand them to posterity as principles from which we should not depart. I want to leave them to posterity, and as the means of doing so, I want to require more than the vote of a majority. These are questions of too grave a character to be mixed up with party politics—questions touching the administration of the government, and involving principles which ought hereafter to be considered, as they have heretofore been considered, sacred and inviolable.

For these reasons, I shall vote in favor of the amendment of the gentleman from Beaver (Mr. Dickey.)

Mr. FULLER, of Fayette, said :

I had hoped that the question had been finally settled, and I regret to find that I have been disappointed. When the question was last under discussion, I then stated my opinion to be in opposition to any thing which would produce frequent changes in the government, for I believe that too great a facility of change is calculated to inflict serious injury on the best interests of the commonwealth. But the proposition immediately before us, requiring a vote of two-thirds, is one that ought not to be adopted by this convention. It is a subversion of one of the most important principles upon which our government was founded.

The government of the state of Pennsylvania, as well as that of the United States, and, I believe also of every other state in the Union, is based upon the broad principle that a majority shall govern; that is to say, the government is based upon the will of the people. The two-thirds principle, then, is in direct opposition to that fundamental principle of our government to which I allude. It is anti-republican—it is anti-democratic; and notwithstanding the respect I entertain for the judgment of the gentleman from the city of Philadelphia, (Mr. Meredith) I am compelled to differ from the opinion which he has here expressed. If it be true, as I have asserted, that our government is based upon the fundamental principle that the majority shall govern, to what end should this convention decide that, for the future time, in making any changes in the fundamental law of the state, the vote of more than a majority of the legislature shall be required? By what course of argument, by what sophistry, if you please, can gentlemen reconcile these two things together? For my own part, I am at a loss to discover how it can be done.

The gentleman from the city of Philadelphia (Mr. Meredith) has adverted to the circumstance, that we came here as a minority convention; and the way he undertakes to prove it is, that forty thousand votes had not been exercised in favor of the call, or such a portion as would not have made a majority of the whole number of votes. I was under the impression that that question had been settled in convention over and over again. I still believe that it has been fully settled, and I shall not, therefore, say any thing about it now.

But the question to which we have to address ourselves, and which it is our object definitely to settle, is, whether a majority of the people shall alter, reform, or abolish their form of government whenever they shall think proper so to do. This, and nothing less than this, is the question which we must settle. And only a few days ago, the convention deter-

mined that the people—by which term, I take it for granted, the majority of the people is meant—may at any time alter, reform, or abolish their form of government, whenever they should think proper to do so. I say, we have decided this question in the bill of rights. We have now passed on to the tenth article, and we are now about to say to the people of this commonwealth, that the people thereof shall not alter, reform, or abolish their form of government at any time when they may please. What other construction can be given to the proposition of the gentleman from Beaver? Look at the matter in any light you will, no explanation can be given which will wipe away the impression that the people of Pennsylvania shall not have the power to alter, reform, or abolish their form of government, whenever they may think proper to do so. It is as plain to my mind as that two and two make four.

The people of this commonwealth, have never before been so fettered and bound down, and yet, so averse have they been to any change in the fundamental law, that they have waited from the year 1790 up to this time, without interfering with it. How can it be imagined that the people will be so anxious as some gentlemen represent that they will be, to change their form of government, if they are satisfied—if it works well—if they prosper under it—if it protects them in the enjoyment of all their rights, civil, political, and religious.

If these great ends should be attained, is it reasonable to suppose that the people will perpetually cry for change, not because of defects in the constitution under which they live, not because it does not answer all the just and sacred purposes for which such instruments are designed, but simply to gratify their love of novelty—their sleepless and never-ending desire for change. Is it, I ask, reasonable to act on this supposition? Surely not, as it seems to me, and I should have some difficulty in persuading myself that the gentleman from the city of Philadelphia would contend for such a position. On the contrary, it is evident that the people will not suddenly change the form of government which they have.

It has been urged as an objection to the adoption of the majority principle, that young men might take hold of constitutional questions as a hobby on which they might ride into popular favor, and that by such means the time of the legislature and the funds of the commonwealth might be idly and uselessly expended.

I do not see that there is much, if any, force in this argument. For my own part, I have no fear that the people, through their representatives, will make improper changes in the fundamental law, and for this reason: that if one legislature, acting under a feeling of excitement or sudden impulse should propose any amendment, the people between the time at which such proposition may be made and the action of the second legislature would have abundant time to reflect on the nature and consequences of the change; and, in electing their representatives, could instruct them how they should act in relation to it. The subject is thus sufficiently well guarded, because, after two successive legislatures have themselves had the power to decide, can there be any distrust of the people in this particular?

It seems to me that the gentleman from Lycoming (Mr. Fleming) from whom the two-thirds proposition originally came, and the gentleman from the city of Philadelphia, (Mr. Meredith) who has advocated it, with so

much eloquence and fervor, may rest satisfied that, under all the circumstances of the case, the people, having full time allowed them for reflection and to act understandingly, will never make an amendment unless upon a full assurance in their own minds that it will be for their permanent benefit and welfare. If it should be discovered that they have done so, the majority have, and ought to have, the power again to change it when they may please.

This principle of two-thirds ought, I think, at once to be voted down by this convention. I will not suffer myself to entertain any misgivings in regard to it, because I feel the most perfect conviction that the majority of the members of this body never will agree to it. They never will agree that a large majority shall be prevented by a minority from making such changes in the constitution of the country as may seem to them, from time to time, to be desirable.

The gentleman from the city of Philadelphia (Mr. Meredith,) has told us that the fundamental law of the land is framed for the benefit of the minority. How can this be? I take it for granted that it is framed for the benefit of all—for that which is the minority this year, may prove to be the majority the next year.

The fundamental law, therefore, is framed as a social compact for the benefit of the whole body of the people; and, in a republican form of government, the minority must always yield to the will of the majority; and in the formation of the compact, such, we all know, is the understanding. There can, therefore, be no ground to apprehend injustice on this point, because, as I have said, the minority of this year may be the majority of the next. So far, the will of the majority of the people have established all their laws and institutions, and to say now that this two-thirds principle shall be introduced, is in direct contravention of that principle of the bill of rights of which I have before spoken, to the terms of which your renewed sanction has within a few days past been given, and which declares "that all power is inherent in the people, and all free instituted governments are founded on their authority, and constituted for their peace, safety, and happiness: For the advancement of these ends, they have, at all times an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper."

This, sir, is the language of your bill of rights! Are you about to disown it? Are you about to say, that what we have hitherto done in relation to our form of government is all wrong, and that you will establish principles in contradistinction to those by which we have heretofore been guided and regulated, and under which have lived a prosperous and happy people? The thing appears to me to be absurd.

Mr. CHANDLER, said that he had risen to make a few remarks in reply to what had fallen from gentlemen on the other side. The gentlemen from the county of Philadelphia had expressed very great astonishment that we should, at this time, undertake to change a principle previously adopted. That gentleman ought to recollect that when the convention was in committee of the whole at Harrisburg, the change was made by a very large majority. Now, a different decision was come to, which was by many considered right, and the other wrong? Were we, he (Mr. C.) asked, never to turn to the right? He entertained the most profound res-

poet for the opinions of the gentleman, but he felt a much greater respect for the people's rights. He (Mr. C.) was not here to advocate them in special, but general grounds. Whatever interfered with, or deprived them of any rights or privileges, also affected him. He would therefore, be doing equal injustice to himself as to them, were he to remain silent on the present occasion. The case of Michigan had been cited as an instance of the liberality of its constitution. He need not tell the convention the circumstances under which that constitution was created—that there were features in it highly objectionable—that it had been attempted to bring to the polls, persons, not citizens of the United States. And, he believed that there was virtue enough in those who framed the constitution to insert a clause by which that instrument could be easily altered so as to do away with any evils that might attach to it. Under that constitution, persons might become citizens who had only just come upon the soil of the state.

So much for Michigan. Now, with regard to Maryland, which had been referred to by his colleague (Mr. Meredith) That state was distinguished for its rotten borough system. It was unnecessary to tell gentlemen, who talked about demagogues, how easy it would be to form little knots of politicians here and there, in the state, in order to procure changes in the constitution, and who would hold the rights and balance of parties. We know that there are men in this as well as every other state who would do anything to effect their purposes. What would a party not sacrifice to make themselves dominant in the state and to secure their popularity? It was not only politicians, but the people—the whole people were liable to be misled—to be carried away by excitement. They feel always right, although they may be sometimes in the wrong. The history of this country shows how liable we are to be misled, from various causes. If the excitement of a day or of years was to uproot the constitution of the state—was to throw all into confusion, why then, this body was legislating to a bad purpose. Surely, we would not go so far as to alter the character of the constitution under which we live. He was almost as much opposed to every amendment that had been made as any other member of the convention. He desired to have them made as acceptable to the people as possible. That they shall be permanent in their character—that something may be settled. There ought to be some abiding place—something that the people can appeal to. This every statesman, every man who was acquainted with human nature must admit.

Mr. HAYHURST, of Columbia, called for the immediate question; which was sustained.

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

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Dunlop, Farrelly, Fleming, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Jenks, Kerr, Konigsmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Saeger, Scott, Serrill, Silb, Snively, Thomas, Todd, Weidman, Young, Sergeant, *President*—60.

NAYS—Messrs. Banks, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cleavenger, Crain, Crawford, Cummin, Curll,

Darrah, Dillinger, Donnell, Doran, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Martin, M'Cahen, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Taggart, White, Woodward—60.

So the amendment was negatived.

Mr. MEREDITH moved

Further to instruct the committee of the whole to amend the article by striking out, in the third line, the words "a majority," and inserting the words "two-thirds."

Mr. M. asked for the yeas and nays,

Mr. EARLE, Philadelphia county, said that he hoped the motion would not prevail. Some gentlemen had said there ought to be some principles which should be held sacred, and never changed, not even by the majority. He denied the doctrine as relates to government, and to a majority of the people. He asserted that a majority of the people, deliberately making up their minds and deliberately acting, have a right to form or alter a constitution in any manner they may think right and just. Even if it were true, however, that there are some principles of a constitution which should not be changed by the will of a majority, the amendment of the gentleman from the city of Philadelphia, (Mr. Meredith) would not attain the object he had in view. The delegate's allegation was, that the majority of the people have no right to change contrary to the wishes of the minority—that there should be some security guarantied to the minority, which the majority should not overturn. Now, if the principle were sound, the gentleman ought to offer an amendment that two-thirds of the people should sanction every amendment before it could be adopted. If a majority of the people are sufficient to sanction the amendment, the principle was admitted that the people are sovereign. Until gentlemen strike out that feature of the amendment, they have not fixed the principle that the majority shall govern. If it was admitted that the majority should govern, why not give the people an opportunity of altering their constitution? While the argument was admitted that the majority of the people can change their constitution, every thing was conceded. The gentleman from the city had said—and if in order, he would allude to what he did say—that this convention was called by a minority of the people of Pennsylvania. And what did the gentleman propose to do? Why that this minority convention, wise in its own conceit, should make amendments to be ratified by a minority of the people. It was argued that amendments ought not to be submitted to the people through four separate bodies—two senates and two houses of representatives, that they had not wisdom enough to submit any amendment that this minority convention had made. What an absurdity it was. Some gentlemen professed to entertain great fears that demagogues in the legislature would make the subject of amendments one for agitating and keeping up a continual state of excitement. But, in his (Mr. E's) opinion the adoption of the principle of two-thirds would not prevent the subject from being agitated. What, he would ask, was a demagogue? He supposed a corrupt politician. Could any delegate here show that corruption was on the side of reform? Now, all his observation and reading had taught him that corruption was against reform. When Christ was crucified at Jerusalem, was corruption on the

side of reform? When Saint Paul went to preach at Ephesus, was corruption on the side of reform? Did parliamentary history show corruption to be on the side of reform? He would maintain that corruption had always been opposed to reform—that demagogues were—for reform was not to their interest—on the contrary they wished to perpetuate corruption. No demagogue could bring forward a proposed change in the constitution with the least prospect of success. He would like any gentleman to point out any alteration that had been made in the constitution of the United States, or in any of the states from a corrupt motive. Were the amendments to the constitution of the United States made from corrupt motives? Now, supposing a demagogue to be elected to the legislature, the chances were at least nineteen to twenty, that instead of his bringing forward any proposition for reform, he would oppose it as strenuously as he was able.

He thought that a pretty compliment was paid to the legislature by this amendment. He would suppose some disappointed politician, some young lawyer to propose amendments to the constitution, and the legislature must *per force* consider them. But gentlemen seemed to forget that there must be a vote taken—that the legislature was not bound to adopt everything that might be proposed. Could not gentlemen suppose that there would be some gentlemen in that body—some good conservative would arise, like the gentleman from Lycoming and the gentleman from the city of Philadelphia, and protest against the proposition, and argue that it was unwise to make any changes in the constitution—that it was inexpedient—that it was dangerous. Do those, he (Mr. E.) asked, who are opposed to making any changes pretend to have found the philosopher's stone? Did they imagine that the people have not common sense to know what was for their benefit? Surely gentlemen could not suppose that an argument of that sort could have any weight here. It was the common weakness of men—of conventions of men—of a man in managing his farm, to adhere to his old habits, practices and notions—and where you found a man wisely changing his politics—his mode of conducting business, you found a hundred who went on in the old way. As for instance, the wagoner who continued to drive his team along the old and bad road when there was a better, merely because his father had done so for forty years. This was the common weakness of human nature. Now, if men would weigh well these prejudices, he should say that one-third of each branch of the legislature for two successive years, would be sufficient to propose amendments. Gentlemen had said it was necessary to have two-thirds of each house. Now, was this anything more than to make a motion? Had the delegate from Lycoming even proposed that we should so alter the rule of this convention as to require two-thirds to make a motion?

Gentlemen say they want deliberation and caution—not excitement and rashness. They said the people might act under excitement. He (Mr. E.) admitted the doctrine to be sound. And that if two successive legislatures were not enough, they might require three, nay, five, six or seven. But gentlemen could not do it in accordance with the principle that the majority shall govern.

It was probable that the convention would submit the amendments *en masse* to the people; and those amendments which might not be regarded as good would have to be adopted, rather than that those which were ap-



proved should be lost. So that by a minority of the people it would be adopted. Was it true—was it a fact, that there was danger of rashness in the manner proposed? If the people would ever be able to make up their minds in reference to the amendments that would be submitted to them, they surely could do it in three years, for nearly that time would elapse between the period when the first legislature would act on the subject and that on which the people give their votes on the amendments. Thus, the chances were against the amendments, if there happened to be only a small majority in their favor. Aye, even if there was a considerable majority in favor of amending the constitution, the chances of affecting that object are decidedly against it under the provision that was now before the convention. Had not (he asked) his colleague (Mr. Brown) justly observed that the effect of the proposition would be to keep up agitation year after year.

He (Mr. E.) would inquire of gentlemen whether they desired to see in this commonwealth the agitation that had taken place in Ireland and England, for the last five years, the minority struggling for the majority. The majority must govern. If the people reject the amendments the question would be settled, and we should be at peace. He wished to draw an argument—it might be applied *argumentum ad hominum*—as to the excitement among the people of the United States who were exceedingly agitated just now in regard to the sub-treasury bill. He was not going to express any opinion favorable to or against, that measure. But, he had heard gentlemen say that there was a disposition evinced on the part of the government to force that measure on the people, who do not want it and will resist it even unto blood. He, however, would tell those gentlemen that there was a much easier mode of obtaining redress than that. All that the people had to do was to remove the public authorities—was to put their shoulders to the wheel and alter the constitution of the United States, and shorten the term of office of the president of the United States and the senators. Then the people would be able to control their rulers. But if, on the other hand, they do not make their representatives in congress responsible to their constituents, they ought to submit. One thing of two was true, either that the people should govern, or should not. These excitements in the public mind had become much too common in this country. He did not mean to say that the government had acted contrary to the wishes of the people; but he only said that gentlemen seemed to think it had. And hence they should devise a remedy for what they regard as evils.

There was only one way of rendering stable and of strengthening and perpetuating a republican government, and that was to make it subject to the people, and not to have anything in it but what the people can change. It was necessary to establish the power of numbers to avoid the necessity of establishing the power of the sword. And, the moment the attempt should be made to abandon the power of the sword without establishing the power of numbers, a revolution would be the consequence. He wished to prevent such a result by establishing the power of numbers. But the gentleman from Chester, said there was danger of sudden excitement among the people, that they are liable in a hasty moment to go wrong.

Now supposing the people to adopt an amendment that two-thirds of the legislature have submitted to them, was that as safe a course, accord-

ing to the gentleman's own argument, as having a majority of two successive legislatures acting with due deliberation and reflection? He (Mr. E.) should think not. He himself, would not value what might be done by three-fourths, if done under excitement. But that which was done year after year, he did value, because it was the result of judgment. He regarded it as much more safe to require a majority of the two houses, and two terms, than to say that nine-tenths should be necessary to alter the constitution. When the gentleman from the city of Philadelphia admitted that it was a republican—a sound policy, for the legislature to grant an exclusive privilege for a thousand years, he at once maintained that the legislature have the power to do that without asking the people at all. And yet, the gentleman would not allow the people to change their constitution.

He proposes to make that which can not be changed, liable to be changed by the hasty action of a single legislature and the consent of a governor; but that which can be changed, he will not allow to be changed with deliberation and by the actual vote of the people.

The gentleman says, that the provisions of the constitution are made for the purpose of restricting the people. This is not so. They are not made to restrict the people, but to restrict the agents of the people, and to prevent them from misrepresenting the people;—it is, I say, to prevent unfaithfulness or misconstruction on the part of the agents of the people. I admit that the government ought to be stable;—that it should be such as young ambitious lawyers or demagogues can not change at their will. But I say, also, that this convention is not the only wise and patriotic body that has ever existed in the land, or that may yet be expected to exist in future years. The city of Philadelphia and the county of Lycoming will yet send forth some valiant guardians of the rights of the people, who will hereafter go into the legislature and ask for certain changes, if they believe those changes to be for the interest and the welfare of the state. That such men will rise up, there can not be a doubt; and we deceive ourselves if we suppose that all wisdom, all patriotism or all public virtue will pass away with this convention or with this generation of men.

I hope that the amendment of the gentleman from the city of Philadelphia, will not be agreed to.

Mr. SMYTH, of Centre, said. As I view this amendment in a different light from some who, on the former motion, voted in favor of the principle which it contains, I will briefly give my views upon it.

The amendment which has just been rejected by the vote of the convention, involves the same reasons in favor, and the same reasons in opposition to it, as the amendment which is now immediately before us. I presume, therefore, that it will be in order to speak to that question, and to the manner in which it was discussed by those who were in favor of it.

The gentleman from the city of Philadelphia, (Mr. Meredith) intimates that the question of trial by jury has been brought to bear in favor of altering the constitution, thus endangering the liberties of the people of the commonwealth.

In answer to this intimation, I, for one, take leave to say, that the trial by jury is as sacred to me and to those whom I represent on this floor, as to any other man, or set of men, in this convention or out it. I consider

that as one of the great bulwarks of our institutions, and am as warmly attached to it as any man.

But the gentleman complains also that the bill of rights was indefinitely postponed, before the convention had gone through its provisions. It seems to me that such an argument would have come with a better grace from any other quarter than that from which it emanates, because, if I am not much mistaken, the gentleman himself was opposed to any amendment of any kind in the bill of rights. 'This, therefore, is a ground of argument with him which I do not think is tenable. If he was opposed, as I have said I believe he was, to all amendments, why should he complain that the indefinite postponement should have taken place. There is an inconsistency in this which I do not find it easy to reconcile.

But the gentleman goes a step further, and tells us too look to the executive for the will of the people. Now, if we are to look to the executive for the will of the people, we shall find that he was in favor of some important changes which, I hope, the legislature will carry out.

Mr. MEREDITH asked leave to explain.

He had not asserted that the executive will was the will of the people. He had merely referred to it as a heresy which he had heard of, that the will of the executive was the will of the people.

Mr. SMYTH resumed. Be that as it may.

The doctrine which I maintain, and the principle which I acknowledge as the rule and guide of my conduct is, that the will of the majority should govern. 'This is the true principle upon which we ought to act; and I will give one reason which ought to operate with the conservatives in particular. As the matter now stands in the constitution—I mean under the amendments which we have made—which change the appointment of the justices of the peace, by the governor, to an election by the people—and which change the appointment of the judges of the different courts from being that of the executive alone, to that of the executive, by and with the advice and consent of the senate.

Now, let us take a case. Suppose that a majority of the people should discover upon further inquiry or trial, that these parts of the constitution, as they have been altered by us, do not answer the end intended by those who voted in favor of them. And suppose that a proposition should be brought before the legislature to alter so much of the constitution as relates to the judges, and that a majority of the legislature should be found to be in favor of the alteration. What would be the consequence, according to the doctrine which is advocated here? Why, it would be in the power of one third of the legislature to withstand the will of a large majority of the people of this commonwealth.

Is it right, is it in accordance with the principles upon which our government has been founded, that one-third of the legislature should control the will of a majority of the people, and should control the action of two-thirds of the legislature? Will not this two thirds' principle, if it should be adopted, operate against those conservatives who are opposed to any and all amendments, just as much as it will operate against the other portions of our citizens, who are in favor of certain amendments? Surely, sir, it will. The true republican doctrine, is, that the majority shall rule

—that the will of the majority, being clearly expressed, shall rule. This is a doctrine which, I hold, cannot be controverted.

But, sir, there is another feature in the amendment of the gentleman from the city of Philadelphia, which, so far as I have heard, has not yet been taken notice of. The amendment requires that the assent of two-thirds of the whole number of the members of the legislature, shall be necessary to any proposition for amendment. Now, there may be eight or ten members absent. We know it is frequently, if not generally, the case; and yet this amendment requires two-thirds of the whole number. This, therefore, is even a harder provision than that I had in the first instance imagined it to be. After all, I repeat that the true principle is, that the majority shall rule; and, in doing so, we suffer those who are of the minority, to be represented as fairly as any other portion of the people; and it is to be borne in mind, that although some gentlemen may be now in the majority in this convention, it may hereafter turn out that they will be in the minority; and thus their own principle may work hard against themselves. I have merely taken one single amendment in illustration of my views; but the same rule which is applicable to one amendment is applicable to all.

I hope, therefore, that the majority principle will be retained. It is the only true democratic principle, and however other gentlemen may shape their course, I will still adhere to that principle; nor will I consent, by any action or vote of mine, to sanction any measure which would, in the remotest degree, be a violation of it. And I shall govern my vote accordingly.

And the question on the amendment of Mr. MEREDITH, was then taken.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. MEREDITH and Mr. DENNY, and are as follow, viz:

**YEAS**—Messrs. Agnew, Ayres, Baldwin, Barndollar, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Craig, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Dunlap, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Jenks, Kerr, Konigsmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Todd, Weidman, Young, Sergeant, *President*—59.

**NAYS**—Messrs. Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cleavinger, Crain, Crawford, Cummin, Curl, Darrach, Dillinger, Donnel, Doran, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stuckel, Sturdevant, Taggart, White, Woodward—62.

So the motion was rejected.

A motion was made by Mr. DARLINGTON,

Further to instruct the committee of the whole to amend the said article by striking therefrom, in the twelfth and thirteenth lines, the words "by a majority of the members elected to each house," and inserting in lieu

thereof the words "two-thirds of the members elected to the house of representatives, and a majority of the members elected to the senate."

Mr. CURLL demanded the previous question.

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

And on the question,

Shall the main question be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to resolve itself into a committee of the whole, for the purpose of amending the tenth article as agreed to on second reading, agreeably to the instructions of the convention?

It was determined in the affirmative.

#### TENTH ARTICLE.

And, agreeably to order,

The convention resolved itself into a committee of the whole, Mr. DENNY in the chair, for the purpose of amending the tenth article of the constitution, as amended on second reading, by striking therefrom in the fourth line, the words "of the two houses," and inserting in lieu thereof the word "house;" by striking therefrom, in the thirteenth line, the word "all;" by striking therefrom, in the eighteenth line, the word "distant," and inserting in lieu thereof the words "after being so agreed to by the two houses;" by striking from the twenty-first line the words "who shall vote," and inserting in lieu thereof the word "voting;" by striking from the twenty-fourth line, the word "it," and inserting in lieu thereof the word "they;" and by inserting in the same line, after the word "be," where it occurs the second time, the word "submitted;" and by inserting after the word "for," in the twenty-fifth line, the words "or against."

A motion was made by Mr. SIERIGERE,

That the committee rise, and that the chairman report the amendments agreeably to instructions.

Which was agreed to.

And thereupon,

The PRESIDENT resumed the chair, and the chairman reported the amendments made to the said article by the committee of the whole agreeably to instructions.

And the report of the committee of the whole was agreed to.

And the amendments made in the said article by the committee of the whole, were agreed to; and,

Ordered, That the said amendments be referred to the committee to prepare and engross the same for the third reading.

A motion was made by Mr. REIGART,

That the said article as amended by the committee of the whole, be recommitted to the committee of the whole for the purpose of amending the said article by adding thereto the following new section, viz:

**"SECTION 2.** No secret society using or administering unauthorized oaths, or obligations in the nature of oaths, and using secret signs, tokens or passwords, operating by affiliated branches or kindred societies, shall hereafter be formed within this commonwealth, without express authority of law; and no person shall hereafter join or become a member of any such society, or take any such oath or obligation in the nature of an oath, in any such secret society, now formed, or which may hereafter be formed."

The said motion being under consideration,

A motion was made by Mr. SHELLITO,

That the convention do now adjourn.

Which was agreed to.

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

## TUESDAY AFTERNOON, FEBRUARY 13, 1838.

### TENTH ARTICLE.

The question recurring on the motion that the tenth article, as amended, be re-committed to the committee of the whole, for the purpose of amending the said article by adding thereto the following new section, viz:—

**"SECTION 2.** No secret society, using or administering unauthorized oaths, or obligations in the nature of oaths, and using secret signs, tokens or passwords, operating by affiliated branches or kindred societies, shall hereafter be formed within this commonwealth, without express authority of law, and no person shall hereafter join or become a member of any such society, or take any such oath or obligation in the nature of an oath, in any such secret society now formed, or which may hereafter be formed."

The amendment being under consideration,

Mr. REIGART, of Lancaster, said:—

Mr. President, having been elected to a seat in this honorable body, by constituents, who, for general intelligence, respectability and integrity, are second to none in this commonwealth, I take occasion to make some remarks on the propriety of incorporating this amendment in the constitution. They, like myself, profess to be purely distinctive political anti-masons. I am neither ashamed nor afraid to avow and advocate their political opinions and my own, here or elsewhere, in the walks of private life or on the floor of this house. I never have, nor never will conceal them; but will honestly avow, and on all proper occasions, advocate them here in my place as a member of this body, without being intimidated by the frowns

of those whose especial duty it is to hunt down, persecute and destroy all who have the hardihood to differ with them, on the great and exciting question of speculative free-masonry. Nor will I be seduced from the performance of my duty here, by the sneers of pretended friends, who are not ashamed to receive anti-masonic votes, and yet who always think and say, to discuss the principles of anti-masonry in deliberative bodies, is to throw in a fire brand, and to disturb the harmony of feeling, &c. Sir, I believe with my constituents, that the institution of speculative free-masonry is a great moral and political evil. We believe it to be an engine of tremendous power, in the hands of the corrupt and designing men. We believe it to have been used, and to be still used by the corrupt and designing, for the worst and basest purposes. We believe it to be now in the hands and under the control of men, enthusiastically mad in the cause of masonry; who now, writhing under the effects of popular odium and political defeat, have planted the bloody banner of free-masonry on the outward wall. We see now, sir, on every side, the hum and bustle of preparation. Let it come—we will prepare, as we have often done before—we will carry the war into Africa. My constituents were among the first, perhaps the very first, in the commonwealth, who dared to bear the anti-masonic standard of liberty and equality—and to strike for their insulted country, and the supremacy of her prostrate laws! Yes sir—when masonry boasted that a ‘world in arms,’ could not stop her career, my constituents, with noble and patriotic daring, threw themselves into the breach, and so far at least as they were immediately concerned, avenged the wrongs of their country, and restored the mild and equitable sway of the laws. In that preparatory conflict, I had the honor of participating, and I glory in its results. We fight our political battles, not as masonry does, under grand kings, knights, and masters, but as the rank and file of the country.

Permit me, sir, to investigate some of the arrogant and imputed assumptions of masonry; and first of all, I will for a moment examine her pretensions to antiquity. Masons say that it “descended from Heaven.” Go with me, if you please, while we examine this subject. As to the origin and descent of masonry, the initiated differ vastly among themselves. Some say it commenced before and others since the Christian era. Now, I will endeavor to show that it is purely modern, and of vulgar origin—that it took its rise from operative masonry—veritable stone, brick, and muddy mortar, with hods, trowls, and all other vulgar implements,—that it was originally a school of architecture; nothing more than to advance the science of stone, brick and mortar masonry—just what the name imports; and it was not until some choice spirits, blessed with a fondness for conviviality, (yet an attribute of the order) met at the apple tree tavern, in London, in the year 1717, and resolved that they would assume a mystical character, and accordingly invented a series of oaths and degrees, which having since been improved on, are now the abominations and horror of all thinking classes in every community. For the truth of this fact I refer the convention, not to anti-masonic authority, not to perjured witnesses, as the votaries of the lodge are pleased to call them—but to an author who is still a mason, who avows himself to be the apologist of masonry—is still a mason, and has undertaken the defence of the order—I mean W. L. Stone. In his letter to Mr. Adams, page 113 and 114, he gives it as a masonic historical fact; and he further tells us that, the first

masonic procession took place in London, 24th June, 1724, at the installation of the Duke of Richmond, as grand master. Since that time he says—"its rites, its mysteries, its ceremonies, and its legends have been gradually accumulating." In fact, sir, we find that the boasted mysteries of the order originally meant no more than the mysteries of any other trade. I will not inquire when '*Heaven descended-masonry*,' as it is called, first made its appearance in this country, the same author gives it historically, that masonry first appeared here about the time of the French war, in 1754, while we were colonists. It was introduced by British officers;—this is also an historical fact, better known to the masons than to us who are of the unsworn. Yet it is known to us, historically known, truly known, and often proved. I challenge masons to disprove what is here said about the antiquity of free masonry and its introduction here.

Masons tell us that masonry is very beneficial to mankind, yet never gave us the reasons why it is so. I admit, sir, that men have from different motives become masons. Some perhaps suppose that it will reveal to their astonished senses some of the mysteries of the christian religion; others that it may assist them in travelling, some from idle curiosity, but by far the greater number as a matter of speculation; they believe it will give them some superior knowledge, and enable them, by secret signs, grips, and passwords, to obtain that which otherwise would be out of their reach. I admit also, that many good and great men have become masons, but it is a singular fact and worthy of all observation, that such men have invariably dissolved their connexion with the institution. Look around you if you please, look at the circle of your own immediate acquaintances, and tell me how many good and pious men, who in their youth have become masons, still adhere to the order;—by adhering, I mean, continue their connection with the lodge. I put it, sir, as a practical illustration, and address myself to every member of this body. Let him recall his scattered recollections on this subject, and carry out the suggestions, and my life for it, if he answers truly, he will say that such men have long since withdrawn from the order. To such as have thus withdrawn themselves I take occasion to say, that they have not done enough, they have not cancelled those obligations which we all owe to society; they should openly renounce all connexion that the influence of their example might operate on the rising generation; for it is to the care of the coming generation that we must ere long consign our free institutions, and it is important that they should carefully guard, watch over and preserve from violation the great fundamental principles of liberty. But masons tell us that the institution is of christian origin, and essentially christian in principle; that it inculcates and promotes the pure precepts of christianity. On this question it is not agreeable to me to argue, disapproving much of all discussions on abstract theological questions; but fortunately, it is quite unnecessary to do so. Permit me only to ask the votaries of the order, how can masonry promote christianity, when Jews, Turks, Infidels and Atheists are admitted into an equal and full participation, in all her rites and mysteries? I call on them to explain this if they can, and if they cannot, let them cease prating about the christianity of masonry. Again, who has not heard masons assume the ground that christianity is one of the essentials of masonry. When they tell us that we might as well blame one christian sect for the acts of another, as to blame masonry every where



for the abduction and murder of Morgan; in answer to this permit me to say, we show that the obligations of masonry are the same every where, and that masons in this state, who believe in their binding efficacy, are prepared just to do the same thing that was done in New York, when masonically called upon.

But, again, no sect professing the christian religion are bound together by an oath of any kind; the case put by masons does not apply—no christian sect binds its members to perpetrate murder on backsliding, on recreant members, as masons are bound by their oaths to do. The analogy fails, and there is an end of the matter. It is only one of those convenient specious arguments to which the order are obliged to resort to sustain the tottering masonic empire. As soon, however, as its votaries are driven from one ground, they boldly assume another, no matter how untenable. They have told us that masonry does not interfere with the religion or politics of its votaries. I will endeavor to show that this position is equally untenable and absurd. I will prove that it interferes with religion, with politics, and with the laws of the country,—that it is anti-republican in its character, dangerous in its tendency, and an insidious enemy to civil liberty. To prove these positions, I shall in the first place be obliged to submit to the convention some delectable specimens of the degrading oaths and obligations which men are obliged to take, before they can become *bright masons*; and will afterwards speak of the authority from whence those oaths are derived, their authenticity, and so on: The candidate for masonic honors is first, to use masonic language, “to be duly and truly prepared,” that is, in other words, he is to be stripped nearly naked, a rope put about his neck, called a cable tow, and then hoodwinked in this very decent manner, he is then brought into the lodge, the conductor holding on to the end of the rope around the neck of the candidate. After being gazed at for some time, he is obliged to kneel, and placing his hand on an open Bible, takes the following oath:

“I, A. B. of my own free will and accord, in presence of Almighty God, and this worshipful lodge of free and accepted masons, dedicated to God and held forth to the holy order of St. John, do hereby and hereon most solemnly and sincerely promise and swear, that I will always hail, ever conceal, and never reveal any part, or parts, art, or arts, point, or points of the secrets, arts and mysteries of ancient free masonry, which I have received, am about to receive, or may hereafter be instructed in, to any person or persons in the known world, except it be a true and lawful brother mason, or within the body of a just and lawfully constituted lodge of such, and not unto him, nor unto them whom I shall hear so to be, but unto him and them only whom I shall find so to be, after strict trial and due examination or lawful information. Furthermore, do I promise and swear, that I will not write, print, stamp, stain, hew, cut, carve, indent, paint, or engrave on any thing moveable or immovable, under the whole canopy of heaven, whereby, or whereon the least letter, figure, character, mark, stain, shadow, or resemblance of the same may become legible or intelligible to myself or any other person in the known world, whereby the secrets of masonry may be unlawfully obtained through my unworthiness. To all which I do most solemnly and sincerely promise and swear, without the least equivocation, mental reservation, or self-evasion of mind in me whatever; binding myself under no less penalty, than to

have my throat cut across, my tongue torn out by the roots, and my body buried in the rough sands of the sea, at low water mark, where the tide ebbs and flows twice in twenty-four hours; so help me God, and keep me steadfast in the due performance of the same."

I will now read the oath of the FELLOW CRAFT; this is called the second degree. It is somewhat remarkable at every degree to which the candidate is advanced, he is always sworn in addition to his former obligation, thus invoking ten fold vengeance on his head, should he violate any part of the obligation. The oath is as follows:

"I, A. B. of my own free will and accord, in the presence of Almighty God, and this worshipful lodge of fellow craft masons, dedicated to God, and held forth to the holy order of St. John, do hereby and hereon, most solemnly and sincerely promise and swear, in addition to my former obligation, that I will not give the degree of a fellow craft mason to any one of an inferior degree, nor to any other being in the known world, except it be to a true and lawful brother, or brethren fellow craft masons, or within the body of a just and lawfully constituted lodge of such; and not unto him nor unto them whom I shall hear so to be, but unto him and them only whom I shall find so to be, after strict trial and due examination, or lawful information. Furthermore, do I promise and swear, that I will not wrong this lodge, nor a brother of this degree, to the value of two cents, knowingly, myself, nor suffer it to be done by others, if in my power to prevent it. Furthermore, do I promise and swear, that I will support the constitution of the grand lodge of the United States, and of the grand lodge of this state, under which this lodge is held, and conform to all the by-laws, rules and regulations of this, or any other lodge, of which I may, at any time hereafter, become a member, as far as in my power. Furthermore, do I promise and swear, that I will obey all regular signs and summons, given, handed, sent, or thrown to me by the hand of a brother fellow craft mason, or from the body of a just and lawfully constituted lodge of such; provided it be within the length of my cable tow, or a square and angle of my work. Furthermore, do I promise and swear, that I will be aiding and assisting all poor and penniless brethren, fellow crafts, their widows and orphans, wheresoever disposed round the globe, they applying to me as such, as far as in my power, without injuring myself or family. To all which I do most solemnly and sincerely promise and swear, without the least hesitation, mental reservation, or self-evasion of mind in me whatever; binding myself under no less penalty than to have my left breast torn open, and my heart and vitals taken from thence, and thrown over my left shoulder, and carried into the valley of Jehosaphat, there to become a prey to the wild beasts of the field, and vultures of the air, if ever I should prove wilfully guilty of violating any part of this my solemn oath or obligation of a fellow craft mason, so keep me God, and keep me steadfast in the due performance of the same." "Detach your hands, and kiss the book, which is the Holy Bible, twice."

The next degree is that of master mason; in addition to the oaths taken in the preceding degrees, the following clauses are superadded in this:

"Furthermore, I do promise and swear that I will not give the grand hailing sign of distress, except I am in real distress, or for the benefit of the craft when at work; and should I ever see that sign given, or the word accompanying it, and the person who gave it appearing to be in

distress, I will fly to his relief at the risk of my life, should there be a greater probability of saving his life than of losing my own. Furthermore, do I promise and swear, that I will not wrong this lodge, nor a brother of this degree to the value of one cent, knowingly, myself, nor suffer it to be done by others, if in my power to prevent it. Furthermore, do I promise and swear, that I will not speak evil of a brother master mason, neither behind his back nor before his face, but will apprise him of all approaching danger, if in my power. Furthermore, do I promise and swear, that I will not violate the chastity of a master mason's wife, sister, or daughter, I knowing them to be such, nor suffer it to be done by others, if in my power to prevent it. Furthermore, do I promise and swear, that a master mason's secrets given to me in charge as such, and I knowing them to be such, shall remain as secure and inviolable in my breast as in his own, when communicated to me, *murder and treason excepted*, and they left to my own election. To all of which I do most solemnly and sincerely promise and swear, with a fixed and steady purpose of mind in me to keep and perform the same, binding myself under no less penalty than to have my body severed in two in the midst, and divided to the north and the south, my bowels burnt to ashes in the centre, and the ashes scattered before the four winds of heaven, that there might not the least track or trace of remembrance remain among men or masons of so vile and perjured a wretch as I should be, were I ever to prove wilfully guilty of violating any part of this my solemn oath or obligation of a master mason. So help me God, and keep me steadfast in the due performance of the same."

From this obligation we learn several important things, that when the grand hailing sign of distress is given, no matter whether it be in the legislative hall, or in a court of justice, if a mason believes in masonry, he is obliged to render assistance to his brother, no matter what sacrifice is to be made, or what scruples of conscience he must overcome, the oath is general and must be so applied. Again he swears not to wrong the lodge, nor a brother of the same degree of the value of one cent. Two things are inferable from this oath—one that masonry, to keep her votaries honest, is obliged to swear them to be so; another is, that it irresistibly implies, that a mason may cheat the whole community, if he can, but not a brother, and yet not be guilty of any masonic offence, and may then give the grand hailing sign to screen himself from punishment by the legal tribunals of the country.

But again: he promises and swears, that he will apprise a brother of all approaching danger, and that he will not violate the chastity of a master mason's wife, mother or daughter. Here again the brethren are shielded from all arrests and punishment for their misdeeds if the arresting officer happens to be a master mason, he must violate his oath if he arrests his brother. What will he do? The answer is plain—and masons may, if they please, invade the sanctity of every other man's house, and violate when he can, without being guilty of any masonic offence. I will pass over the obligation of the mark master and past master, they being nearly the same as that of master mason, and for the purpose of saving the time of this body, will proceed to the consideration of the oath taken by a royal arch mason. The oath itself being very long and diffuse it is not my purpose to read the whole of it, but call the atten-

tion of members generally and of the grand kings, princes, high priests, knights and masters of the order, to some parts of the oath. Gentlemen will bear in mind, however, that this whole oath is taken by the candidate in addition to all his former obligations.

"Furthermore, do I promise and swear that I will aid and assist a brother companion royal arch mason when engaged in any difficulty, and espouse his cause, so far as to extricate him from the same if in my power, whether he be right or wrong. Also that I will promote a companion royal arch mason's political preferment in preference to another of equal qualifications. Furthermore, do I promise and swear, that a companion royal arch mason's secrets given me in charge as such, and I knowing them to be such, shall remain as secure and inviolable in my breast as in his own, *murder and treason not excepted*.

In conferring this degree there is much ceremony used, being one of the highest degrees—it is also among the most blasphemous; the Diety is personified in the sublime scene of appearing to Moses on Mount Horeb, in the burning bush. It is generally done in this way;—an earthen pot is filled with earth, green bushes set round the edge of it—a light in the centre;—or a bush suspended from the ceiling, around which tow saturated with oil of turpentine is wound, and set on fire, the bandage being removed from the eyes of the candidates, they see the fire in the bush—these words are then read :

"God called to him out of the midst of the bush and said: (and a person from behind the bush calls out) "Moses, Moses, Moses"—the conductor answers—"Here am I,"—the person behind the bush then says, "draw not nigh hither, put off thy shoes from thy feet, for the place whereon thou standest is holy ground, (his shoes are then slipped off.) Moreover I am the God of Abraham, the God of Isaac and the God of Jacob." "And Moses hid his face for he was afraid to look upon God." At these words the bandage is again placed over the candidates eyes. The recital of these blasphemies, to myself, are tedious and disgusting. I have given part, not the whole; that would consume too much time. Those who are desirous of seeing them will find them fully given, together with all the initiating ceremonies in the volume called "Bernard's Light on Masonry" published in 1829, and to be found at all bookstores except masonic ones. Permit me now, sir, again to call upon the nobility of the order holding seats in this body, to deny these oaths if they dare?—to point out, if they can, in what they differ from the oaths which they themselves have taken? let them not avoid it. I again hear, sir, the low murmurings of the delegate from Northampton, (Mr. Porter) on my right, sneering at the authority I have cited;—he, sir, is one of the masonic nobility; on him then, here in my place, as a member of this body, I call upon him, personally to deny the verity of these oaths, and beg him to produce any book, even of masonic authority, addressed to and for the exclusive use of the masonic world alone, and show me whether the oaths and obligations which masonry imposes on her votaries are not literally the same as those which I have read to this convention. Sir, I do not wish to practise any deception in this matter;—my object is to elicit the truth;—if I am in error, let me be set right; let the masons in this hall do it; they now have the opportunity of clearing up all the charges which my political friends and myself have

charged upon free masonry for the last nine years. I beg they will not again forego the opportunity ; it may not be afforded to them again, at least in such a body as this, for many years to come, perhaps never. Now that we are revising our fundamental laws, and having submitted a section to suppress secret societies, let them convince us all, that we are about to do them great injustice, and set the public mind at rest. If they can do this, all will rejoice ; but if they cannot and do not, then I hope this body, will insert the section. Their simple general denial will not do however, they must give us some tangible evidence. The charges are specific—capable of being easily refuted if untrue ; the issue is plain and simple. I implore them not to avoid it, but to meet it, look it honestly in the face. I pledge myself to go fairly to the trial with them to prove every affirmative charge. Nay further, let me use only the records and depositories of the grand lodge in this city, to prove the authenticity of the oaths and obligations read to this convention ; I will prove them by evidence in their own possession. But if the masonic nobles here will avoid this, they avoid investigation, and judgment must go against them by default ; and their friends, the jacks, can no longer prate about the purity of masonry, when masons themselves avoid the contest ; for the sake then of their friends, of the long eared tribe here, they should not avoid it, but go at it at once, and be done with it.

Sir, I have also said that masonic oaths have a direct tendency to prostrate religion. Need we dwell on this point ? Look at the oaths, examine them, judge for yourself—is it consistent with the pure, peaceful gospel truths that men should give utterance to the most foul, disgusting, and abominable oaths ;—are they not inconsistent and utterly irreconcilable with each other ? Will any one say that to make a man religious and good, he should be sworn to be so ? Will not all concur in saying that religious and good men would repudiate such doctrines ? Oaths such as these, have a natural, inevitable tendency to weaken religious impressions. All experience proves, that the frequent administration even of judicial oaths, has the effect of weakening their binding obligation. I take it then that the position is uncontroverted and incontrovertible, that masonic oaths have a direct tendency to sap the foundations of religion.

But, I have also said that masonry is political. Those who have been close observers of the political affairs of the country cannot fail to have seen that the great men of the order, I mean those who are high masons, are always *in*—look around you in every city, town and village in the Union (where anti-masonry has not yet made its way) and you will find them well provided for in this way. How does this happen ? Not by accident surely,—not that they are better men or more intelligent than their neighbors—how then ? By design certainly. The superior and the inferior lodges are every where pursuing the same course—to elevate their members. Their secret and united action paralyse every effort of the uninitiated—individual merit is in some strange unaccountable manner overlooked—not of the order, are not in the secret, they know nothing of the powerful effects of that unseen power who are straining every nerve in secret conclave at the midnight hour, to affect their object ;—they feel the blow, but they know not, they do not even suspect the hand that strikes. So far has the political management of masonry been carried that but a few years ago, when anti-masonry first began to shed its light

on a benighted community, that the office of governor was offered to a distinguished member of the house of representatives, on the condition that he would become a mason. He was offered the *favour*, to be raised to the Royal Arch degree in one night, by special dispensation from the Grand Lodge of Pennsylvania, but the representative being made of stern stuff, the plan did not succeed, although masonry did succeed in nominating a Grand Master at the same time to that high office, and succeeded also in electing him, and thus secured her triumph at the expense of the people. In this be it said, masonry gets nothing more than she has a right to expect—her members only carry out their principles, they act only in accordance with their oaths; for we find in the Royal Arch degree a special clause introduced solely with a view to the political preferment of the members of that degree. I might, if it were expedient, go into an examination of the higher degrees of the order, to shew that this doctrine of political preferment is carried out most fully in them all, but will rely on some of my anti-masonic friends here, to begin where I have left this subject.

I have also charged masonry with obstructing the due administration of justice. This is a grave and solemn charge, and in considering it, I must be permitted some preliminary remarks which will illustrate my positions on this subject. We often see masons of inferior degrees (which may be called small masons) the most vociferous and boisterous in defence of the order, while the great guns of the order say very little. This is very easily accounted for, the masons of inferior degrees do not know or believe, that political oaths are administered in any of the higher degrees, as nothing of the kind was in the oaths which they themselves took. But they cannot and dare not know this; as they are sworn not to learn or look at the oath before they take it—they are never permitted to be present at the meeting of a lodge of high masons. For instance an entered apprentice or a fellow craft, dare not be present at a lodge of master masons, and thus the small fry never know any thing about the working of the Royal Arch Chapter, and hence also, the reason why high masons are less vociferous, than small ones, when accused of political action. They know the truth of the charge and never deny it with the same earnestness; but the small fry, poor fellows!—will bawl most lustily at any accusation of the kind;—not that they do not interfere politically, in favor of a brother mason of equal or superior degree, but because they have not expressly sworn to yield a political preference for their brother of the same degree.

I will now inquire, very briefly, into the cause of anti-masonry and the reasons which brought it into existence. Sir, the causes which brought into existence political anti-masonry at the period to which I shall refer, it grieves me to say, had its origin in a matter which, while our free institutions shall remain, will be a foul blot on our national character. It was sir, nothing less than the abduction and murder of William Morgan, a free citizen of the state of New York, in the year 1826,—who by a masonic conspiracy was, under colour of legal process, illegally arrested, torn forcibly from his family, carried a great distance through a densely populated country, not by a mob of fanatics, not by men ignorant of their duty to the laws, not by men actuated by sudden impulses of violent passion; but by cool, sober-minded men, who occupied not only respectable

but elevated stations in society ; who spent their nights in the recesses of lodge rooms, silent and subtle as serpents, while honest men slept. This conspiracy embraced men of all ranks and classes, sheriffs, members of assembly, justices of the peace, and even those who ministered at the altar of the living God, bathed their hands in the blood of their fellow man. Do men yet wonder at the determined spirit which actuates those who profess the pure principles of anti-masonry ? To such let me say, that the blood of an American citizen cries aloud for vengeance, on his murderers ; it is yet unatoned for :—the garments of masonry are still saturated with innocent blood ;—the spirit of anti-masonry will never be appeased until free masonry shall have ceased to exist. Let not the order solace themselves with believing that this excitement as they are pleased to call it, will ere long pass away and that all will again be calm and serene. We accuse them of a masonic murder, inflicted according to masonic oaths. I know sir, that I speak the sentiments of many thousands of the people of this commonwealth, as well as my own, when I say, that the anti-masonic party of this state will never yield their distinctive principles while free masonry exists,—they may be abused and battered, they may be defeated, but they will never yield ;—they cannot be destroyed ; men may change but principles never, their distinctive principles are part of their natures, yea, of themselves. For a less offence than masonry has committed, the Tarquins were expelled ; and shall it be that the stern republicans of this Union will permit that institution to remain a disgrace to the land, who binds her votaries to kill, murder and destroy our fellow citizens ? It would be wonderful indeed, if in this contest for principle, masonry with all her errors, her vices, and her crimes, should be permitted to survive. Masons, however, to screen their institution from deserved prostration, have the impudence to tell us that their oaths must be construed figuratively, and not literally. I shall again call upon the grand kings, high priests and grand masters of the order having seats in this hall, to shew us in what part of the oaths or instructions of the lodge this construction is inculcated ; let them point out to us where it appears ; will they have the condescension to place their fingers on the spot ? will they be so good and shew me the masonic authority for this assertion ? I should be glad to see the record, to find where such masonic doctrine as this is to be found ?

Masons sometimes tell us that the judicial oath is to be considered superior to the masonic oath—in other words, that when testifying in court for a brother mason, they must always tell the truth. I confess, sir, I have not been able to find any doctrine of this kind in the books ; it is quite new to me. But, sir, in answer to this, we all know the history of the trials for the abduction and murder of Morgan, in New York ; at one of these trials, witness was placed on the stand ; he refused to answer, and said he held his masonic obligation superior to the oath administered in court. In redeeming my pledge to prove that masonry interferes with the due administration of the law, I almost weep over the fallen institutions of my country. In vain will you search the history of the civilized world for examples like these, which occurred in the western part of the state of New York. In one of those abduction trials, Bruce, one of the conspirators, and sheriff of Niagara county at the time, selected the grand jury,—the public prosecutor was a mason,—a majority of the grand

jury were masons,—bills of indictment were presented to the grand jury; and here scenes of corruption took place, unsurpassed in the annals of judicial iniquity, too flagrant for belief. Witnesses refused to testify on account of their masonry, others because they were poor, and dreaded masonic vengeance, they were all excused by the grand jury, they assumed the power of excusing them, without allowing the court to interfere. Indeed written questions were so cunningly framed that witnesses could answer without giving any dangerous information, and without exposing themselves to the danger of a legal prosecution for perjury. All the efforts of the people to convict any of the conspirators were useless, as on every attempt, Bruce, the sheriff, had again a packed masonic grand jury, for the purpose of shielding himself and his fellow conspirators,—preventing the court from taking any action in the matter and thus polluting the very fountain of justice. This begat great excitement in that community. 'That people, sir, and the world, witnessed the appalling spectacle of a few daring and desperate men, placing the judges and magistracy of the land at defiance, the sword of justice snatched from the hands of the goddess, herself turned out of the temple, and her place usurped by the dark and bloody spirit of masonry? 'This, sir, is the history of this matter, for the truth of it I refer the order to Stone's Letters to Mr. Adams, pages 247 to 258. I again hear the sneers of one of the grand masters of the order, sneering at the authority to which I have referred. 'This book, sir, has been printed since the year 1832, many thousand copies of it are extant, and if susceptible of refutation would have been refuted by masons, long before this time. I again call upon them to refute it if they can—shew us in what particular it is false. Let them meet the matter fairly and not avoid by sneers and *silent contempt*.

In the same book we find that masonic witnesses have stood mute—refusing to answer at all; we find the court exhausting all its plenary powers of fine and imprisonment for contempt. We find the brethren of the order, surrounding the very portals of justice, complimenting these contumacious witnesses for their bravery and fidelity to the craft: and all this, too, in obedience to masonic obligations:—and yet, sir, we are impudently told at this late day, and in this enlightened age of the world, that masonry is strictly submissive to the laws of the country. Who believes it? Is there a man here that believes it,—if there is let him answer and let him shew it? At length Governor Clinton removed Bruce from office, and the people succeeded in convicting Whitney and him, of participation in the abduction of Morgan. Whitney was sentenced to fifteen months imprisonment, Bruce for two years and four months. Here again, we find masonry exhibiting herself. Bruce and Whitney, were considered as masonic martyrs, notwithstanding the atrocity of their guilt, the order crowded round them, ministering to their every want; even respectable ladies, wives of masons, were in waiting, presenting them with delicacies prepared by their own fair hands.

But it is said to be the duty of lodges to expel unworthy members. How was the case here? Why, sir, men belonging to the order were convicted of crimes involving great moral turpitude. Yet they were not expelled—they were not only retained, but considered excellent members—nay, indeed, they were almost worshipped by the order.



The distinction taken by masonry in matters of expulsion, seems to be thus : if a member cheats the lodge out of a farthing he is expelled as an unworthy member ; but he may rob and plunder the rest of the community just as much as he pleases,—nay, even kill his fellow man, and he is not guilty of any masonic offence. But there is another, perhaps a stronger reason why Bruce and Whitney were not expelled,—they had not only not behaved themselves unmasonically, but they had served their masonic brethren in the most approved masonic manner, by abducting and murdering the victim of masonic vengeance. Masonry, sir, is the same every where,—what has happened in New York, may happen in Pennsylvania, and I am not prepared to say that it has not so happened. I have never yet heard a mason, great or small, say that the oaths and obligations were not the same every where. Permit me now, to identify the institution of free masonry, as an institution acting officially with the abduction and murder of Morgan. It is a well known fact that the general grand chapter of the United States, went in session at the city of New York, in September, 1826, at the very time of the abduction and murder of Morgan : and it is equally well known, as an historical fact, that a mason came into the chapter at the time of their session, and informed them that he had obtained certain manuscripts and printed sheets, purporting to be a revelation of the secrets of free masonry, and we have the word of a member of that chapter, that the general grand chapter agreed to take no notice whatever of these manuscripts and printed sheets, and ordered them to be restored. Now, sir, I will present to the consideration of the convention, the circumstance just alluded to, in connexion with the doings of the grand royal arch chapter of the state of New York, which met at Albany, in February, 1827. The latter body put forth a disclaimer of all knowledge individually and collectively and of all participation in the abduction and murder of Morgan, and yet, sir, at the same session of that body, while they were framing their disclaimer, they vote the sum of one thousand dollars of their funds, for the relief of these very murderers ; or in other words, they gave them this large sum of money to enable them more effectually to elude and mock the justice of the country. By the rule of three, then, if the grand royal arch chapter of the state of New York, gave one thousand dollars for this purpose ; what should the general grand chapter of the United States, have given ? For myself, I am willing that the people should judge of this. These are historical facts, which cannot be tortured or perverted, and will be found in the same book 227 and 228.

I will now close this disgusting recital by giving another instance. In the same book we find the grand lodge of the state of New York voting two hundred and fifty dollars to Eli Bruce, one of the convicted conspirators. Do not, I ask, these facts fully, completely, and triumphantly identify free masonry with the abduction and murder of Morgan ? and is not the institution chargeable, with undying never ending reproach and guilt for her participation in this damnable deed ? If her kings, princes, knights and masters here, deny the fact ; I challenge them to produce the records of the chapters and lodges referred to, and I pledge myself to convict them of it. I have now, sir, but a few words more to say. That is on the conduct of the *press* in this affair. I have been taught in

my youth to look upon the press as a sentinel on the watch towers of liberty, but I have lived to see it sleep the sleep of death, almost while labouring under the effects of powerful masonic narcotics. We have seen that press in the hands of the members of the order, degraded, sunk, fallen from its high place,—it neglected, or it refused to enlighten the public mind on the subject of this masonic murder,—it dared not speak in the bold language of freedom ; it was paralyzed by speculative free masonry ! I regret, sir, the occasion which calls for this allusion. I could not say less and will not now say more ; but will never cease to deplore the degradation of the American press in the instance alluded to. In conclusion, Mr. President, permit me to say, that I believe I have proved to your entire satisfaction and to the entire satisfaction of this convention—

That masonry is not ancient :

That it is political :

That its oaths are wicked and abominable :

That it is subversive of religion,

And that it has prostrated the laws of the country. I therefore, here, in place as a member of this body, in the name of the people of Pennsylvania, of whom my immediate constituents form a very considerable portion :

Charge speculative free-masonry with imposing oaths and obligations on its members unauthorized by and inconsistent with the laws of the country :

That it binds its members to give a preference to each other in all things, over the rest of their fellow citizens :

To “ apprise each other of all approaching danger ”—whether such danger arises from the legal prosecution of their own crimes and misdemeanors, or otherwise :

To conceal the secrets and crimes of each other not even excepting murder and treason :

To evenge even unto death the violation of any of the masonic oaths, and the revelation of any of their secrets :

That the rights and ceremonies of the lodge are of mean, degrading, impious and immoral character :

That the candidates are stripped nearly naked and led to the imposition of their awful oaths, hood-winked with a rope or cord around their neck, called a “ cable tow : ”

That in the royal arch degree, they affect to enact the sublime and sacred scene of God appearing to Moses in the burning bush of Mount Horeb :

That it is anti republican and an insidious and dangerous enemy to our democratic form of government :

That it creates and sustains secret orders of nobility in violation of the spirit of the constitution :

That it is a regularly organised kingdom, within the limits of this republic, assuming and secretly exercising all the prerogatives and powers of an independent kingdom :

That it secures an undue advantage to the members of the fraternity over the uninitiated farmer, mechanic and laborer in all the ordinary business transactions of life :

It presses a corrupt brother in appointment to office :

It prevents the wholesome enactment and the due administration of the laws :

It corrupts our courts of justice, and converts the trial by jury (instead of being the palladium of our rights) into an engine of favoritism and masonic fraud :

Its whole tendency is to cherish a hatred of democracy and a love of aristocracy and legal forms and powers.

For the reasons, I hope that this amendment will be adopted and become a part of the amended constitution of the state.

Mr. CHANDLER, of Philadelphia, said I have never Mr. President obtained the floor in this convention with less desire to occupy your attention than at the present moment, and if it were not that my motives might be mistaken, I should certainly relinquish the advantage I hold and suffer the occasion to pass without a comment. The time of this convention is too short to waste in the discussion of irrelevant questions, and I can imagine none more irrelevant than that of free-masonry. I am also unprepared with any peculiar set terms of assault or defence, and the gentleman from Lancaster, it will be remembered, came hither with missiles all proved, and of familiar exercise, drawn from the great armory of anti-masonry.

I had hoped, Mr. President, that as the great *Jupiter tonans* of anti-masonry, (Mr. Stevens) was engaged in his legislative duties at Harrisburg, if indeed he should not therefore be styled the *Jupiter Capitolinus*, that we earth-born and earth-pressing masons might have passed unscathed, or comforted ourselves with the good old proverb, *procul a Jove procul a falmine*, but, sir, our confidence was not well founded, the gentleman from Lancaster, envious of the thunderer's fame, has seized his bolts and scattered abroad the tempest as if a revolution had broken out in the anti-masonic Olympus : let him beware of the re-action.

There is, sir, nothing new in the language or the sentiment uttered by the gentleman from Lancaster ; they are the stale worn out slanders of a politician who has lately changed his coat. I congratulate the gentleman on his oracle. I give him joy of his political preceptor, who has marked out for the delegate from Lancaster a track which must be pleasant to follow, because it is full of variety, always changing.

It is of little consequence to me, sir, or to this convention, whether the order assailed on this floor can establish to antiquity, a claim which the gentleman has so earnestly denied, but I may say to him that he is less acquainted even with the literature of our language than I had sup-

posed him, if he imagines that the order can show no record of its existence beyond 1737.

I have, sir, on more than one occasion when I have seen the storm gathering here, bared my head to the blast, and let it pass in silence. Though injured if not insulted by the language used, and the unjust imputations cast upon those with whom I am associated, I have from respect to this honorable body and especially to the political party of which I am a member, forborne retaliation—and I now feel that the marked attention given by the members of this convention, is not due either to me or my subject, but is caused by the political relations in which I stand to the gentleman who has thrown down the gauntlet; that attention shall not be abused. I shall notice only a few of the gentleman's stereotyped charges.

"The silence of the press under masonic influence." Surely the gentleman was unwise to refer to a *silence*, which if broken must have covered him and his partizans in unspeakable shame; the press spoke manfully of the outrage which gave rise to the anti-masonic party, and never ceased its censure until it was obvious that busy meddling men whose want of talents sunk them in significance, and whose want of industry kept them in poverty, were using the excitement to place themselves at the top of the ebullition and to secure a sort of consequence by the crime of another, which their actual position would never have given them, their vices being of too contemptible a kind to excite extensive notoriety, and their virtues being of that unknown quantity for which science itself has no exponent.

The press in honest hands, Mr. President, said all that public good required, or that a public wrong rendered necessary. The party to which the gentleman from Lancaster seems to be anxious to be considered a head, however, seized that engine of public good and turned it upon the people in a way disgraceful to themselves, if they could be disgraced, and injurious to public morals. They "abused the press most" as bad as did their prototype of old—Sir John Falstaff.

The gentleman from Lancaster has comforted himself with the thought that in quoting from the letters of Colonel Stone, he has used against me the *argumentum ad hominem*. I have nothing to say of the letters or the man; except that I love and esteem the latter for his worth—and the former I regard as one of those evidences of a peculiar *idiosyncrasy* that received perfect confirmation, on a more recent production upon another popular subject, viz: animal magnetism.

As touching the oaths, with which the gentleman from Lancaster has edified the convention, and imputed to the masonic order, I have little to say; excepting that they seemed to me to be little else than giving special force to certain moral duties, in those who assumed and kept them—and justifying the charge of moral perjury, or false swearing against those who voluntarily took and as voluntarily broke them. I leave the gentleman, however, to settle the question of false swearing with his favorite authors.

But, sir, the titles worn by certain officers of the masonic societies grate most dissonantly on the democratic ears of my friend from Lancaster. How democratic, Mr. President, the Lancaster converts from good old

federalism attempt to be! But what titles do the masons use among themselves, which the most straight-laced democrat of our country, the gentleman from Lancaster himself, does not bestow on others? If the principal officer of a masonic chapter is, within the chamber where he presides, and there alone, styled "*most excellent*," does not my politically puritanic friend, when he addresses his favorite anti-masonic governor, call him "your excellency?" If the presiding officer of a lodge is called the "*worshipful master*," does not the gentleman from Lancaster, most learned in the law, address the court, which of course he rules with his eloquence, by the title of "your honors." The difference is this, that with the masons the title is only used among themselves, with others it is public, and becomes a part of the customs of our commonwealth, as it is a constitutional *right* in Massachusetts.

Mr. President, the gentleman from Lancaster, has denied with great vehemence that freemasonry is a christian institution. I am, sir, somewhat advanced in the order—have been a member of the institution for more than twenty-five years, and now preside over the highest order of free masons in the commonwealth; holding the office which the gentleman has denominated grand high priest, and I assure the gentleman that masonry never made any pretensions to a christian origin—they never claimed it for themselves, and they never asked to be so considered by others.

It is a charitable—a philanthropic order—feeding the hungry, clothing the naked, and comforting the afflicted, of every clime and every creed. It includes in its numbers, Christians, Jews, Mahometans, the Chinese, the African and the Indian—all kinds and all classes of men, excepting atheists and anti-masons.

The gentleman from Lancaster, has declared that anti-masonry is not proscriptive. Why, sir, no one has assailed anti-masonry here. We act on the defensive alone. But the gentleman may, perhaps fail to establish the fact which he asserts in favor of his political order, which denies employment to the mason—shuts against him the door of political preferment—meanly truckles to receive his vote, and then with pharisaical pride, denies him the crumbs which fall from the table which his own labor has spread.

The gentleman has renewed the stale charge of murder, and defeat of justice in the case of William Morgan.

Mr. President, I mention that name with becoming respect, it is marked with red letters in the calender of anti-masonry. But, sir, I remember a case which is not dissimilar. I heard it reported upon the floor of the house of representatives at Harrisburg, when with some twenty-three other citizens I had been dragged to the bar of that house because I was a free mason. It was related by the representative from Warren, I think.

"A discussion arose in a town in that county, between a mason and an anti-mason, upon the subject which is now occupying the attention, and wasting the time of the convention. The anti-mason at length bit the mason with such severity that he caused his death. The culprit spite of the exertions of his political partizans was imprisoned. The trial was postponed, and at length the prison was broken open, and the pri-

soner let out. The rabid anti-mason was suffered to escape and go at large, unmuzzled and unwhipped of justice. Anti-masonry, sir, was operative then, to defeat justice, and destroy the supremacy of the laws."

I feel much disposed to take my seat Mr. President—the subject is out of place in this convention, and if I had been at all instrumental in bringing it hither, I would apologize for the error, and abate the evil. But I think that I may be allowed to ask the attention of the convention to a few words more.

Suppose, sir, the amendment should be adopted, and that no freemason should be allowed to hold office in Pennsylvania—that you should deny to him the right of a freeman, what would be the next step? For you would not stop there.

I ask the members of this convention whether all the tales of horror which the gentleman from Lancaster has dwelt on with such force, are at all to be compared with what has been charged, and believed by some, concerning the priests of the catholic church. Is the murder of Morgan comparable to the alleged torments of the inquisition?

If I had Fox's book of the Martyrs, I would shew you, sir, upon authority about equal to that which my friend from Lancaster has quoted, that the Roman Catholics have been as bad as the masons—and of course they must be dealt with accordingly.

Well, sir, having disposed of these two classes, the episcopalians might next come in for a share of political ostracism, and thus sect after sect be excinded, until none were left but pure anti-masons to share the offices and hold the rod. There would be a regular sifting and bolting—just such a selection as was made by the Israelitish leader, to whom the gentleman from Juniata, (Mr. Cummin) recently referred.

The gentleman from Lancaster, speaks of the defeat of justice by the interposition of masons in favor of those charged with the outrage in the western part of New York. I am not prepared to explain every circumstance to which the gentleman refers, and I presume that most of the charges to which he alludes are her altogether gratuitous. But I would ask gentlemen, as men and as christians, if a member of their church was charged with a dereliction of duty, whether it would be a just act to turn him, without inquiry, from your door, and thus tell the world you believe him guilty?

It would have been more of a christian principle, and so perhaps the masons thought, to sustain the arm of the feeble one—to minister to him, and, in the ordinary maxim of the law, consider him innocent until they proved him guilty. This, at least, is a masonic rule, if it is not a christian one; and I presume it is upon this rule they acted.

This subject that I play upon has made some good music and fine dancing. I will not, therefore, dwell upon it. With the exception of the gentleman from Northampton, (Mr. Porter) I am probably the only one of this persecuted body here, that will venture to say a word. And I do not ask that this resolution may not pass. I should not vote upon it. I should throw all the odium upon those who brought it here. And suppose it should pass and become a part of the constitution. The very

height of the ambition of its authors here, would be destruction to them. Let them make a law that masons shall not vote, and what would be their political condition. They hold office now under the vote of free masons.

I will call to the recollection of the gentleman from Lancaster, (Mr. Reigart) in the most solemn manner, the circumstance of the dead body of their saint having been discovered at low water mark. I will call to the recollection of the gentleman the anti-masonic lodge that was called on the occasion—the wife designating him as having a scar on his toe, and how the body was carried forth and buried with cries and groans, and how the honest man whispered, “why this is not Morgan, this man is six inches shorter than the other.” “True,” he says, “that is true—but he is a good enough Morgan until after the election.” This is a grave matter; all these things are good enough until after the election.

But, sir, permit me to say that all these charges against free masonry are utterly false. I lay my hand upon my heart, and say that they are utterly false. Free masonry is a charitable institution, and suffer me here, as knowing well this institution, to reveal to you what its character is. The information may be worth something.

We who become members of that order, deposit in the public treasury a sum of money, which sum is to be required of every body who joins the order. When we visit distant parts of the world, as one in want, poor, sick, or destitute, we are entitled to relief. We may demand in China from the treasurer there, a sum of money for that which we have deposited here. And upon the mode of demanding depends the secrets of the craft. There is nothing, I believe, unconstitutional in this, and I know that there is nothing in it which is in opposition to the great, the revered precepts of christianity. It has been charged on this floor, that masonry is a blasphemous institution, indecent in its rights. I deny the fact. I speak in the presence of men who know the truth of my assertion.

The gentleman from Lancaster, who has made these grossly false charges, has done it almost upon the grave of the sainted, the beloved Bedell, the pastor of St. Andrews Church, in Eighth street—the zealous and active principal officer of that high order of masonry, against whose rights and ceremonies, the gentleman in his false and indiscriminating zeal, has charged indecency and blasphemy. In Philadelphia the name of Bedell, is not thus associated.

But, sir, I waste time. I might invite the attention of delegates to a thousand excellent, eminent, and philanthropic individuals, who have lived and died members of that order. But, sir, I was not sent here to defend it; and I presume that, in attempting to do so, I should rather offend than please my brethren. We live in love, and would rather please a friend than embitter an enemy.

But a gentleman, whom I respect as a friend, has declared that the present amendment, if inserted in the constitution, would deprive him and thousands of our fellow-citizens of those rights which our fathers, who were themselves free-masons, secured for us, and handed down to us, that we also, in our time, might transmit them to our posterity; because the rights of liberty are not more certainly descended from Washington

and his followers, than are the rights of free-masonry. Since I came here, there have been laid on the table a pamphlet which the gentleman from Lancaster seems to think something extraordinary. I am mortified to find upon its title page, the name of the governor of this commonwealth, who has turned aside from the high duties of his station to assail free-masons.

"Ocean into tempest tost,  
To waft a feather, or to drown a fly."

In that pamphlet, the author quotes, with a spirit of triumph, a remark by one Colden, viz: that he "never knew a great mason that was not a great fool."

Now, Mr. President, what office was vacant at that time, or what committee of nomination was in session, I cannot tell. But when the assertion was made, or about that time, Dewitt Clinton, a name to be revered, was the grand high priest of free-masonry, in the state of New York; and at the close of the masonic year, resigned his charge, his jewels, and his office, to Stephen Van Rensselaer, an eminent philanthropist, a defender of christianity, a man who was universally loved and respected, and whose name is yet held in reverence by all who know him. And yet that man, according to the argument of the advocates of this school of politics, was a great fool. Be it my pleasure all my life long, to be yoked with such men! to share their folly and their greatness.

Let me not be considered, in any thing I may here have said, as desiring to wound the feelings of any man. I have been so often charged on this subject with evil motives, that I have learned the christian duty to bear and forbear—to give and forgive; and whilst I defend in debate an institution which has been thus fiercely assailed, I would rather be considered as deprecating the passage of an improper resolution which has been presented to this convention, than as speaking in defence of an order usually ranked as a secret society, but which is no more so than any association of lawyers, carpenters, and shoemakers. I have given you a revelation of a great portion of its secrets; the rest may be purchased for a like sum. We cannot expect to have sisters, as the gentleman from Lancaster, (Mr. Reigart) says, but if they come we shall be glad to see them.

Mr. President, I have finished what I have to say in relation to this resolution. I regret that the gentleman from Lancaster did not permit a silent vote to be taken upon it. I regret that he felt bound to assail me, not personally, but as the conductor of a public press, and a member of an institution, for a wrong that I never did, and never allowed to be done. I regret that he should have rendered it necessary for me to occupy so much of your time. But what I have done, I have done with the kindest feelings.

One word more, and then I will close. We have been spoken of as a political association, horded together for political purposes. I appeal to the experience of all the members of the masonic body to say, whether this is a fact or not. I appeal to your experience, Mr. President, when you were a candidate for congress, and were opposed by Thomas Kit...



era and Henry Horn. The former, the grand master of the grand lodge, and the latter, a past-master. I, a member of the same lodge with them, opposed both personally, and with my press. The grand master succeeded, but you had the masonic vote.

I appeal to the gentleman from Lancaster to say, whether I was not yoked with George M. Dallas and George Wolf, as state prisoners at Harrisburg, although we were the antipodes of each other in all that relates to the political questions which have agitated the country. I know that all these injurious things are said *pre forma*. Still they are fire-brands scattered about, inflicting injury and wrong; and he who knows what they really are, wonders how intelligent minds can be led into error by them. It is unkind, it is unjust, to assail any class of citizens when they are not in a situation where they can well defend themselves. Assertions are made, and are given to the winds, until the whole public mind is embittered against a class of citizens who, from the day they were first known in the United States, may challenge any other class, in point of integrity, piety, learning, and christianity; and for all those traits of character, which adorn the hearts of men, and make men love each other.

Sir, I have now closed. I had some few more observations to make, but I will not weary the patience of the convention. I know that any labored defence of this order is unnecessary. Its assailants are fast giving way, and the cause of masonry is again budding like the rod of Aaron—again its members are associating for benevolence—they are again feeding the hungry, clothing the naked, ministering to the wants of the sick and the destitute—presenting an asylum where men may meet without reference to political parties—and where all things good may be produced without injury to mankind. I hope that the anti-masons may be able to say as much of their institution, when they shall be called to account.

Mr. PORTER, of Northampton, rose and said :

I did hope the other day, when the gentleman from Allegheny (Mr. Denny) offered this same amendment, which, it will be recollected, was voted down by more than two to one, that we should not again have been troubled with this third or fourth edition of "Jenny dang the weaver." But it seems now that the gentleman from Lancaster (Mr. Reigart) was not then present in the convention, and that he had no opportunity of recording his vote or of making a speech, and I suppose he will not be satisfied until he has done these things. The gentleman has been pleased to define his ideas of free masonry, of which he knows nothing, and which he takes upon hearsay; and I will in return, on rather better data, give him some incidents in the history of anti-masonry, as I know it to be, and as I will prove it to be.

I say, then, that this is a persecuting attempt of a persecuting sect—a sect that is just worthy of the spirit which led John Rogers to the stake; for there is nothing upon earth that seems to have so strong a tendency to curdle the sympathies and dry up the fountains of charity in the human heart, as anti-masonry. Take a good man—a gentleman by education and by habit—a man who has been accustomed to sympathize with the

wants, the sufferings, and the misfortunes of his fellow men, and to perform all the kind offices of life to those about him—take, I say, such a man, and let him mingle for a time with anti-masons, and he becomes, in a very short period of time, as bitter as gall; he loses sight of the common charities and courtesies of life. In a word, he is transformed into a being as different to what he was before, as any two extremes that can be imagined.

Mr. President, I do not stand here as the eulogist or the defender of free masonry. It needs no defence at my hands. It is composed of men—there are some good and some bad. We do not suppose that all men in that fraternity are perfect. I believe that the perfectionists are not free masons, although I believe that there is such a sect as perfectionists somewhere in the states. But I could not suffer the opportunity to pass without saying something in reply to the gentleman from Lancaster, who has stigmatized us as every thing that is bad, not upon his own authority, but upon the authority of William L. Stone, a man who has swallowed anti-masonry, as he has swallowed animal magnetism, and as he would swallow any thing on which he can make money by gull-traps.

I am now a deputy grand master of the order of free masonry. I am neither ashamed nor afraid to own that I am a free mason. My father was one before me, but that did not prevent him from serving in the war of independence for seven years, nor did it prevent more than one of his sons from shouldering their muskets and marching out to defend their country when that country called.

I have taken upon me no obligation, I have made no promise, I have done no act inconsistent with the humble character of a christian, which I profess, inconsistent with my duties as a republican and a democrat, or inconsistent with the duties which I owe to myself and my family. I hold myself to be as good a man now as if I had never become a member of that order, and, probably, no better. But this I know, that had I lived strictly up to its precepts, I probably should have been a much better man than I am at this present time.

The gentleman from Lancaster (Mr. Reigart) has told us that some men say that masonry comes from heaven, although, he adds, it is not quite certain that it had not a more vulgar origin. One thing I will say, that I never heard even so much as a rumor that anti-masonry came from heaven, and in this respect, therefore, we have the advantage of him; but, on the contrary, I have never entertained a doubt that it came from a much lower source. And whilst I am upon the subject, I will tell you how anti-masonry got into the state of Pennsylvania, and how it exhibits itself in the county of Lancaster, as well as in some other parts, and I will produce my authority here in the city of Philadelphia, if it should be necessary so to do.

There were certain worn out politicians in the western part of the state of New York, who had run their round and worn out their welcome with the people. These men, notwithstanding their rejection by the people,

who had turned them out of their confidence as well as out of office, had still a longing after "the flesh pots of Egypt," and stood ready to avail themselves of any excitement which might bring them into notice. Billy Morgan's book, and the allegation of his abduction and murder, furnished them with a fitting occasion, and they made the most of it, by alarming the fears and exciting the prejudices of the ignorant, and to a certain extent, succeeded in the object.

A fellow from Berks county, who had been educated for a German clergyman, but whose lack of moral principle being discovered in time, preserved the ministry of the gospel from being disgraced by his admission into it, then turned his attention to store-keeping, and having purchased large quantities of goods from Philadelphia merchants, whom he defrauded out of the amount of their debts, he absconded from his creditors to the neighborhood of the Niagara river, either in Canada or in the state of New York. He there thought it would be a good speculation to translate Morgan's book into German, and accordingly did so, and had it printed in the western part of New York, but for lack of German characters, he was obliged to use Roman letters in printing it. He loaded up a pedler's wagon, and posted off to enlighten the Germans of Pennsylvania with them.

The first lodgment he made was in Lehigh county, near the Lehigh gap. There, having enlisted a certain justice of the peace into his views, he began to vend his books and the infection spread among the Heidelbergers to a considerable extent. They have not got entirely clear of it yet. It spread thence to other parts of the county of Lehigh, and for a time changed its political character. Other persons finding the *book speculation* succeeding, reprinted the work in veritable German letter, and the country was inundated with them and with anti-masonic almanacs, and for aught I know, primers and spelling books also.

Some yankee pedler also took up the trade, and landing at New Holland in Lancaster county, he interested a wealthy old gentleman in the subject, who furnished him with the means to set up a printing press, and thus quit the business of vending threshing machines, wooden nutmegs, and the like. There, too, *the soil suiting*, the noxious weed took root in the natural way, and spread to a considerable extent.

It is very well known that we have had two great parties dividing our citizens, the democrats and the federalists. When anti-masonry took root it had proselytes from both these great parties, although in the onset, it did not number many of the leading or very respectable men of either, and they soon arrayed themselves against the leading measures of the democratic party.

About the time that anti-masonry began to assume something like political importance in our state, there had been a very respectable party known by the name of national republicans, composed of moderate, and for the most part, disinterested men, taken from the ranks of both the leading parties of the state, to which party the gentleman from Lancas-

ter, as well as myself, had the honor to belong; and I well remember the honest horror, which he in common with myself then entertained, of the idea of a party based on no *principle*, as we believed anti-masonry to be, should be made the stalking horse for knaves to ride into power on the ignorance and prejudices of the weak and uninformed. But considerations of *interest* have some times, nay, too generally, an influence on human actions; and it was so in relation to my national republican friends. Instead of adhering to and maintaining their principles, for temporary and local considerations, they became hewers of wood and drawers of water, for that *thing* called anti-masonry, and they and I bid adieu, and I rather think forever. I warned and cautioned them of the consequences of their dereliction of principle, and of the unholy union they were about forming; but they were deaf, as well to entreaty as to the prophetic voice of warning addressed to them, and verily they have reaped their reward in their utter prostration and annihilation. There was no one whose conversion to anti-masonry more astonished me than the delegate from Lancaster, and when he was gone, I could only say, "Ephraim is joined to his idols, let him alone!" But enough of this.

It is claimed for anti-masonry that it is not only not proscriptive, but that it is pure. Sir, it is not only relentlessly proscriptive, but it is rotten as corruption itself. It has entered the temples of religion, there to instil its baleful and malign influence. It has entered the sanctuary of justice, and polluted its fountain at the source. It has contaminated the jury box by interfering with and *packing* the whole of the jurors provided for grand inquests, as well as for traversing issues. I speak in perfect confidence on this subject, for I can at any moment produce the proof in support of what I assert. A few indubitable and well authenticated cases need only now be named, for the accuracy of which in every essential particular, I pledge myself.

Some years since, when anti-masonry had the entire sway in Lancaster county, the commissioners and sheriff were drawing a jury. The law has thrown wise safeguards round the selection and drawing of jurors, so that if the sheriff and commissioners are governed by any thing like moral principle, or have any regard for the sanctity of an oath, there is a reasonable prospect of having honest and impartial men for jurors. They are required to swear before the heart-seeing God "to use their best endeavors to make an impartial selection of competent persons for jurors, and not to suffer partiality, favor, affection, hatred, malice or ill-will, in any case or respect whatever, to influence them in *selecting, drawing, or returning jurors,*" &c. Yet, sir, in the face of this oath, and in the teeth of duty and honesty, the anti-masonic commissioners of Lancaster county were on one occasion drawing jurors from the wheel, when one of them was observed to be *tearing up three of the ballots drawn*, and when they had left the office, the pieces were picked up from the floor, and on them were written the names of "Joel Lightner," "Henry D. Overholzer," and, I think, "Israel Carpenter," three gentlemen who happened to be members of the masonic order. The sheriff (Mr. Miller) was no party to this villainy, and as far as in him lay endeavored faithfully to select the persons to be put in the wheel; and the anti-masons of Lancaster county

then, in order to control him in this respect, elected the former sheriff a commissioner, whose practice on this subject was well known and could be relied on. This, sir, was done to prevent an honest selection of jurors, and in order to place the administration of justice in the hands of that vile thing, anti-masonry; and the complexion of the jurors in Lancaster county shews that the same thing is persisted in at this day.

Here, sir, is a high handed attempt successfully made to invade, to destroy the sacred and invaluable right of trial by jury. Show me that free masonry ever committed so foul an act—ever perpetrated so glaring an outrage on the administration of justice, and I will strip myself of the insignia of the order, and abandon it. I call upon the delegate from Lancaster to point out, if he can, conduct of masons to compare with that of his anti-masonic politicians of his own county.

Upon what authority has that delegate undertaken to revile our order? Why, he refers to Barnard's Lights of Masonry. If Barnard did take the oaths he mentions and publishes to the world as having been taken by him, he makes himself out a precious and perjured scoundrel. As to him, however, as well as Colonel Stone, he is a perfect gull-trap—making up books to sell, with little regard to the subject matter contained in them, if they only sell. It was quite natural for the man who was credulous enough to believe in animal-magnetism, to have full faith in anti-masonry also.

Another sample of anti-masonic interference with the administration of justice, had occurred in Lehigh county, and in the infected district of Heidelberg. A man named — Rex committed the crime of forgery, by putting his neighbor's name to a note for the payment of money. The thing being discovered, he was arrested and brought before an anti-masonic justice of the peace, there being none of any other sort in the township. There was a terrible fluttering in the camp. The anti-masonic fraternity of the neighborhood were convoked, and they had the matter arranged, and the anti-masonic justice permitted it to be settled, and never returned the recognizance to court.

These things were truths as clear as the sun at noon day, and could be proved to the letter; and this very Rex himself has since been commissioned by your anti-masonic governor, Joseph Ritner, to be a justice of the peace. Had free masons done the like of this, every anti-masonic paper in the state would have proclaimed the outrage of the fraternity to the world.

Anti-masonry is not proscriptive! says the delegate from Lancaster. What, I would ask, was the character of that tribunal at Harrisburg in the winter of 1835-6, before which my friend from the city (Mr. Chandler) and others were arraigned? and the object of which was to further their political schemes. That tribunal compelled the attendance of highly respectable citizens from different parts of the state, required them to come before it, and imprisoned them. The anti-masons behaved, on that occasion, worse than any inquisition could have done at this enlightened day. They undertook to do by day what inquisitors would not do by night. They departed from the legitimate purposes of the assembly. They were sent there to make laws, and they converted themselves into a political inquisition.

But, thank God, the people were soon aroused to a sense of their danger, and that party have been properly marked from that day to this, and they have given such proofs of their utter recklessness, that the people will never trust them again. They shewed the cloven foot of anti-masonry—they shewed the tyranny of which they were capable—and they shewed what they would do if they possessed the power. And to such an extent did they show it, that his (Mr. P.'s) word for it, they never would have another opportunity of practising upon the feelings of the people again. They were rebuked by the voice of the public, and told in language not to be misunderstood, that their days were numbered, and their power at an end.

Why, to such an extent was this humbug of anti-masonry carried, that in some places the clergy were prohibited from baptising the children of free masons. And, they were told it was necessary, in order to put down this vile thing called masonry! He who undertakes (said Mr. Porter) to purify any sect, or institution, should come with clean hands to the work. He (Mr. P.) had already said, that he did not expect after what had taken place the other day, that we should have had this subject brought up again.

I should have been content that a silent vote should have been taken on this amendment, but the gentleman from Lancaster entered upon a crusade against free masonry, and if, in self-defence, I have carried the war into Africa, the fault is not with me. I have yet plenty of facts in store, and, if this debate should be continued, I may hereafter feel it my duty to produce them. For the present, however, I have given enough. When I see what the course of these gentleman will be, it will then be time enough for me, should it be necessary, to produce a few more proofs of the villainess of this sect of anti-masons. I do not speak personally, and I have no desire to give offence to any man; but I speak of the principles, if principles they can be called, which characterize this sect. I speak of the grounds upon which they have started—I speak of the means by which they have sustained themselves. If I have exhibited a picture, true to life as it is, such as ought to disgust the minds of men, I shall have answered every object which I had in view, and I shall at once feel satisfied that this convention never will tolerate such a proposition as that which is contained in this amendment. What, I will ask, has this matter to do with the fundamental law of the land? It has nothing, it can have nothing to do with it. Your constitution is to contain principles of government. It is not designed to contain any thing like a criminal code. If this were a proper subject for legislative action, it should not enter into the fundamental law, but should become a subject only for legislative enactment. But it has nothing to do even with that. I am a Presbyterian. My neighbor is a Lutheran. Another man is a Roman Catholic, and another man is a Methodist. Each follows the bent of his own judgment, and each worships God according to the dictates of his own conscience; and you might as well proscribe any one of these denominations as proscribe free mason. I choose to belong to that order. You can not deprive me of that right. And this convention has already spoken in terms which no man can misunderstand, and has told you, by a vote of two to one, that it will tolerate no such idea as is contained in this proposition. I have finished.

Mr. DARLINGTON, of Chester, said. Mr. President; it is a source of some gratification to me, that I have obtained an opportunity to say a few words on this, which I regard as of much importance. I had scarcely hoped to be so fortunate as to get the floor, owing to the number of gentlemen about me who, as I perceive, have been anxious to obtain it.

I will here take occasion to say, that this immediate question to which so frequent a resort has lately been made, is becoming a nuisance. It tends to choke off proper and legitimate debate, and I trust that, in this instance at least, no gentleman will so far forget what is due to the members of this body as to call for it. We are not pressed for time; we have time enough to do and say, all we have to say and do, between this time and the day fixed upon for our final adjournment.

I trust, therefore, that no gentleman will seize upon the opportunity, when I have closed my remarks, of calling either for the pervious question or the immediate question. Let both parties be heard.

The simple question before us is, shall we make a constitutional provision which will have the effect to discountenance the further progress in the state of Pennsylvania, of societies bound together by secret oaths unknown to the constitution and the laws. This is the question which we are now called upon to decide.

I can not feel any surprise at the course which has been adopted by the gentleman from Northampton (Mr. Porter.) I expected nothing more and nothing less from him on the subject of masonry, than that instead of defending the order, he should have set himself to work to abuse and revile those who entertained opinions which might not be in accordance with his own. I had scarcely expected, however, from the gentleman from the city of Philadelphia, (Mr. Chandler) such a line of conduct as he has thought proper to pursue on this occasion. I say, I scarcely expected it from him; because it is known to me that he has been admonished by some of his masonic brethren, that so far as concerns his course in relation to masonry altogether, he has displayed more chivalry than prudence. I had hoped that he would have taken counsel from those who have heretofore acted with him in masonry—that he would have laid his chivalry aside, and would, on this occasion at least, have acted on prudential considerations.

The gentleman said what I did not expect to hear from him. He attributed to the gentleman from Lancaster, (Mr. Reigart) who is undoubtedly able to answer for himself, quotations from Richard Rush. Aye, sir, and thus it is. Whenever the subject of masonry is broached, the same common, the regular, the stereotype language is applied in order to revile those who have ever thought differently on the subject.

And what of Richard Rush? Is it less true—is it an answer for gentlemen to say, that because a gentleman has held high and distinguished posts—however much he may differ from ourselves on political topics—is it an answer to say that that man has advocated a particular doctrine, and that, therefore, we must give our sanction to it. I deny the whole conclusion.

This principle of antimasonry—for a grave and important principle it is however much the gentleman from Northampton (Mr. Porter) may endeavor to throw contempt over it—has nothing to do with Richard Rush. I tell the gentleman that that principle is firmly fixed in the affections of this commonwealth. I tell him that there is an abiding sense in the

minds of the people of Pennsylvania, that such combinations of men, bound together by secret and unlawful oaths, are inconsistent with the principles of a republican government, and that they ought not to be tolerated.

But, sir, we are told by the gentleman from the city of Philadelphia (Mr. Chandler) suppose that these oaths are true, there is no harm in them. Is it not a matter of surprise to the members of this convention, to hear such language as this coming from a source so respectable? I ask what it is in which the gentleman can see no harm? Is it denied that the oaths of masonry—of the master of the grand lodge and of the grand high priest, are not of a character calculated to excite disgust and abhorrence in the mind of every unprejudiced man? What is a master mason's oath? I will not take up your time by reading the whole of it, but I will just refer to a portion—which is in the following words:

“Furthermore do I promise and swear, that a master mason's secrets, given to me in charge as such, and I knowing them to be such, shall remain as secure and inviolable in my breast as in his own, when communicated to me, murder and treason excepted; and they left to my own election. To all of which I do most solemnly and sincere promise and swear, with a fixed and steady purpose of mind in me to keep and perform the same, binding myself under no less penalty than to have my body severed in two in the midst, and divided to the north and the south, my bowels burnt to ashes in the centre and the ashes scattered before the four winds of heaven, that there might not be the least tract or trace of remembrance remain among men or masons of so vile and perjured a wretch as I should be, were I ever to prove willfully guilty of violating any part of this my solemn oath or obligation of a master mason. So help me God, and keep me steadfast in the due performance of the same.”

Here, continued Mr. D., is an oath taken with all the solemnity which can be thrown about it—an oath to keep the secrets of a brother mason, with the exception of cases of murder and treason, and those also, if the person to whom it may be administered, shall so please—I say, an oath of this character is taken, and yet the gentleman from the city of Philadelphia, who here boasts of being a grand high priest of the order, tells us that he can see no harm in it. I again ask the members of this convention whether they expected to hear such a principle as this advocated and defended by the gentleman from the city of Philadelphia?

But it did not stop here. What, he asked, was the royal arch mason's oath?

“Furthermore do I promise and swear, that I will aid and assist a companion royal arch mason, when engaged in any difficulty, and espouse his cause, so far as to extricate him from the same, if in my power, whether he be right or wrong. Also that I will promote a companion royal arch mason's political preferment in preference to another of equal qualifications.”

Now, he would ask if the gentleman from the city of Philadelphia saw no harm in this? Was he prepared to sanction a doctrine of this character, that one member of a society should assist and protect a brother member in any difficulty into which he might fall, no matter whether he have right or wrong on his side? He would ask if this principle was not



abhorrent to every feeling that should actuate a man? He would inquire whether, in a community like that of Pennsylvania, they were prepared to tolerate the idea of a secret association of individuals being bound together by the most solemn and profane oaths, to defend each other against all attacks, no matter whether the parties were right or wrong! What! a man having committed murder, and in danger of being apprehended and brought before a judge for it, was to be defended by his sworn brothers, whose duty it was to defend him—whether guilty or not! And, was there no great harm in doing so? He would ask whether the convention were prepared to sanction so horrible and monstrous a doctrine? For his own part, he candidly and conscientiously declared that he was not.

He regarded the existence of masonic societies as anti-republican. Never had he anything to do with masonry, and he trusted that he never should. He numbered among that order many of his own relatives, who were near and dear to him; and he saw gentlemen all around him, of high integrity and honor, many of whom might be members of the order. He, however, had nothing to say against masons, as individuals, but only against the principles of the society.

The gentleman from the city of Philadelphia, (Mr. Chandler) had amused himself by giving a fanciful description of some proceedings on the part of the anti-masons, during which a mason was bit by an anti-mason, and afterwards became rabid. He had not expected to hear from any member of the city delegation, and more particularly a conservative member, such an argument, or such an appeal, as had been addressed to this body by the gentleman, (Mr. Chandler.)

The gentleman from Northampton, (Mr. Porter) had related some facts in regard to what he purported to have taken place in the county of Lancaster some years since, as to the selection of a juror by the anti-masons. With respect to the accuracy or inaccuracy of this information, he (Mr. C.) had nothing to say. But, he presumed that the members from Lancaster were fully able to set the matter in its proper light—to give the true version of the matter. He would venture to say that there was no truth in it. The gentleman from Lancaster (Mr. Reigart) could state whether or not there was any truth in the story.

But, admitting it to be true, was there no punishment precribed by law for an anti-mason as well as a mason? Certainly there was. Were we not told that, because one individual out of eighty thousand of the people of the commonwealth, who were opposed to masonry, might have acted wrong, therefore their opinions were to be treated with ridicule and contempt?

Was it any reason why, because the gentleman from Northampton, (Mr. Porter) had stated facts, or drawn from fancy a picture implicating a single member of the great family of Pennsylvania, eighty thousand petitioners should be precluded from bearing evidence against the evils resulting from the existence of such a society? He trusted that a very different result would be arrived at.

So far as had come within his knowledge anti-masonry had had a very beneficial effect, particularly in the intelligent and populous county of Chester, which he had the honor in part to represent. Not a single

masonic lodge was now to be found in the county. The honest and discreet have abandoned masonry, and the principles of anti-masonry are triumphant.

He trusted that the present state of things would long continue. He would say that this oath bound institution of masonry, now existing in the commonwealth of Pennsylvania, by which one member is sworn to defend his brother member, in all his enterprizes, whether right or wrong, has yielded to the force of public opinion in the county of Chester. It no longer existed there. And, if any man was so foolish as to join the masons, he must seek some other county; he must go to the county of Delaware, or some other county to become a member of the lodge. Eighty thousand of the citizens of Pennsylvania were totally opposed to masonry, and they would never yield the principles they held in regard to that institution. Could he have heard correctly when he understood the gentleman from Northampton, denounce eighty thousand citizens as a persecuting sect?

Mr. PORTER, explained. About ten thousand are anti-masons. The rest are hewers of wood and drawers of water to them.

Mr. DARLINGTON resumed. He denied that the anti-masonic party were a persecuting sect. Look at the vote of the party. The delegate from Northampton, would find on proper examination, that there were eighty thousand at least; and he (Mr. D.) trusted that by this time, there was a greater number. What, he would ask, was the object of this persecuting sect, as the gentleman called them? Why, it was to have inserted the proposition offered by the gentleman from Lancaster. Was there any attempt to persecute by that amendment? No. But, as the argument had already been sufficiently answered by the gentleman from Lancaster, he (Mr. D.) would not detain the convention with any remarks in regard to it. He would ask those members of the convention, who do not belong to either party, whether in their secret hearts they were prepared to say that it was right, in a republican form of government like ours, for any portion of the people to be bound together by secret and unholy oaths? He put the question to gentlemen as moral men—as good citizens of a moral community, whether they could by their votes, sanction the principle of men being bound together in this manner? He asked gentlemen to answer the question calmly and considerately, and to give such an answer as they would have not the slightest hesitation to stand by hereafter.

The proposition now before the convention was one that deserved its serious consideration, because eighty thousand of the freemen of the commonwealth desired the insertion of some such provision in the constitution, not with a view to disfranchise any portion of the citizens, but in order to secure to all their just and equal rights. He would ask on what principle it was that any man could vote against the proposition? He would support the proposition purely on the ground that it was necessary to prevent men from being operated upon by an improper influence to the inquiry, herhaps, of the rest of the community. Liberty and equality are our watch words. Let there be no secret influences. The revered name of Clinton, was on record against masonry. De Witt Clinton, who stood at the head of his own state, and who was a good and great man, said in one of his orations, published in Niles's Register,

and the authenticity of which never was doubted, that masonry had been used for political purposes. Now, when the gentleman from Philadelphia, eulogized his great pattern, he should have given us all he did say—that masonry had been used by many to advance political prospects. If it was capable of being used for improper purposes as Governor Clinton said, then he (Mr. D.) would ask whether this convention ought to give it their sanction? It had not been his intention to have said any thing on the subject, but the extraordinary course of the gentleman from the city, (Mr. Chandler) had induced him to say something.

Mr. FULLER, of Fayette, moved the previous question, which was sustained.

And on the question,

Shall the main question be now put?

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

YEAS—Messrs. Barclay, Bedford, Bigelow, Brown, of Northampton, Clapp, Crain, Crawford, Crum, Darrah, Dickerson, Doran, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helfenstein, High, Hyde, Kennedy, Krebs, Lyon, Magee, Mann, Miller, Myers, Overfield, Ritter, Seager, Scheetz, Sellers, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Weaver, Woodward—41.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Butler, Carey, Chambers, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Cummin, Cunningham, Curl, Darlington, Denny, Dickey, Dillinger, Donnell, Earle, Gamble, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Jenks, Keim, Konigsmacher, Long, Maclay, Martin, M'Cahen, M'Sherry, Meredith Merrill, Merkel, Montgomery, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Ritter, Royer, Russell, Scott, Seltzer, Serrill, Shellito, Sterigere, Taggart, Thomas, Todd, Weidman, Young, Sergeant, *President*—66.

So the question was determined in the negative.

Mr. LOXC, of Lancaster, rose and addressed the chair as follows :

Mr. President :

After the courtesy which has been extended to me by the convention in refusing to sustain the previous question, in order, as some of the members have expressed themselves, to afford me an opportunity of expressing my views upon the present question, I consider that a corresponding degree of courtesy on my part demands that I should be as brief in my remarks as the question will admit. I shall therefore, not trespass long upon their patience by inflicting upon them a set speech, although the amendment offered by my colleague embraces principles which, for years past, I have cherished with the fondest regard, and which are deeply embedded in my heart, but inasmuch as the subject was fully investigated by him, I concluded not to trouble the convention with any remarks upon the subject, intending to be satisfied by showing my approbation of the proposed amendment by simply voting for its adoption ; but the course which the gentleman from Northampton has taken, compels me to change the conclusion I had arrived at previously.

That gentleman, with the true spirit and dignity of a worshipful grand master of freemasonry, instead of manifesting his usual courage by meeting the charges which have been preferred and proven against the institution, with that boldness which he has shown on other occasions, has

taken refuge behind what he conceives the evils of anti-masonry, preferring to take out the mote which is in his brother's eye to the beam that is in those whom he now defends, and in his zeal has been loud in his denunciations of the political party bearing that name, describing them as a persecuting set of broken down politicians. This song which the gentleman has sung with so much pleasure, is lacking in originality ; it has been so long used and has become so threadbare that it fails in most counties in the commonwealth to excite any attention. As for the people of the county which I have the honor in part to represent, they have too long been accustomed to the blustering denunciations and mournful cries of the lodge, to be startled by a blast from Northampton ; but as the gentleman has been principally pointing his remarks to the citizens of that county, a sense of duty as well as an honest pride for the character of those citizens, (I speak without reference to any political party,) induces me to say a few words in their vindication, although in doing so, I am well aware I am committing an act of supererogation, for the known purity of their character, is the best refutation that can be offered of the attacks which have been made upon them.

The apology I shall offer for the short time I shall occupy the attention of the convention, is the high regard I have for their virtues, for, to adopt in part the sentiment of a distinguished member of this body expressed on another occasion, the strongest pulse that beats in my bosom, save that for my own friends and the principles of liberty, is for the citizens of the county of Lancaster. Let us now make a short inquiry into the character of the people of that county, and ascertain if the gentleman has given a true history of them, and whether they belong to the desperate race of politicians that he would wish us to believe, (I mean the anti-masons of that county, because it was with reference to them that he spoke.) It has been my lot, and I may add my happiness, from a long intercourse with those people to become acquainted with their moral, social, intellectual and political character, and I am pleased to say with the utmost sincerity, that I do not believe that a more moral, intelligent and benevolent community exists in the Union. Their hospitality is proverbial, and although they do not spend their nights in revelry and dissipation in honor of an institution which claims to itself all love, perfection and decency, yet none are more ready to succour the distressed and alleviate the sufferings of the poor.

No man whose case merited relief, ever applied in vain to a true son of Lancaster county, if his abilities afforded him the means of granting assistance. They make no display of their kind acts, content with that reward which the recollection of having done a good act always affords to the virtuous, preferring that mode of doing good, to the example set them by that institution which makes large pretensions to charity ; who grudgingly dole out a few cents to relieve a distressed widow while it squanders thousands to protect the murderer from the punishment which the violated laws of his country requires. As to their political character, I believe they will not suffer when compared with the most patriotic part of the commonwealth. They have always in the darkest period of our national history shown themselves ready and willing to defend with their persons and with their means, our liberties and free institutions ; none have shown greater obedience to the laws of their country, no, not even old Northampton.

Another strong feature in their political character is, that they act consistently and from principle—they are none of your vacillating politicians who change with the diurnal motion of the sun—who to-day will be found fighting under the banner of the national republicans, and to-morrow on the opposite side. When they abandon one party to join another, it is from a thorough conviction that their country's good requires it; they never calculate the personal costs that they are subjecting themselves too. Neither are they an office seeking people. Blessed by a kind Providence with a soil, which from its fertility, has been justly styled the garden of America, yielding its fruits in abundance and surrounded with all the comforts of domestic life, they love to live by the sweat of their brows, and inspired with that independence which always is the attendant of honest industry, they never hesitate to express the honest convictions of their heart, and to carry them out into practice. And yet those men have been stigmatized as a set of persecutors and broken down politicians. Let me, sir, refer to an illustrious instance of those broken down politicians, as a sample of that sect to which the gentleman says the anti-masons belong, to show how much reliance can be placed in the accusation which has been made against the citizens of that county. I allude to Amos Elmaker, a name known to us all, and identified with the history of our country; alike distinguished for his moral worth, political honesty and literary attainments, who never sought office, but for whom office always went in search of. Almost from the moment he became eligible to office, he was honored with the confidence of the democratic party, having before he arrived at the age of thirty years—a period when the political aspirations of most men only commence—been honored both by the people and different chief magistrates, with some of the most exalted political and judicial stations that can be conferred upon a citizen. Yet with all the honors which those stations conferred upon him, I believe he considers them of much less value than to be considered a decided anti-mason. If then such men are to be considered as embraced by the denunciations of the gentleman, who would not glory to fall within the same circle?

The gentleman has also indulged himself in a vein of ridicule with regard to the death of Morgan, and telling us the old story that anti-masonry is about dying. If he can reconcile it to his sense of propriety to treat thus the memory of a man who has been cut off by the ruthless hand of the assassin for having dared to expose the abominations of freemasonry, I shall not envy him his feelings. With regard to anti-masonry dying, this has been so long predicted that if true, it must be laboring under a very peculiar and protracted disease, for instead of being enfeebled, it becomes stronger and stronger, until it has made itself the terror of that institution which a few years since we were told a world in arms could not stop its progress, and from present appearances hopes may be entertained that the day is not far distant when it will see buried, never again to be recusitated, the last remains of freemasonry.

He has also brought a charge against the late commissioners of Lancaster county, charging them with improper practices, in the discharge of their duties. With true masonic dignity, he has not deigned to furnish us with any evidence of the truth of the charges thus made, and as the rule of justice by which the accused is called upon to prove a nega-

five has not yet been I believe adopted in this commonwealth, and as I do not hail under the flag of radicalism, I shall not be the first to introduce that rule into practice, but content myself by saying that from my intimate knowledge of the sterling worth and unbending integrity of those commissioners, that they would be incapable of prostituting their office, for the purpose of pandering to the prejudices of any party, and no man in our county whose mind is untrammelled with the bigotry of freemasonry and acquainted with those commissioners, will for one moment give credence to the charge which has thus been made. After making this charge against the commissioners, he with an heir of triumph exclaims, "that he would much sooner belong to the institution of freemasonry than to such a party." He has a right to the enjoyment of his predilections, but I do consider it a most singular taste, and a curious system of morality. The institution of freemasonry as now understood, recognizes fellowship with one who has been engaged in taking away the life of a fellow being and requires a fellow member not only to give countenance to him, but to succor and relieve him; this was the situation with regard to the abductors of and murderers of Morgan, and the friendly conduct of the brethren of the lodge towards them, was in strict accordance with the precepts of that institution. There is another singular trait in the character of the gentleman's speech. At the first session of the convention he undertook to rebuke a member of this body for introducing and reviewing the political character of a gentleman who was not a member, and yet strange to tell, when freemasonry is the subject, he can, without any apparent compunctions of conscience, be guilty of what he then pronounced an impropriety.

As the gentleman has taken some pains to blacken the character of anti-masonry, it perhaps will not be mispent time, to occupy a few minutes in disabusing the minds of the members of this convention, in ascertaining the motives which gave rise to its political existence, and ascertaining whether it be a sect of persecutors, or whether its object recommends itself to the favorable notice of the patriot and honest politician. The spirit of anti-masonry had long been in existence, and in most of the counties of this commonwealth, many good and religious people had looked upon freemasonry with distrust, but it was not until emboldened by its strength, and after having paralyzed the strong arm of justice, that the slumbering spirit of anti-masonry was aroused to action; what was its object, was it a desire to office, or was it a desire to preserve the supremacy of the law?

Look at its political history and condition in its infancy, and there will be no difficulty to the unprejudiced mind, in arriving at a correct conclusion. A large majority of the members of that party were composed of the yeomanry of the county, men who had never mingled with the political strife of the times and ignorant of the stratagems and artifice which generally characterizes political warfare, with few papers to disseminate their principles, and their motives misrepresented, every effort made to destroy the usefulness of those presses which were established, and their places of meeting sometimes assailed by their political antagonists in order to disturb them in their deliberations, but trusting in the justice and purity of their undertaking, they submitted the decision of their cause, to their fellow citizens, and notwithstanding, the fearful odds against which they

had to contend, their antagonists being well trained, bound together by the closest compact, and lead by politicians, many of whom had grown grey in political management, yet at the first election which took place in this commonwealth and which rested upon the basis of anti masonry, it received a support which startled the friends of freemasonry, and in a few years thereafter a chief magistrate was elected to office, who recognizes the principles of anti-masonry in its fullest extent, and, sir, has not his elevation to office been productive of the most happy results? At the time the reins of government were placed in his hands the financial condition of the state was in a most deplorable condition, without funds in its treasury or credit at home or abroad, its citizens borne down with oppressive taxation, his friends trembled at the inauspicious state of affairs which awaited him, but his wisdom and the wisdom of a legislature co-operating with him, soon revived the drooping energies of the state, and as if with the influence of magic, extricated her from the difficulties with which she was surrounded, and once more placed her in that exalted situation which makes her the pride and admiration of every true son of Pennsylvania, and this was some of the fruits of that party which we are told is composed of worn-out politicians. Many of those who joined the cause of anti-masonry belonged to the Jackson party, and were honored and respected by them, a party then in the ascendancy. Who then can believe with the gentleman, that those men became anti-masons for the sake of office, when it was apparent that the party to which they were attaching themselves had not the power of conferring office upon them, and that the only party in which office could be obtained was that which they were leaving, because at that time the general and state government stood opposed to the principles of anti-masonry.

A few words with regard to freemasonry and I have done. That institution has been proven by evidence the most conclusive, to be selfish in its operations, and of the most pernicious tendencies, inconsistent with the principles of republicanism, and calculated, if the obligations which are imposed upon its members are carried out to their full extent, to pervert the ways of justice, to place citizens upon an inequality, and to blunt the tender sympathies of the heart. It would be an idle waste of time, after the evidence which has been adduced by my colleague, to trouble the convention any further by a reference to authorities, to prove the truth of what I have stated.

The murder of Morgan was legitimately the result of the masonic obligation which was imposed upon the votaries of the lodge, acting according to the habitual interpretation of the oaths which had been imposed upon them, for the actors in this scene were not men who were not capable of understanding the nature of the duties which their oaths required of them. Many of them before that event took place, held a respectable standing in society; for Colonel Stone, a royal arch mason, tells us, that a judge of the court of Genesee county, declared openly, that whatever Morgan's fate might have been, he deserved it—he had forfeited his life. Another magistrate, who always previously, had been counted a worthy citizen, asked, "what can you do? what can a cat do with a lion?" *Who are your judges, who are your sheriffs and who will be your jurors?* A high mason of New York, declared publicly, that the men engaged in the abduction and murder of Morgan, were the *most honora-*

ble we have in the country. Again, Col. Stone, who, it must be borne in mind, is an unrenouncing royal arch mason, after detailing the circumstances attending the abduction and murder of Morgan, says,—“nor was the crime perpetrated by ignorant or hungry banditti, or for the lust of power or of gold. The circle of the conspirators embraced, directly and indirectly, *hundreds of intelligent men*, acting not on the spur of the occasion, from sudden impulse or anger, but after long consultation, and weeks and even months of preparation. *Those immediately concerned in the conspiracy were men of information and of high standing in their own neighborhoods and counties, embracing civil officers of almost every grade, sheriffs, legislators, magistrates, lawyers, physicians, and even those who calling it was to minister at the altar in holy things*; along the route of the captive, the members of the masonic fraternity left their occupations, however busily or ardently engaged, and flew at a moments warning to aid in his transportation to the spot where his sufferings were ended. A clergyman preceded him, moreover, heralding his appearance from town to town, and announcing his captivity to the assembled brethren before whom he was simultaneously to deliver a discourse, dedicating a masonic temple to the service of God, and the holy St. John, and enforcing the golden maxim of peace, harmony, and brotherly love;—arrived at the end of his journey, the wretched victim was imprisoned in a fortress, over which the banner of freedom was streaming in the breeze, and finally murdered in a most cruel manner. When this outrage was discovered, what was the conduct of those vigilant sentinels of liberty, who upon the first appearance of danger, are generally ready to sound the alarm; did they call the attention of the public to a transaction, the bare recital of which is calculated to chill the blood of every one who has the ordinary feelings of humanity; did they call upon the people to fly to the rescue of their violated rights, and to sustain the majesty of the laws? Alas, they were spell-bound by the magic power of freemasonry.

No one was found who had intrepidity enough scarcely to notice the event; but by way of flattering that institution, they attempted to turn one of the greatest outrages ever perpetrated in any country into ridicule. How different was their course on another occasion. I allude to the outrage in Alton, Illinois, which, atrocious as it was, did not equal the case of Morgan. A distinguished and leading editor in this city, and now an able and honorable member of this body, notices that occurrence thus: “We published on Saturday, an account of the doings, the death doings, of a mob in Alton, while we may doubt the prudence of Mr. Lovejoy, and ‘wisdom dwells with prudence,’ in thus proceeding against the current of popular opinion, we cannot find words sufficiently strong to express our abhorrence of the horrible outrage upon the proprieties of society, rights of individuals, and the laws of God.” Nor can we think that the editor who announces the awful catastrophe has considered well the duties of his station, when he thus uses an exulting tone, in telling the tale of shame to his neighbourhood, and crime in the actors. The whole American press would have been in arms against the tyranny of foreign governments and the besotted ignorance of the people, had this affair taken place on the continent of Europe.” When did we find such language used and abhorrence expressed when the horrid Morgan outrage was committed? When was there any sympathies expressed in the



newspapers of that day for the wife and helpless children of the victim who fell a sacrifice to masonic vengeance? Alas! they were no where to be found—they were struck dumb before the mighty power of freemasonry.

In vindication of this institution, we have been told that instances might be produced where professors of the christian religion have, in the name of that holy religion, perpetrated acts of cruelty and bloodshed, but that it would be wrong to denounce the christian religion on that account. True, but the grand error in the argument consists in supposing the duties enjoined by christianity, and those enjoined by freemasonry, to be the same. You might as well compare light to darkness, or the ferocious feelings of the hyena, to the gentle temper of the dove. They will admit of no comparison, they are the very antipodes of each other. The christian religion never allows the perpetration of evil under any circumstances; whereas, freemasonry in certain cases not only allows, but approves and enjoins the commission of cruelties of the most hideous character. The memory of General Washington has also been invoked in support of freemasonry. But he might with as much propriety be referred to as the friend of slavery, because he held slaves, as the friend of freemasonry. Both I believe, were abhorrent to his feelings.

The question now is, shall the people of this commonwealth have an opportunity of declaring whether an institution fraught with so much mischief shall still hereafter be kept alive, or whether all men shall be placed upon an equality with regard to their civil rights. All that we ask is that the supremacy of the laws may prevail.

Mr. LONG, moved that the convention now adjourn.

The yeas and nays were required by Mr. INGERSOLL, and nineteen others, and are as follow, viz :

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Brown, of Lancaster, Brown, of Northampton, Carey, Clarke, of Beaver, Clark, of Dauphin, Coates, Cochran, Cunningham, Curll, Darlington, Denny, Dickey, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Long, Maclay, Martin, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Porter, of Lancaster, Purviance, Reigart, Russell, Serrill, Thomas, Weidman, Young, Sergeant, *President*—39.

NAYS—Messrs. Banks, Barclay, Bedford, Bigelow, Bondham, Brown, of Philadelphia, Butler, Clarke, of Indiana, Crain, Crawford, Crum, Cummin, Darrah, Dillinger, Donnell, Doran, Fleming, Foulkrod, Fry, Fuller, Gumble, Gearhart, Granell, Hastings, Hayhurst, Helfenstein, Hiester, High, Hyde, Ingersoll, Kaim, Kennedy, Krebs, Lyons, Magee, Mann, McCahen, Miller, Myers, Overfield, Payns, Porter, of Northampton, Ritter, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Taggart, Weaver, Woodward—56.

So the question was determined in the negative.

Mr. KONIGMACHER, of Lancaster, rose and said :—

Mr. President—This is the only question that has come before the convention upon which I am instructed to vote for an amendment to the constitution. We have a memorial on our files, from a very respectable "democratic antimasonic state convention," held in Harrisburg, during our session in that place, requesting the convention, by a unanimous vote,

to adopt an amendment, providing for the abolition of extra-judicial oaths.

This is not the only source from which we have instructions on this subject. We, the Lancaster county delegation, were elected to this convention upon the exclusive ground that secret societies ought not to be tolerated in our republic and that they are dangerous to the liberties of our country.

This opinion they have not founded on supposition, but on facts which have come under their immediate notice from time to time, but never to such an alarming extent until the atrocious abduction and murder of Morgan, in which the cloven foot of freemasonry was fully developed.

I well remember seeing the first newspaper that contained the inhuman outrage, of the abduction of William Morgan. It was printed in the state of New York and sent to one of my friends. It was handed about among the neighbors until it was worn out. I remember, also, that no editor in our state had the independence to publish the facts connected with that foul transaction. An occasional notice was seen in some of the newspapers, such as "Morgan was seen in Smyrna, or that he was trading in slaves," &c, endeavoring thus to cast the whole matter into ridicule. Not a word did we hear in our newspapers, in relation to the trials of those who were connected with the abduction and murder of Morgan, and who were screened from justice by the fraternity, until the people of Lancaster county took the bold and fearless step to establish a press of their own; which for a long time we were not permitted to locate in the city of Lancaster, the strong hold of masonry to this day, and even there, few will now acknowledge having any connexion with the lodges; and much to the credit of the county it may be said, that all the lodges have become defunct. I know of none now in existence, out of the city. I believe that in the city they only meet when the grand hailing sign of distress is given from Harrisburg or Washington, and when there is trouble in the ranks.

What newspaper editor had the independence to publish the trials of the abduction and murder of Morgan; the investigation of freemasonry before the legislature of Rhode Island, or the series of letters of the Hon. John Q. Adams to the Hon. Edward Livingston on the subject of secret societies, or of circumstances that had any connexion with the investigating of secret societies?—all of which were only met by dignified silence. I state these facts to show that the liberty of the press is polluted and prostrated, when under the control of masonic influence. Sir, when the liberty of the press depends on this contingency, it is high time that a remedy should be had.

If masonry be nothing more than a charitable institution, why shrink from every opportunity afforded them to vindicate the character of their institution, when an opportunity was afforded them by our state legislature of 1835 and 6, before a tribunal composed of the representatives of the people of Pennsylvania, to go into a fair, open and impartial investigation of their much injured order? Why did they shrink from that investigation, when they had it in their power, if unjustly accused, to refute the charges alleged against their devoted institution, and put forever at rest the excitement which has prevailed all over the Union for the last ten years? Eighty thousand freemen have spoken on this question in our own state,

in a voice not to be misunderstood, that masonry and republicanism cannot exist together. They are two distinct species of government.

To the constitution of the first, the individual must be sworn to adhere, before he becomes a member, and as he advances he is obliged to take an additional oath at every degree, subject to awful penalties. To the latter he is not required to swear to support its constitution, unless he be a foreigner. It will then be a question with the individual which constitution he will regard as most sacred and binding.

The constitution of the United States, in section nine, expressly declares that "no title of nobility shall be granted." Then, sir, in direct violation of this section, and in contradiction of every republican principle, free masonry assumes the most aristocratic and monarchical titles, which titles can only be acquired by taking a series of blasphemous oaths: such as excellent grand king—most excellent grand high priest—knight of redemption—knight of the holy ghost—and the like profane, pompous, and ridiculous titles, at the mention of which, the imperial honours assumed by Napoleon sink into insignificance.

Sir, an institution which requires of its members, as they rise in degrees, to take oaths at which humanity shudders, to support its constitution, when the applicant is ignorant of what that constitution may require from him. The members will of course be required to do something, and what that something may be will depend on actual circumstances. Is it possible that freemen will thus enslave themselves, in the faint hope of being some day benefited by the assurance they have, that the members of the order to which they have thus wantonly attached themselves, are bound to assist in elevating them to offices of honor and profit? If the benefits derived from secret societies are not exclusively of this character, that is, to give its members advantages over those who are not of the fraternity, in all political relations; if the object of the institution be charity and religion, why are its members bound together, by oaths unauthorized by law, to keep each others secrets, right or wrong, murder and treason not excepted? Sir, will this convention sanction that in Pennsylvania, the keystone state of the republican arch, lawless, aristocratic combinations of men, who have certainly not at heart, (judging from their organization as a body,) the public good, and for the benefit of the community at large; but it cannot be disguised that their sole object is self-interest and self-aggrandizement, at the expense of the public, otherwise they had no occasion to hide their "light under a bushel."

According to their own admission on this floor, they are allied with all the monarchies and aristocracies of the known world, not excepting Heathens, Pagans and Mahomedans. Will our republic continue to countenance such an unholy alliance, by which christians and heathens meet in secret conclave, on an equality, all subject to the same penalties and laws—I trust not.

If morality and virtue, or the duty which is due from man to man, must be cultivated and cherished by such connexions and such means, and all to be effected only by virtue of awful obligations and penalties, imagine what the nature of a penalty must be to bind a heathen and a christian together to keep each others secrets. How degraded must be the human race at this enlightened age, when the advancement of religion and charity, the arts and sciences, depend on such a source for aid and

maintenance, they allege that all are based on masonry, an institution governed by a code of laws better suited to discipline a banditti.

If our republican institutions rested on no purer basis, we would soon sink into a despotism. Is it strange that the freemen of Pennsylvania should be jealous of such a powerful political engine within our government, which can be put in motion by a decree of the "grand holy royal arch chapter" in a moment, all over the commonwealth.

I will not take up the time of the convention to repeat what has been brought into view by my colleague, (Mr. Reigart;) he has given an accurate statement of the origin of secret societies; as well as the penalties, obligations and practices of the order.

I had hoped, Mr. President, that the district deputy grand master for the counties of Lehigh, Northampton, Pike and Susquehanna, (Mr. Porter,) would, agreeably to his promise at Harrisburg, remove all the dark clouds which hang over his favorite charitable institution. He stated, when he made this promise, "that he thought the time had gone by when subjects of this kind would find their way into bodies like this. For the last few years," said he, "no one could open an anti-masonic newspaper or listen to an anti-masonic speech, but he would find the same statement of what the Emperor of Russia, Daniel O'Connell, or the King of Spain were doing against the poor freemasons. It reminded him," said he, "of the fidler, who when asked to play any tune, no matter what, always ended with 'Jemmy Bangs the weaver.'" This subject appears to be very annoying to the grand master. So much so, that the only way he has to creep out of it, is to throw the whole matter into ridicule, instead of showing the errors the anti-masons have fallen into, which led them to have such a contemptible opinion of freemasonry. His whole argument on this occasion consisted in making unfounded assertions against the anti-masonic party, and more especially against those of Lancaster county, which have all been ably refuted by my colleague, (Mr. Long.)

I had expected more from the learned gentleman from Northampton. Every other subject he has taken in hand, he always made himself master of; he never let a stone remain unturned, to make out his position, clear and comprehensible, so that when he rose in his place, all eyes were turned to him, all were on tiptoe of expectation, anticipating a rare treat, but when it became his duty to vindicate the order of freemasonry, his eloquence and his reasoning powers failed him. His whole harangue consisted in his favourite slang of "Jemmy Bangs the weaver," from beginning to end. So freemasonry is as much in the dark as ever.

I shall now proceed to read a few extracts which no masqn nor the convention dare reject as unworthy:

It is said that Gen. Washington, out of novelty, when young, became a mason. If this be true, he has afterwards set the world an example which every virtuous man who had been tempted by curiosity to become a member of a secret society, should be proud to imitate. The father of his country, in his farewell address, of September, 1796, we find these warnings to the people, which cannot be misunderstood:

"All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to

direct, control, counteract or awe the regular deliberations and actions of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize factions, to give it an artificial and extraordinary force, to put in the place of the defeated will of the nation, the will of the party, often a small but artful and enterprising minority of the community, and according to the alternate triumphs of different parties, to make the public administration the mirror of ill concerted and incongruous projects of factions, rather than the organ of consistent and wholesome plans, digested by common councils and modified by mutual interests.

"Howevr combinations and associations of the above description may now and then answer popular ends, they are likely in the course of time and things to become potent engines, by which cunning, ambitious and unprincipled men will be enabled to usurp for themselves the reigns of government, destroying afterwards the very engines which have lifted them to unjust dominion."

Those are the sentiments of the illustrious Washington, which he gives us in his last legacy to his country, and which will be revered as long as liberty and equality shall be cherished among men. He never shrunk from his duty, and was always free to express his opinions on subjects involving the liberty of his country. What says the democratic Jefferson, who devoted his whole life to the cause of liberty and the equal rights of man? It can very readily be discovered in his writings, what his opinions were on secret societies.

Thomas Jefferson thus writes to General Washington, dated April 14, 1784, who had requested his opinion on the subject of privileged societies :

"The objections of those who are opposed to the institution (Cincinnati) shall be briefly sketched. You will readily fill them up; they urge that they are against the confederation—against the letter of some of our constitutions—against the spirit of all of them—that the foundation on which all of these are built, is the natural equality of man, the denial of every pre-eminence but that annexed to legal office, and particularly the denial of a pre-eminence by birth.

"That, however, in their present dispositions citizens might decline accepting honorary instalments into the order, a time may come when a change of disposition would render these flatterings when a well directed distribution of them might draw into the order all the men of talents, of office, and of wealth, and in this case, would probably procure an engraftment into the government, that in this they will probably be supported by their foreign members and the wishes and influence of foreign courts; that experience has shown that the hereditary branches of modern government are the patrons of privilege and prerogative, and not of the natural rights of the people, whose oppressors they generally are—that besides these evils which are remote, others may take place more immediately—that a distinction is kept up between the civil and military, which it is for the happiness of both to obliterate: that when the members assemble, they will be proposing to do something, and what that something may be, will depend on actual circumstances—that being an organized body, under habits of subordination, the first obstruction to enterprize will be surmounted—that the moderation and virtue of a single character have prob-

ably prevented this revolution from being closed as most others have been by a subversion of that liberty it was intended to establish—that he is not immortal, and his successors, or some of his successors may be led by false calculations into a less certain road to glory.”

To this may be added the opinion of our Simon Snyder, contained in his annual message, of December 5th, 1816 :

“The frequency of oaths, and the lenity with which they are commonly administered, on occasions trifling and unnecessary, beget indifference and irreverence to the most awful appeal which the creature can make to his Creator. This has not only a most pernicious influence upon the morals and order of society generally, but it causes the commission of numerous injuries and perjury. This abomination in our land, it is feared will increase while oaths are uselessly multiplied, and so long as the distinction between merely moral and constructively legal perjureis, shields the perjured against prosecution and deserved punishment.”

What says the democratic Findlay, in his last executive message, of December 7, 1820, to the legislature ?

“My public life,” said he, “has no doubt been clouded by many errors of judgment, but in reviewing the numerous intrinsic difficulties which pertain to the exercise of an extensive patronage, and especially when an inordinate avidity for power and emolument was so prevalent, I shall always regard it as a source of high satisfaction that every attempt on the part of ambitious individuals or secret associations to exercise an unconstitutional control over the executive authority of the commonwealth, has been successfully resisted during the period those functions have been entrusted to my care.”

Thus I might proceed through the catalogue of our great men, who are sometimes claimed as members of secret societies, for the purpose of giving respectability and standing to their institutions, and when their real sentiments are generally the principal instigators in effecting the annihilation of all oath bound combinations.

I trust I will be pardoned for entertaining hostile opinions towards secret and privileged societies, when I have shown that I am prompted by the illustrious Washington, who at so early a period foresaw the evils that may arise out of such combinations, and against which he has warned the people. In addition to this, I have given you the opinions of Thomas Jefferson, Simon Snyder and William Findley on the same subject, all democrats of the pure republican stamp. Yes, and no loco fucos, as my friend in front of me suggests, (Mr. Keim) who has the honor of being of the latter class.

I believe, sir, that the very best form of government for the promotion of human happiness and safety, and the perpetuity of our republican institutions, is dictated by the natural love of liberty and equality, implanted in every patriotic heart, to carry out those sacred principles, we should pursue that course which is best calculated to secure the enjoyment of the greatest possible portions of the rights of man to the people, and not to privileged orders and secret societies. This amendment will not exclude the organization of charitable institutions, it is only to prevent such combinations, by which a few artful, designing, unprincipled men may usurp for themselves the reigns of government, and if it suits their purpose, to overthrow our republican institutions.

It proposes to guard against the administration of extra-judicial oaths. if the convention desire that those oaths required by the constitution and the laws, should be held sacred, you cannot object voting for the amendment, which goes to preserve the solemnity of those oaths. If you permit this pernicious practice of administering oaths not authorized by law, you will certainly destroy all veneration in the sacredness of the oath.

I am aware, sir, that the convention is weary and tired of discussion. I shall close my remarks by expressing a hope that the convention will see the propriety of adopting the amendment.

Mr. DARRAGH, of Berks, called for the immediate question; which was not sustained.

Mr. DENNY, of Allegheny, said that he was sure that gentlemen were very much wearied, after the long and protracted debate which had taken place, and he thought they had better adjourn. The question pending was one in which a large portion of the commonwealth felt a deep interest. He wished it could have been discussed with more temper. The efforts of those opposed to masonry were not to proscribe masons, but merely to hold up to the people the dangerous tendency of their principles. With respect to the members of the masonic order, he could say that he numbered among them many personal as well as political friends. He would forbear saying any thing on the subject; all that he desired was that the vote should be taken when there was a fuller attendance of members. With that view he moved that the convention do now adjourn.

The motion was negatived.

Mr. M'CAHEN, of Philadelphia county, observed, that at first he thought this subject was brought before the convention as a joke. He was neither mason nor anti-mason, therefore he might act impartially. He had lived almost all his life in the vicinity of Philadelphia, where there were a great many masons, and he had never suffered any inconvenience or injury from them. They had always been well spoken of, and distinguished for their charitable and benevolent acts. Indeed, he knew many gentlemen belonging to that fraternity, who were as honorable and high-minded as any men with whom he was acquainted. And yet the masons, as a body, were charged with being guilty of very grave and serious crimes! Now, whether there was any foundation for them, he could not say. There could be no doubt, however, that if a society was of an immoral and dangerous character, it would be put down by the public voice.

It was true, that in some parts of the state, masonic lodges had ceased to exist, and perhaps through the influence of public opinion. If masonry has a dangerous and pernicious effect on the morals of the community, it must go down. But he dissented from the opinions entertained by some on this point. He did not think that freemasonry was productive of ill consequences. Under every aspect in which he viewed the subject, he thought it impolitic to meddle with it. He trusted that the question would be taken to-night.

Mr. MILLER, of Fayette, moved the previous question, and then withdrew it.

Mr. REIGART, of Lancaster, asked for the yeas and nays on agreeing to the amendment.

And the question being taken, it was decided in the negative. Yeas 30; nays 62.

YEAS—Messrs. Ayres, Barndollar, Brown, of Lancaster, Clarke, of Beaver, Clark, of Dauphin, Cochran, Crum, Cunningham, Darlington, Denny, Dickey, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Konigsmacher, Long, Maclay, M'Sherry, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Thomas, Weidman—30.

NAYS—Messrs. Agnew, Baldwin, Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, CRAIN, Crawford, Cummin, Curll, Darrah, Dillinger, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, High, Hyde, Ingersoll, Kennedy, Krebs, Lyons, Magee, Mann Martin, M'Cahen, Meredith, Miller, Myers, Overfield, Payne, Porter, of Northampton, Ritter, Rogers, Scheetz, Scott, Sellers, Serrihl, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Starigare, Stickel, Taggart, Weaver, Sargeant, *President*—62.

Mr. FRY, of Lehigh, moved,

That the convention resolve itself into a committee of the whole, for the purpose of amending the tenth article, by inserting after the word "representatives," in the third line, the words "not oftener than once in five years."

Mr. FRY moved,

That the convention do now adjourn;

Which was agreed to.

Adjourned until half past nine o'clock to-morrow morning.

### WEDNESDAY, FEBRUARY 14, 1838.

Mr. Cox, of Somerset, asked leave to record his vote in the affirmative, on the question of agreeing to the motion made yesterday, that the convention resolve itself into a committee of the whole for the purpose of amending the tenth article of the constitution, as amended, by adding thereto the following new section, viz:

"SECTION 2. No secret society using, or administering unauthorized oaths or obligations in the nature of oaths, and using secret signs, tokens, or pass-words, operating by affiliated branches or kindred societies, shall hereafter be formed within this commonwealth, without express authority of law; and no person shall hereafter join or become a member of any such society, or take any oath in any such secret society now formed, or which may hereafter be formed."

Mr. FULLER asked for the yeas and nays on this question.

Mr. KERR, of Washington, moved to amend by inserting his name in the motion, as he desired to record his vote also in the affirmative on that question.



Some discussion ensued. Other motions to made were moved, when Mr. FLEMING, of Lycoming, moved that the motion be indefinitely postponed.

Mr. STERIGERE demanded the previous question, and the demand was seconded by the number required by the rule.

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

It was determined in the affirmative.

And on the question, will the convention agree to the motion?

The yeas and nays were required by Mr. HAYHURST and Mr. DARLINGTON, and are as follow, viz:

**YEAS**—Messrs. Ayres, Baldwin, Barndollar, Brown, of Lancaster, Carey, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Cline, Coates, Cochran, Cox, Cunningham, Darlington, Denny, Dickey, Dickerson, Dillinger, Dunlop, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Jenks, Kerr, Konigsmacher, Long, M'Dowell, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Royer, Saeger, Seltzer, Taggart, Thomas, Todd, Young, Sergeant, *President*—46.

**NAYS**—Messrs. Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Clarke, of Indiana, Cleavinger, Crain, Crawford, Cummin, Curll, Darrah, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Helfenstein, Hiester, High, Hopkinson, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, MacLay, Magee, Mann, Martin, M'Cahen, Merkel, Miller, Myers, Nevin, Overfield, Payne, Porter, of Northampton, Read, Ritter, Russell, Scheetz, Sellers, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Weaver, White, Woodward—69.

So the question was determined in the negative.

Mr. KERR, of Washington, asked leave to record his vote in the affirmative on the question of agreeing to the motion made yesterday, that the convention resolve itself into a committee of the whole for the purpose of amending the tenth article of the constitution as amended, by adding thereto the aforesaid new section to be called "section 2."

And on the question, will the convention grant leave?

It was determined in the negative.

On leave given,

A motion was made by Mr. HIESTER,

That the convention proceed to the consideration of the resolution as read, modified and postponed on the 13th instant, in the words as follow, viz:

*Resolved*, That twelve thousand copies in the English language, and three thousand in the German, of the existing constitution, and the like number of copies in each language of the amended one, be published side by side in pamphlet form; the parts proposed to be stricken out of the existing constitution to be printed in italics, and the amendments proposed by this convention to be printed in small capitals in connection with the parts retained of the old constitution, for the purpose of distribution by the members of this convention, and that the committee on the English and on the German printing are hereby authorized and required to contract for said printing to be done under their supervision and direction.

Which was agreed to.

And the resolution being again under consideration,

A motion was made by Mr. HIESTER,

That the same be referred to the committees on English and German printing.

Which was agreed to.

Mr. KREM, of Berks, asked and obtained leave to present the following petition from citizens residing in the county of Berks, on the subject of education, of which he asked the reading:

"To the honorable delegates of the reform convention to amend the constitution of the commonwealth of Pennsylvania; the petition of the subscribers, citizens of the county of Berks, respectfully sheweth—

That they have seen, with regret, that the amendment to extend the benefit of education to all children in the state, was *lost* by a *tie vote*. therefore, they would respectfully pray of the delegates to reconsider the same, and so to amend the constitution as that the legislature may continue to provide for a common school system for the education of all the children in the state; and if they submit the common school system to the people on its own merits, that every other amendment of said convention may be submitted in the same manner, and they will pray."

The convention resumed the third reading of the amendments made in the tenth article of the constitution, on second reading.

The question recurring on the motion,

That the convention resolve itself into a committee of the whole, for the purpose of further amending the said article, by inserting after the word "representatives," in the third line thereof, the words as follows, viz: "not oftener than once in five years."

Mr. SMYTH, of Centre, asked if the article had not been ordered to be engrossed, and whether the amendment proposed was in order?

The PRESIDENT replied that the motion pending was to recommit, and the motion being on third reading, the article to amend was in order.

Mr. FRY then modified his motion so as to instruct the committee to amend the article in the twenty-third line, by inserting after the word "constitution," the words as follows, viz: "but no amendment or amendments, shall be submitted to the people oftener than once in five years."

Mr. REIGART asked for the yeas and nays.

Mr. CHAMBERS, of Franklin, said the amendment seemed to deserve the serious consideration of the convention. He had not been aware of the intention of the gentleman from Lehigh to offer it. He was decidedly in favor of it. He fully concurred with the mover of the amendment, that the question of amending the constitution ought not to be too often agitated. That instrument should be kept as stable and permanent as possible. He would now, notwithstanding the impatience manifested by the body, offer a few remarks in support of the amendment, because he considered them due to the importance of the question to be decided. The amendment which was yesterday determined by a vote of sixty to sixty, was, in his opinion, one of the most important, that had yet been adopted by the convention. He regarded it as ultra-radical, and he extremely regretted that every member was not then in his seat. It was a matter of much regret that at this important stage of the proceedings of the convention, so many delegates were absent—a dozen, or more. When the question was up before, there were thirty absent. He perceived by the vote which was

taken at Harrisburg on an important amendment, that every member was present. And, at Washington, upon a recent occasion, a vote in the house of representatives, showed that out of two hundred and forty members in that body, only seven were absent.

This question was not yet disposed of, however much some gentlemen were inclined to think it was. He trusted that when the question was to be taken, every delegate would be found in his seat. He was in favor of the amendment offered by the gentleman from Beaver, and he was also in favor of the one now pending.

The convention had been referred to the constitution of the state of Maryland, by the delegate from the county of Philadelphia, (Mr. Brown) as offering a very great facility for amending it. The argument of the gentlemen, was replied to, in part, by the delegate from the city of Philadelphia. If he understood the remarks of the gentleman, he said that the legislature of Maryland had not availed themselves of the power granted them, to amend their constitution. Now, this was entirely a mistake, for the legislature of that state have done it again and again, so often, indeed, that he had heard lawyers say that they did not know what the constitution was. Gentlemen had only to look at the book of constitutions, and there they would find that amendments had been made session after session, for the last thirty years. There was only one amendment which they ought to have made, and that was to provide a representation according to taxation and population.

The amendment now under our consideration, was similar to the one introduced into the constitution of Tennessee, revised a few years since. It was amended in August, 1834, and Tennessee was then certainly a democratic state—whatever may be supposed to be her character now. The provision restrained the legislature from proposing amendments to the constitution oftener than once in six years; and it was required that the amendments should first be adopted by a majority of the members elected to each branch of the legislature, and afterwards by a majority of two-thirds of each house, of the following legislature, before they could be submitted to the people. This provision was adopted in order to guard Tennessee against the repeated and vexatious agitation of the question of amendments. But the convention of Pennsylvania have gone beyond this, and said that a bare majority of the two houses shall have power to submit amendments to the people.

In this provision, then, providing for future amendments to the constitution, we have gone further than any other state in the Union. The gentleman from the county of Philadelphia, observed yesterday, that several states had gone further than we have now done in granting facilities for making amendments to the constitution. The gentleman (said Mr. C.) shakes his head. Now, he would like to know if there were two states that had done it. Michigan had been referred to. It adopts the New York practice. The states of New York, Massachusetts, and Connecticut, require two-thirds. By the constitutions of Missouri and Arkansas, it is provided that amendments shall be made by the legislature, if adopted by two-thirds of each house of two successive legislatures: and the amendments are required to be published for twelve months. He did not know of any constitution being amended by a majority of two bodies. With respect to the constitution of Maryland, it was admitted to be defective,

and the people are desirous of amending it. The provision, then, in that constitution to which reference had been made, was not a precedent to be followed. It had been greatly complained of, and had led to so much constitutional amendment as to render the constitutional law of that state uncertain. Believing that the amendment would have a beneficial effect in preventing useless and unnecessary agitation in respect to amending the constitution in future, he would give it his warmest support.

Mr. BROWN, of Philadelphia county, said that he did not see any great evil in the amendment, nor did he think it was calculated to do any good. Some gentlemen seemed to think it necessary, in order to prevent amendments from being too frequently proposed to the constitution of the state, which they were apprehensive would be done, unless some restriction should be inserted. He, however, thought that the convention had already placed sufficient guards in the fundamental law.

The gentleman from Franklin was mistaken, for there are six or eight constitutions of states, which allow amendments to be made by the legislature, without their being submitted to the people at all. Among them are Delaware, South Carolina, and Alabama. He (Mr. B.) could not vote for the amendment. He had hoped that the majority principle would not be disturbed, whether it were considered ultra-radical, or not. The delegate might recollect that in June last, at Harrisburg, this article was adopted by a vote of eighty-five to fifteen, thus showing that a decided majority of the convention were in favor of opening the way to the people to amend the constitution of the commonwealth, when, and in such manner as they might think right.

Mr. CHAMBERS said that he was not aware of the fact stated by the gentleman from the county of Philadelphia, that it was adopted by a vote of eighty-five to fifteen. He thought the vote was sixty to sixty.

Mr. STERIGERE, of Montgomery, said that he was about to suggest to the delegate from Lehigh, to move to add the amendment to the article to which it properly belongs.

Mr. FRY replied, it seemed to be the general opinion that it was better to put it where it then was.

Mr. STERIGERE said that he had no objection.

Mr. BELL, of Chester, remarked that he agreed with the gentleman from Franklin that this was one of the most important amendments which had come under the consideration of the convention, and consequently deserved the serious and deliberate attention of it. He meant to oppose the views of the gentleman from Franklin, who characterized the amendment we had under consideration yesterday, as ultra-radical. That gentleman should not lose sight of the fact that the people of the commonwealth of Pennsylvania have called upon this convention to devise some mode by which they can amend their constitution, in future, without being put to the expense and trouble of calling another convention. What, he asked, was proposed? Why, that a vote of two-thirds of each house of two successive legislatures, shall propose amendments to the constitution, and submit them to the people for their ratification, or rejection. Here, then, were amendments to be submitted to the people, for them to decide upon at once, without discussion, without perhaps fully understanding some of them. They were to say whether they would accede to them or not.

Now, what was the object of the gentleman who proposed the amendment yesterday, as to the two-thirds principle? That amendment, if adopted, would probably be tantamount to a direct denial or refusal of all future amendments to the constitution. We all know that the constitution of the state of Maryland, is one of the most defective in the Union, and that the people have been clamorous for reform, and that the legislature, instead of acting with haste or precipitancy, has, in the very face of that clamor, refused to alter the constitution in one of its most essential features.

But what would have been the effect of the amendment proposed yesterday? If any gentleman will look to the proceedings of deliberative assemblies, or if he will take the trouble to revert carefully to the action of this convention,—composed as it is, of a body of men not to be surpassed, as I believe, in point of intelligence and patriotism, by any similar assembly, he will see that upon any question of moment, of interest, or of importance, it has been found impossible to secure the assent of two-thirds of the members here present. And the same remark is applicable, as I have said, to other deliberative bodies similarly constituted. And yet you would say by your constitution, that it shall not be altered upon the recommendation of two successive legislatures, followed up by the action of the people. You would say that it shall not be acted upon unless two-thirds of the members of the legislature concur therein. If you look to human nature, acting in bodies of men like this, you will find that such a provision would be tantamount to a direct refusal of all amendments. So much for the two-third principle, which, I rejoice to say, was yesterday rejected by the vote of this convention.

Now, what is the proposition of the gentleman from Lehigh, (Mr. Fry?) I think I have demonstrated that we have sufficient security here against the hasty action of the legislature, or of the people. And what will be the consequence, if we should adopt the amendment of the gentleman from Lehigh? It will be, in effect, to erect your legislature every five years into a counsel of censors. Yes, sir; every five years the people will be agitated in relation to proposed amendments, and the legislature of that time, will be invested with power far beyond that of the ordinary legislature; for, in addition to their ordinary duties, this amendment will constitute that body a counsel of censors—thus prohibiting every intervening legislature from interfering at all in the matter. Look at the history of the counsel of censors in this commonwealth! What did it result in? It resulted in nothing but dispute, embarrassment and difficulty. I ask the question seriously and solemnly, whether the amendment of the gentleman from Lehigh, if it should be carried into the constitution, will not operate as a direct restriction, so far as regards future amendments? Certainly it will. There is, and always has been, a reluctance on the part of our people to make any change in the organic law, and it has required the most decided and long continued action to do so. I repeat, therefore, that there is nothing to be apprehended on the ground of haste.

Considering that this amendment would produce improper and inordinate action, I must vote against it; and I trust that a majority of the members of the convention will do so likewise.

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

And on the question,

Shall the question be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the said motion as modified?

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

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Bedford, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Philadelphia, Chauncy, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Dunlop, Fleming, Forward, Fry, Gearhart, Harris, Hastings, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Jenks, Kennedy, Kerr, Konigsmacher, Long, Maclay, Mann, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Myers, Nevin, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Ritter, Royer, Russell, Saeger, Scheetz, Scott, Seltzer, Serrill, Snively, Sterigere, Sturdevant, Thomas, Todd, Weaver, Weidman, White, Woodward, Young, Sergeant, *President*—76.

NAYS—Messrs. Banks, Barclay, Bell, Bigelow, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Coates, Crain, Crawford, Cummin, Curl, Darrah, Dillinger, Donnell, Earle, Foulkrod, Fuller, Gamble, Gilmore, Grenell, Hayhurst, Helfenstein, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Martin, M'Cahen, Miller, Montgomery, Overfield, Payne, Read, Riter, Rogers, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Stuckel, Taggart—45.

So the motion, as modified, was agreed to.

#### TENTH ARTICLE.

And agreeably to order,

The convention resolved itself into a committee of the whole, Mr. REIGART in the chair, for the purpose of amending the tenth article of the constitution as amended on second reading, by inserting after the word "constitution," in the twenty-third line thereof, the words as follow, viz :

"But no amendment or amendments shall be submitted to the people oftener than once in five years."

A motion was made by Mr. FRY,

That the committee rise, and that the chairman report the amendments agreeably to instructions.

Which motion was agreed to.

And thereupon,

The PRESIDENT resumed the chair, and the chairman reported the amendments agreeably to instructions.

And the report of the committee of the whole was agreed to.

A motion was made by Mr. MEREDITH,

That the convention resolve itself into a committee of the whole, for the purpose of making the following amendment to the said tenth article, viz :

By inserting in the section thereof, in the twenty-third line, after the word "constitution," the words as follow, viz :

"Provided that at least as many votes shall have been given in favor

of such amendment or amendments, as shall form a majority of the whole number of votes which shall have been given for the candidates for the office of governor, at the same or the next preceding election for governor."

Mr. MERRIDITH said, that he had made this motion, in consequence of the vote which had been taken yesterday, and by which he understood that the convention had come to the decision to retain the principle, that a simple majority of the legislature should be sufficient to change the constitution of the commonwealth. A bare majority of the representatives of the people, might propose amendments, under the section as it now stood, and the vote of a bare majority of the succeeding legislature, was to be sufficient finally, to submit those amendments to the people; the main principle thus established, being, that a mere majority should be sufficient to change the fundamental law of the commonwealth.

It is not my intention, continued Mr. M., again to quarrel with the decision of the convention, although I believe that, for so grave and important a purpose, something more than a mere majority ought to be required; that is to say, I believe that inasmuch as the constitution of the country is intended to protect the most sacred rights of the citizens, they ought not to be compelled to hold those rights at the mere will of the majority. Still, sir, that being the decision of the majority of this convention, I am bound to agree to it so far as our proceedings here are concerned; and it is my wish now to test whether the majority of this convention will carry out their own principle. I want to know whether it is intended, that there should be such a majority as my amendment indicates, before the fundamental law of the land shall be changed. We all know the difference between an ordinary election, and a vote that is to change the constitution of the commonwealth. When we elect officers to carry on the government, it is necessary to have a majority of the number of votes; but does that necessity prevail in a proposition to change the fundamental law of the land? And ought there not to be a declaration of the desire for such a change, only on the part of the active and actual voters of the state—of those who have voted at a period shortly preceding—to wit, the next preceding governor's election—that being the only mode which I could devise, which would not be objectionable as to number. If we were to look at the list of taxables made out once every seven years, we should find, in the first place, a number of them not entitled to vote. In the next place, we should find a number who, although entitled to vote, did not exercise their right. This latter class consists of a very large number of the people of Pennsylvania—there being among us several religious sects, some of whom vote only on particular occasions, and others, owing to conscientious scruples, not exercising the right of suffrage at all. These classes, although I do not think it right, I have thrown out of view in the proposition, and I propose to take a simple majority only, of those who actually did exercise the right of suffrage in the elections of the state.

In order, then, to ascertain this point, although there is a constant increase in the number of voters, by the growing up of young people, and the people coming from other states, I take the next preceding governor's election, a point of time never more distant than three years. I ask, then, whether upon an abstract principle in the fundamental law of the com-

monwealth—since we all know the difficulty with which men are to be prevailed upon to go to the polls, not only in cases of ordinary election, where their own business is not immediately concerned, but as we know also, the difficulty of getting them to the polls even in elections for their own immediate officers and representatives, into whose hands they entrust their own immediate rights and interests; and since we are by the amendments which we have adopted, increasing this difficulty, by increasing the number of officers whom they will be called upon to elect—I ask whether, on an abstract principle in the constitution, it is not right and proper that we should require such an expression of the will of the people as is indicated by my amendment? I believe that a great many of our citizens do not know, when they come to vote, how many officers they are to vote for. I believe that there are, in this city and county, not less than eight or nine tickets to be voted for, some of which might be entirely neglected, and many of our citizens would have known nothing about it. You are about to increase this difficulty, by throwing into the hands of the people the election of county officers and justices of the peace; and men are to come from their country houses and places of residence to vote. This, I say, will render the matter more difficult than heretofore, to bring the attention of the people to any change which may be proposed in the constitution of the country.

I ask to have some clause, which, whilst it shall fully carry out the principle which has here been established, and shall leave to a majority the right to alter the constitution—whilst it shall leave, as this section does, the rights of the minority at the mercy of a majority—I ask to put in a provision that before those rights can be taken, and before that form of government can be changed, there shall be, at all events, a majority of the active voters of the state in favor of that change. In other words, I ask that those who are content with the constitution as it stands, and who are not desirous to leave their usual occupations in order to go to the polls and vote upon questions of not immediate personal importance, may be allowed to be counted, as they really are, against making an amendment which they are not willing to go to the polls to make. This is all the effect of the amendment which I have offered, and which I trust will be agreed to.

I have heard that some gentlemen who were not on this floor when the vote was taken yesterday, and whose opinions I highly respect—although I differ from them on this and some other questions—are in favor of the principle of a bare majority, especially the gentleman from Bucks, (Mr. M'Dowell) whom I am happy this morning to see in his seat. I call upon him now to support his own principle of a simple majority; I call upon all gentlemen who think with him on this occasion, to carry out their own principle. I know that the gentleman from Bucks, (Mr. M'Dowell) is in favor of a stable government; I can never be prevailed upon to believe that he is desirous that changes should be made in the constitution of our land, without the express will of a majority of the voters of the state; and I anticipate from him a cordial support of this proposition, and that by his assistance and that of other members who yesterday voted in favor of the majority principle, I shall be able to secure for it the approbation of this body.

Mr. Brown, of Philadelphia county, said, that the gentleman from the



city of Philadelphia, (Mr. Meredith) had shewn his ingenuity as well as his ability in the amendment which he had offered.

The gentleman, continued Mr. B., argued his amendment of two-thirds before us, because it was not new, and because it was found in the constitution of other states. I call upon him now to shew me where, in the history of the United States, an election upon one question, is to be determined by a majority of voters who voted upon any other. This, at least, I believe, is a new proposition, and has never been heard of before in any constitution of any of the states of this Union, or in any other proceedings having reference to questions of election. We are here called upon to determine that a majority of those who vote on the question shall not determine the result, but that it shall be determined by a majority of those who voted on some other question. Does the gentleman mean to say, that the people will go to a governor's election and vote, and yet that they will let a proposition for a change in the fundamental law of the land go by default? I take it that there is no such indifferent feeling abroad among the people of this commonwealth, and that they will regard a change in the fundamental law as being of at least as much importance as the election of governor, or any other officer. I venture to say, that the man who wishes any principle in the constitution changed, will, on the proper occasion, go to the polls and give his vote in favor of that change; and that he who wishes the principle retained, will go to the polls and vote in favor of its retention.

The gentleman from the city of Philadelphia, (Mr. Meredith) in the depths of his ingenuity has found out a labor saving machine, which I think this convention will not consent to apply, and which I think the people of Pennsylvania will never sanction.

Suppose, for instance, that the people should not choose to turn out in the usual numbers at a governor's election. Why not say, that the governor should not be elected, unless by the highest number of votes ever polled in this state or any other? Why not say that the members of the legislature should not be elected except by a majority of votes given for the governor?

Let us have at once a new principle established—a registry for the state.

If the gentleman from the city, wants his principle carried out, let us know how many voters we have, and let every man who votes for any officer send up his vote to Harrisburg, and let us have a commission appointed to see whether the governor is elected by the people of Pennsylvania. Let us have a provision in the constitution, that no law shall be passed, unless by the vote of a majority of the people. Let us, in short, get up some new device to change the government of the people. Such it seems is the object of the gentleman from the city of Philadelphia; for, after the matter has been brought up in every new shape, he has finally racked his brain until he has laid before us a scheme, which, I venture to say, is unheard of in any country on the face of the globe. Let him shew me when such a principle has been adopted—let him shew me when it has been approved by democratic republicans like those which compose the inhabitants of Pennsylvania. I want no example from elsewhere. Sir, the gentleman cannot produce such an instance.

I hope this amendment will not be agreed to, and, unless I mistake the views and the principles of a majority of the members of this body, it will not be agreed to. If there is any process under Heaven, by which we could get this question definitely settled, I should be thankful to gentlemen to find it out, so as to give us some chance of final adjournment by the twenty-second day of February. I am as anxious as any man in the land to have a firm and stable government—a government, if it may be, that will last forever. But I wish also that the foundations of that government should be laid deep and broad in the affections and confidence of the people, and not in the tyranny of any body of men. Without such a foundation, no government can be, and no government ought to be stable. And the agitation against it should never cease until it has been so altered and reformed as to secure for itself the confidence and affection of the people.

Mr. MEREDITH, of Philadelphia, was glad to find that the gentleman from the county of Philadelphia, (Mr. Brown) was in favor of the new principle. It was a most extraordinary thing how any gentleman, however he might undertake to lead the reformers in this body, could suppose one thing one day, and another the next. And when the gentleman asked him, (Mr. M.) where he found a precedent for his new proposition, he answered that it was ———

Mr. BROWN (interrupting.) I say that the gentleman on a former occasion, opposed the section because it was new, and brought forward the two-thirds principle, because he found it in several constitutions. And now he brings in a provision which is not to be found in any constitution.

Mr. MEREDITH proceeded. The gentleman had brought in a principle which was new, and argued as if, on that account, it ought to be adopted, and because the people of Pennsylvania had been so oppressed heretofore, that they had not known, and did not even up to this hour, know what were their sacred rights, and the advantages of having them placed at the feet of parties, and the game of foot-ball going on. The gentleman had now succeeded in persuading one-half of this body that it was very becoming—instead of setting an example of adherence to a sound principle of half a century's duration—to bring forward a principle which had never before been thought of, and which would bring our constitution and bill of rights into the common arena of party politics. Now he, (Mr. M.) desired, since the principle had been established, that it should be carried out. The gentleman had asked him to show an example of a simple majority of the legislature having the constitutional power to submit amendments to the people. He (Mr. M.) could not. But, the principle had been adopted here. And, as gentlemen had established the principle of a mere majority, he was not going to enter his exception to it. All he would say was—carry out that principle. Let us show that a mere majority shall not change our fundamental law. Where, he asked, was the objection to this? Was it to be said that a small number of agitators, who might be the most active men in the state, could go to the polls with a bare majority? He denied that it was the republican principle.

The gentleman from the county of Philadelphia had asked him what connexion there was between this amendment and the governor's elec.

tion? He asked if the difference of forty thousand votes given for governor over the call for a convention, was not attributable to the high state of parties at that period? A governor of the commonwealth must be elected. His functions were necessary to the carrying on of the government. So of the other officers that were elected. A house of representatives must be elected, or there would be no legislative body. The other officers of the government too, must be elected, or the wheels of government would be stopped. What, he inquired, was the difference here? Here was an amendment before the convention—a proposition to change the fundamental law. Now, supposing it not to be changed, the people would remain with the same rights as before. What objection could be made to this by gentlemen who were in favor of majorities? Where was the man that would tell him it was necessary in order to carry out the republican principle, that a farmer, or any other individual, who desired to vote for senator, county commissioner, clerks, &c., should have to go a distance of twenty or thirty miles to the county town—or to vote against taking away trial by jury, or altering the form of government, or against the bill of rights? We who are genuine democrats—we who are republicans—we will change this principle, and shew you that you must submit to the tyranny of the minority. He (Mr. M.) would ask if the government should be changed? He did not believe that any body would like to take for their basis the list of taxables, because there were many taxables who had no right to vote, and many that had a right, who did not exercise it. And therefore, we could not count them anything. They should have the same right in the community. But he did not propose it, because he did not think it could be carried out. He would take the majority at the nearest point to the vote given at the governor's election, as declared in the legislative hall. The votes on record, on the subject, are most interesting.

Now, he would ask any democrat—and he called himself a republican—a democrat, except in the party sense of the term—if he was desirous that the will of the majority should rule? He would ask, why not allow the majority to change the law of the land? He would inquire of gentlemen whether they could not see the difference between an election of that kind, and a majority to carry on the government? An effort was yesterday made to get in a clause, but because it was new, and for a new object, objection was made to carry it out to-day. Now, this could only lead to such a course of argument as would convince those who heard him, that they have left the ground on which they stood. He called upon the gentleman from Bucks, (Mr. M'Dowell) who had argued in favor of the two-thirds principle, to say whether he would not stand up here and maintain that the majority principle ought to be carried out. He (Mr. M.) felt sure, from what he knew of the stability and correctness of the gentleman's habits, that he would not oppose the present proposition. The amendment that changes may be made in the constitution once in five years, did not change the principle in any degree. It was desirable that there should be a principle of stability in our institutions. Although we had taken a course not calculated to secure that end, but, however, on that point, he would say nothing. The question was whether any change should be made without the voice of a majority of those in the exercise of that right. He would ask whether any vote less than that

of a majority ought to authorize a change in our fundamental law? He thought not; and if the people should decide that any thing less should attain the object, they would sanction the tyranny of minorities which had been spoken of.

Then will be the time when no man can attend to his business in safety, without holding himself always ready to take the field at the polls, in order to give his vote against change. I want to save the community from such a necessity. I want to say to the good people of this commonwealth, it is true that your constitution no longer stands on the footing it once did;—it is true that you set an example of a requirement of no more than a simple majority of the representatives of the people to make a change in that constitution; it is true that you may be vexed from time to time with proposed changes whenever a party may find it expedient, in order to answer their own peculiar purposes;—but it is also true, that we have provided that if you are opposed to any change—if you are in favor of leaving your institutions as you have found them, you may not be drawn from your labor and attention to your business, in order to go to the polls to say so. You who choose to remain at home shall be permitted to take that mode of shewing that you do not desire a change. Who can say that a provision of such a character as this, is unreasonable or impolitic, unless he is willing at the same time to say, that it is for the benefit of this commonwealth that changes should be made at any time whenever the agitators will go to the polls, and when those who have an apathy on the subject, and think that there are enough of their neighbors to go and save the constitution, stay at home; when the agitators thus forming a minority in fact, may be able to do with the constitution whatsoever they will. Sir, such cannot be the disposition of this body; and I look with confidence to a vote which will shew, that upon one principle of tact at least—that is to say, upon the principle of recognizing the power of the majority—there will be scarcely any division against us.

I desire that this proposition should meet with the vote of the reason and intelligence of this convention.

Mr. HAYBURST, of Columbia said, I never intended to trouble the convention with any further observations of mine upon any question, but I consider now that I should prove recreant to the trust which has been reposed in me by my constituents, if I did not say something to the point under discussion.

Is it possible that we would add injury to misfortune? Is it possible that, because in the year 1838, a certain number of people may vote for governor, and the year 1840 a proposition may be made to amend the constitution—which proposition may meet with a less vote than the governor received—is it possible, I ask, that, therefore, the voice of the people is to be thus controlled? Is it possible that because in the year 1838, I voted for governor, and in the year 1840 I should be laid on a sick bed, when my sentiments may be in favor of a proposed amendment to the constitution—is it possible, I ask, that my vote is, therefore, to be counted as one against an amendment which I have at heart? not only that I should have the misfortune of being unable to vote, but that that very vote is to be counted in the negative?

And further. In the year 1838, the people, who may have become ex-

cited in the result of a particular election, and may have turned out to the polls *en masse*. In the year 1840, an invading foe may have taken your good men and true beyond the limits of the state. A proposition to amend the constitution is submitted in their absence. They all may wish to see that amendment carried; and yet, because they are bound to shoulder their muskets, and to bear the heat and burthen of the day in their country's cause, their votes are not only to be lost to them—but you are to add insult to misfortune, and injury to privation. You say that every vote which these men have an acknowledged and a legal right to give, shall be counted as having been given against the amendment to the constitution; simply because from the operation of your military law, you have placed them beyond the bounds of your commonwealth? Is this the course of policy which you would pursue? If so, on what plea of necessity would you attempt to justify, or sustain it? Shall the vote of every sick man, shall the vote of every soldier, be construed to be against a necessary amendment to the constitution, simply from the fact that he has not had the power to poll it? And is this constitution, as it may have been amended by us, to be submitted to the people on the same principle? If we should vote to have the constitution adopted by a majority of the whole number polled at the last governor's election, is this amended constitution to be subjected to the risk of failing—and failing, too, upon such a principle;—a principle which has never been recognized in any republican government;—a principle which is new and unheard of, and which, withal, is of a most unjust and injurious tendency? Heretofore, we have been taught to believe that silence gives consent. But we are now to reverse that maxim. We are now to be taught that if any man, in consequence of the necessities of his family, in consequence of stern necessity or the pressure of circumstances, or in consequence of an unfortunate absence from the state, on account of sickness or any other cause, is deprived of the power to give his vote, that vote is to be considered as given in the negative. And this rule is to be applied to every man in the situation to which I have referred. Sir, there is no necessity for the establishment of such a doctrine, and there is no justice in it.

In reply to the other objection which has been urged by the gentleman from the city of Philadelphia, (Mr. Meredith) that the section imposes an unnecessary burthen upon the people, I have to say that there is no such thing in this commonwealth as the people assembling at county towns to vote. We have election districts at certain convenient places and houses; and if we have not we can bring the ballot box within a very reasonable distance. There is not any thing like the scarecrow in this thing that has been represented; and if it were true, that some men took so little interest in elections that they would not vote at all, how do we make it out that, therefore, their votes should be counted in the negative.

I hope that we shall not adopt any provision of the kind; because if we do, we adopt it as a provision upon which this very constitution now about to be submitted, is to be rejected or adopted. And if so, let me tell gentlemen that this constitution will be rejected. Look at the old and feeble men who prefer the enjoyment of the little remaining health that may be left to them, to endangering their lives by going to the polls to vote. If they are to be counted in the negative, labor, and the time and the funds of the commonwealth have been spent in vain.

I hope, therefore, that no such feature will be incorporated into our constitution; it will be the entering wedge for the present, for if it is good for the future, it is good also for the present. Apply the same principle to the proceedings of this convention. Suppose that you had counted every absent member as voting in the negative, and when would any amendments have prevailed? The proposition which was last evening rejected by a vote of thirty to sixty-two, would have been adopted, if the vote of every absent member had been counted in the negative. If the principle is a good one to govern the people of the commonwealth, it is good also to govern this convention; and if it is good to govern this convention, then it is manifest that the proposition which was submitted yesterday by the gentleman from Lancaster, (Mr. Reigart) and which, as I have said, was rejected by a vote of thirty to sixty-two, is honestly, justly and fairly a part of the amendments which ought to be submitted by this convention, to the ratification or rejection of the people of this commonwealth; and we should be acting in violation of all principle, if we did not submit it to the people as such.

The better principle is to regulate the matter by the number of votes actually taken; and to regard the rest as indifferent, or else upon the principle that silence gives consent. Let the majority of the votes be taken as the actual rule.

Mr. MERRILL, of Union, said:

Let us look how this matter stands upon the amendment which we have adopted. It stands thus; that a majority of all the members elected to both houses of two legislatures must vote in favor of any amendment to the constitution before it can be submitted to the people. Why is this so, if not upon the principle that an actual majority must be given in favor of any given proposition, before the provisions of the constitution can be touched.

But look at the matter in another light. Suppose the terms of the provision were simply, that the two houses of two successive legislatures must pass a resolution, before any amendment could be submitted to the people.

The house of representatives is composed of fifty one members, and a majority of that number would be twenty-six. The senate is composed of seventeen members and a majority of that number would be nine. So that, under such a provision, the vote of twenty-six members of the house of representatives and the vote of nine members of the senate, of two successive legislatures, would be sufficient to authorize any amendment to be submitted to the people.

The very gentleman who proposed this amendment which has been adopted to the constitution, has said that you should not go to the people on any proposition for future amendment, without the consent of a majority of all the members who should have been elected to each house—not who should have voted, but who should have been elected.

Now, I ask that the same principle may be carried out in the particular under consideration. Let us who are in the minority rest satisfied that we are secure against change, until a positive, an actual majority shall determine that changes shall be made.

Let gentlemen put it to this convention how many amendments have

been submitted and adopted here? How few among them have received sixty-seven votes? On the other hand, he did not think there was one question which had been sent here for our consideration, which had not received seventeen votes, and no one which had not been sustained by some portion of the people, had ever received sixty-seven votes. He did not mean to say that the trial was not yet to be had before the people. The amendments are all to be sent to the people, and it will be seen hereafter, if a majority of the people will sanction them.

There was scarcely even a proposition which the people elected us to consider which had received sixty-seven votes, and all these which they had not committed to us for consideration had not received seventeen.

He believed that if it should be found that there was not an actual majority in favor of changing the constitution, it would be because the people did not think it was bad enough to change. The ballot box should be the test until a majority of the people are in favor of a change.

It was said in time of mobs many joined the mob from fear, because then they would be safe. And were we to have no rights unless we choose to join a party to which we are opposed? He thought we should have required a vote of two-thirds, in order to make it a matter of more difficulty to repeal the constitutional law of the land.

As the amendment now stands it requires only fifty-one members of the house and seventeen of the senate, to send a proposition of amendment to the people and to be acted on by two successive legislatures. He thought there should be more effectual check in these majorities of the legislature, than that of a majority of these who may happen to go to the polls. If a majority is to decide, let it be a majority of all the votes. It has been asserted over and over again that no one amendment can obtain a majority of all the votes. It is said the will of the people is the will of the majority. It ought then to be a majority of the whole. We say our constitution ought to stand until a majority of the people shall change it. Let that majority consist of an actual majority of all the people, and not of merely such as may choose to go the polls.

Mr. BROWN, of Philadelphia county, maintained that the effect of the amendment would be to introduce a registry law and compel every man to vote. Then it would be necessary if we adopt this amendment, to introduce another concerning the election of governor. A pretty principle this would be to establish—to bring the dead against the living. The man who will not risk a dollar, or spare a moment of his time, is to have the same power of suffrage as the man who, at all hazard and inconvenience, will come to the polls.

He would advise those who wished to take the government out of the hands of those who feel an interest in it, to leave the state, and to go to Connecticut, or any other state to reside. He never desired to see the government in the hands of men who have to bring forward the votes of the dead, and of those who will not leave their farm or country seats to come to the polls. This was his Pennsylvania policy; this was his democracy; and the gentleman from the city was welcome to his creed of democracy.

I do not speak in reference to a party, (said Mr. B.) I see some here who, although not of the democratic party, sustain democratic principles. I

wish some of the democratic party were as good as these men are. I want to see equal rights—to see the people enjoying the power and the right to alter, reform or abolish their government. He complimented the gentleman from the city for his new scheme of government. I hope (said Mr. B.) he will attain better laurels from some other source, or I shall not envy him his wreath.

Mr. MEREDITH, in explanation of his amendment, said that he would state in reply to what had fallen from the gentleman from Columbia, (Mr. Hayhurst) and from the gentleman from Philadelphia county, (Mr. Brown) that his amendment would sustain the rights of those patriotic men who might be absent from the state defending it against a foreign enemy.

I was about to say (said Mr. M.) that whilst these patriotic men were absent from the state defending their country against foreign foes, the domestic foes to whom the gentleman from the county of Philadelphia, (Mr. Brown) has alluded, might, before they got back, have destroyed the whole form of the government. I apprehend that such is not the desire of this convention.

Mr. M'CAHEN said he supposed that the gentleman from the city of Philadelphia would not vote for the adoption of this amendment to the constitution when it should be finally submitted to the people. And as he (Mr. M'C.) looked upon this as an ingenious mode of defeating the whole, he would ask for the immediate question.

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

And the question being taken,

Shall the question on the said motion be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the said motion?

The yeas and nays were required by Mr. MYERS and Mr. DARRAH, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Carey, Chambers, Chandler, of Chester, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Kerr, Konigsmacher, Long, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Royer, Russell, Saeger, Scott, Serrill, Snively, Thomas, Todd, Weidman, Sergeant, *President*—46.

NAYS—Messrs. Banks, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Clapp, Clarke, of Indiana, Cleavinger, Coates, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donell, Doran, Dunlop, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Mann, Martin, M'CAHEN, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Northampton, Purviance, Reigart, Read, Ritter, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shelito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickol, Sturdevant, Taggart, Weaver, White, Woodward, Young—74.

So the amendment was not agreed to.

A motion was made by Mr. WOODWARD,



That the amendments made to the said article, be referred to the committee appointed to prepare and engross the amendments made to the constitution, for the question of final passage.

And the said motion being under consideration,

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

And on the question,

Shall the question on said motion be now put?

It was determined in the affirmative.

And on the question,

Will the convention agree to the motion?

It was determined in the affirmative.

And the said amendments were referred accordingly.

On leave given,

A motion was made by Mr. WOODWARD,

That the convention proceed to the second reading and consideration of the report of the committee appointed to prepare and report a schedule to the amended constitution, to whom were referred the inquiries when the amendments to the constitution should be submitted to a vote of the people, by what officers the election should be conducted, in what form and manner the amendments should be voted on, and when they should go into effect if adopted, read on the 12th of February instant.

Mr. BELL said, that he had some time since submitted a resolution on this subject, and which was in the following terms:

Resolved, That the amendments to the constitution agreed to by the convention, ought not to be submitted to the people as a single proposition, to be approved or disapproved, but the same ought to be classified according to the subject matter, and submitted as several and distinct propositions, so that an opportunity may be given to approve some and disapprove others, if a majority of the people see fit; and that a committee be appointed to report to the committee a classification of the amendments, and the manner in which the same shall be submitted to the people of this commonwealth."

It is my intention, continued Mr. B., to call this resolution up for consideration, but I do not desire so to do at the present moment. The report of the committee on the schedule has only been on my files a short time, and as it contains important principles on which we should not act hastily, I move that its further consideration be postponed until to-morrow morning.

Mr. WOODWARD said, that his motion to proceed to the consideration of this report at the present time, had been made at the desire of the presiding officer of the convention who would have to issue writs of election upon the last day of the session of the convention. The President was desirous of having these writs prepared, and, unless an early hour was fixed upon, there would not be proper time allowed for the purpose. Mr. W. thought this was a consideration which ought have some weight with gentlemen.

The PRESIDENT said, this whole debate was out of order. And the motion of the gentleman from Chester, (Mr. Bell) was out of order, because the convention had not yet determined to consider the report on the schedule.

Mr. Scott said, there was a third report from the committee on the schedule which had not yet been laid on the table, and he would suggest to the gentleman from Luzerne, (Mr. Woodward) to suspend his motion, until the report should be laid before the convention.

Mr. Woodward said, he had supposed it was not the intention to bring up the third report to which the gentleman from the city of Philadelphia, (Mr. Scott) alluded; although he (Mr. W.) was aware that such a report, was in contemplation. He had thought, however, that it was to be offered as an amendment and not as a separate report. He would not press his motion, although he did not feel himself authorized to withdraw it.

And the question having been taken.

The motion to proceed to the second reading and consideration of the said report was agreed to.

The convention then adjourned.

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### WEDNESDAY AFTERNOON, FEBRUARY 14, 1838.

There being no quorum present, a call of the convention was ordered, and continued, until it was ascertained that seventy-four members were present, when

On motion of Mr. FOULKROD, the further proceeding was dispensed with.

### SCHEDULE.

Mr. Cox, of Somerset, moved that the convention resolve itself into a committee of the whole, for the purpose of considering the report of the committee on the schedule to the amended constitution, which was read on the twelfth instant.

Mr. Cox expressed a hope, that gentlemen would see the propriety of going into a committee on the report. The framing of a schedule was very important. In ordinary cases it was not necessary, but where we were about to form an organic law for the people of the commonwealth, it ought to be well considered. If the convention did not go into committee of the whole on this report, it would have but one reading in fact, and, although of more importance than the amendments would pass with less consideration. The time agreed on for taking the vote of the people may determine the fate of the amendment, whether rejected or agreed to, contrary to the opinion of the people. It was then due to the importance of the subject, that we should go into committee of the whole on the report, and then let it pass through a second reading.

Mr. DARLINGTON, of Chester, asked for the yeas and nays on this motion.

Mr. BELL, of Chester, said it was certainly of great consequence that we should not pass hastily on this matter. There were two reports, each fixing separate days. It was the intention of the minority to present another report, which would differ from both these, as it will recommend a classification of the amendments, so that the people may have an opportunity of rejecting or adopting them. He had understood from two of the members of the committee, that this report was not yet ready.

Mr. BANKS, of Mifflin. It is not in order to speak of what is passing in committee.

The CHAIR decided, that this course was not strictly in order.

Mr. BELL said, that he was merely speaking of a conversation in the street with two members of the committee, who had said they were not yet prepared. The question is, whether we shall go into committee of the whole, or take up the report for consideration in the convention. What do the reports recommend? That the people shall be compelled, whether they will or not, to reject or adopt all the amendments. This question resolves itself into two others: First, the justice of so compelling, and second, the expediency of the measure.

First: As to the justice of the cause. The people wished only a few changes. The convention commenced its session in May, and set through six or seven months, making many amendments, embracing the various departments of the judiciary, the executive, and the legislative, and these amendments are to be all presented as a whole, and we are to ask the people to accept or reject all together. Was this just? Was it not proper that the people should have the opportunity of accepting or of rejecting particular amendments? Rather than lose a me, he would be willing to sacrifice all. But the question is, whether the people shall not have the opportunity to discriminate. He now addressed himself to the ultra radicals and the ultra conservatives.

He found that some of the ultra radicals were opposed to his proposition, because they feared that some of the amendments that had been adopted, if submitted separately to the people, might be rejected. Now he (Mr. B.) rested himself on ultra radicalism. But, on the other hand, he found that many of the ultra conservatives were also opposed to it, and among them was his venerable friend from the city of Philadelphia (Mr. Hopkinson.) He (Mr. B.) would ask if gentlemen would run the risk of destroying all the reports which had been shaped with so much care? We had inserted in the constitution the word "white," in order to exclude a certain class from exercising the right of suffrage. We know also, that there is a strong party in this commonwealth who are favorable to the exercise of the right by the description of persons referred to. God grant that that party may not exercise the power they possess, before the amendment shall have been submitted to the people, or, perhaps it might be found that they held the balance of power against the amendment proposed of the word "white."

Mr. HIESTER rose to a point of order.

The PRESIDENT said, that the remarks of the delegate from Chester were not exactly in order.

Mr. BELL continued. He would bow with submission to the decision of the Chair. He (Mr. B.) was discussing the propriety of adopting the

motion of the gentleman from Somerset, (Mr. Cox) to go into committee of the whole. He had intended to close his remarks with a request that the gentleman would postpone his motion till to-morrow. He was opposed to going into committee of the whole on these reports, because a report was expected from the committee recommending another course to be adopted in regard to the time and manner of submitting the amendments to the people. He was proud to say, that it would come from authority entitled to respect. The committee of revision either are now ready to report, or nearly, so that no time would be lost. He hoped the gentleman would withdraw his motion.

Mr. Cox. The gentleman can move to postpone.

Mr. BELL then moved to postpone the consideration of the reports until to-morrow morning.

Mr. DICKEY, of Beaver, expressed his hope that the consideration of the reports would be postponed until after the schedule had been acted on. If the committee of revision should report, we might as well progress with the third reading of it. He would move to amend the motion by saying to postpone for the purpose of taking up for a third reading the report of the committee of revision.

The PRESIDENT said the motion was not in order.

The question being then taken on the postponement, it was negatived—yes 44; noes 50.

Mr. DICKEY said, that as he was averse to fixing a time to submit the amendments to the people for their ratification or rejection, before they were finally passed upon by the convention, he could not agree to go into committee of the whole. This was the reason why he had suggested that it would be better to postpone the consideration of the reports. He would state that one of the members of the committee of revision had informed him that the committee were ready to report. Now, he (Mr. D.) would ask if gentlemen were prepared to fix a day for submitting the amendments, before those amendments were passed?

The PRESIDENT. The motion is not in order, as the committee have not yet reported.

Mr. BELL moved to postpone the question under consideration, in order that the committee might have leave granted them to report.

The PRESIDENT. The motion is not in order.

Mr. CUNNINGHAM, of Mercer, said that the motion which had been made was, that the convention should resolve itself into a committee of the whole, for the purpose of fixing upon the time and manner of submitting the amendments to the people, for their ratification or rejection. The subject was unquestionably one of the highest importance, as was admitted by every gentleman.

Mr. READ, of Susquehanna, rose to a question of order. Before the convention adjourned for dinner, they agreed to go into committee of the whole, on the second reading and consideration of these resolutions. Now, what he (Mr. R.) desired to know, was, whether it was in order to dispense with the orders of the day, to receive the motion of the gentleman from Beaver?—if it was not within the spirit of the rule to debate this matter of consideration?

The President said, there was no rule to prevent debate on the question of going into committee of the whole.

Mr. CUNNINGHAM said, that he was astonished that a gentleman of such experience in legislative matters as the delegate from Susquehanna was, should have taken this extraordinary course. The gentleman did not call delegates to order in the morning, although they must have been proceeding out of order according to his view of the matter. He (Mr. C.) would appeal to every member of this body, whether the President of the convention ought to be excluded from participating in the debate; but, if he understood the rules correctly, the President could not take part in it on the third reading, and he had not done so on second reading. The present speaker of the house of representatives of Pennsylvania, had once spoken on third reading, but it was contrary to all rules. He (Mr. C.) would ask if this subject was to be disposed of on second reading, and the President not have an opportunity allowed him of participating in the debate? It was due to courtesy, that no member of this body should be precluded from delivering his sentiments on every subject that came up. The usual course was to consider a matter of this kind in committee of the whole, but it seemed it was not to be so on this occasion.

Mr. HIESTER, of Lancaster, said, he perfectly agreed with gentlemen that this was a very important subject, and deserved consideration in committee of the whole; and if the convention had six weeks to sit, instead of only six days, he would give his vote in favor of that course. But, under present circumstances, having only a very few days left to dispose of all the business before the convention, which had agreed to adjourn *sine die* on the twenty-second instant, he could not vote for going into committee of the whole. He, therefore, hoped the motion would not be agreed to.

Mr. STERIGERE, of Montgomery, thought that the gentleman from Mercer had taken a correct view as to the course of proceeding which this body ought to adopt. Every gentleman, certainly, ought to have an opportunity allowed him of giving his opinion on every subject brought before the convention. He did not think the argument of the gentleman from Lancaster entitled to much weight. He was of opinion that the convention should resolve itself into committee of the whole, and he should give his vote accordingly.

Mr. M'CAHEN said, he agreed with the gentleman from Lancaster, (Mr. Hiester) that there was not time to go into committee of the whole, if the convention was desirous to get through with its business by the twenty-second of February; and as there is an evident determination not to rescind the resolution, I hope we shall not go into committee. If he was not mistaken, the gentleman from Mercer, (Mr. Cunningham) and the gentleman from Somerset, (Mr. Cox) both voted to cut off the consideration of the ninth article.

Mr. M'CAHEN then demanded the previous question.

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

And the question being taken,

Shall the main question be now put?

It was determined in the affirmative.

The CHAIR having then decided that the main question would be on the adoption of the report of the committee on the schedule.

Mr. WOODWARD said, that if such was the fact, he had voted for taking the main question under a misapprehension of what that main question was. He had supposed it to be on the motion of the gentleman from Somerset, (Mr. Cox) to go into committee of the whole.

A motion was then made by Mr. WOODWARD and Mr. HIESTER,

That the convention reconsider the vote just taken on the said question, viz: "Shall the main question be now put?"

Which was agreed to.

And on the question,

Will the convention agree to the motion as follows, viz:

That the convention resolve itself into a committee of the whole, for the purpose of considering the said report of the committee on the schedule, read on the twelfth instant?

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

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Bell, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dickerson, Dunlop, Farrelly, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Ingersoll, Jenks, Konigsmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Russell, Scott, Serrill, Snively, Sterigere, Thomas, Weidman, Young, Sergeant, *President*—53.

NAYS—Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Cleavinger, Crain, Crawford, Crum, Cummin, Currell, Darrah, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helfenstein, Hiestler, High, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Myers, Nevin, Overfield, Payne, Reigart, Read, Ritter, Rogers, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, Todd, Weaver, White, Woodward—65.

So the motion was rejected.

And, agreeably to order,

The convention proceeded to the consideration of the report of the committee on the schedule to the amended constitution.

And the first resolution thereof being under consideration, in the words as follows, viz:

*Resolved*, That immediately after the final adjournment of the convention, the President shall issue a writ of election, dated the day of the final adjournment, and directed to the sheriff of each and every county of this commonwealth, agreeably to an act of assembly, passed the 29th day of March, A. D. 1836, entitled "An act providing for the call of a convention to propose amendments to the constitution of the state, to be submitted to the people thereof for their ratification or rejection," commanding notice to be given of a special election to be held in the several townships, wards and districts of the respective counties, on the first Tuesday of June next, for the ratification or rejection, by the people, of the amendments to the constitution. And the said writs of election shall direct at least thirty days notice to be given of the said election, in the manner provided by law for giving notice of the general elections of this commonwealth. And they shall further direct that the said election shall be held in the several townships, wards and districts of each county, by the judges, inspectors and clerks who conducted the last general election; and that if any of the said judges, inspectors or clerks shall not attend at

the proper time and place to conduct the special election hereby provided for, the qualified voters of the proper township, ward or district shall choose a judge, inspector or clerk in the manner that is now provided by law in like cases at the general elections of this commonwealth.

A motion was made by Mr. WOODWARD,

To amend the said resolution by striking therefrom all after the word "resolved," and inserting in lieu thereof the words as follows, viz: "That immediately after the final adjournment of the convention, the president shall issue a writ of election, dated the day of the final adjournment, and directed to the sheriff of each and every county of this commonwealth, agreeably to an act of assembly passed the twenty-ninth day of March, Anno Domini, 1836, entitled 'An act providing for a call of a convention to propose amendments to the constitution of the state, to be submitted to the people thereof for their ratification or rejection,' commanding notice to be given of an election to be held in the several townships, wards, and districts of the respective counties, on the second Tuesday of October next, (being the day for holding the general elections of the commonwealth,) for the ratification or rejection by the people of the amendments to the constitution. And the said writs of election shall direct at least thirty days notice to be given of the said election, in the manner provided by law for giving notice of the general elections of the commonwealth."

Mr. WOODWARD said, it might probably be expected that he should explain the views of the committee in relation to these matters, and that he would do so in a few words. And he would state his own reasons why he preferred the second Tuesday of October to the second Tuesday in June, as the day on which the people should vote upon the amendments.

Mr. STERIGERE rose, and submitted to the chair that a large portion of the amendment proposed by the gentleman from Luzerne, (Mr. Woodward) was the same as the report of the majority of the committee, and that, therefore, it was out of order.

Mr. WOODWARD said. It is true that many of the words are the same, but there is a substantial difference in my proposition, which I will shortly point out.

It is to be observed that in the resolution reported by the majority of the committee, which fixes on the first Tuesday in June, it is required that the election shall be held by the officers who hold the general election. Now, many of those officers may not be attending on the spot next June to conduct the election;—some may be dead, others may be removed, and it may be inconvenient for others to attend. "And they shall further direct that the said election shall be held in the several townships, wards and districts of each county, by the judges, inspectors and clerks who conducted the last general election; and that if any of the said judges, inspectors or clerks shall not attend at the proper time and place to conduct the special election hereby provided for, the qualified voters of the proper township, ward or district shall choose a judge, inspector or clerk in the manner that is now provided by law in like cases at the general elections of this commonwealth." This, continued Mr. W., is the report of the majority.

The report of the minority makes no such provision. If the election is held, as that report proposes, on the second Tuesday of October, it is

then by the act of assembly to be held under the direction of the officers who shall conduct that election; and it will not be necessary, therefore, to provide for officers.

As to the manner of submitting the amendments, I understand the committee to be unanimous as to the propriety of submitting them in mass. It was supposed that the writ of election to be issued by the president should bear date on some day during the session of this body. The act of assembly requires that the convention shall issue writs of election; the resolution requires that the president shall issue them. But the committee believe that the writs should bear date upon a day during the session of the convention,—and for the reason, that he will only be president during its session: his power ceasing after the adjournment of the convention *sine die*.

A question has been raised whether a writ issued by the president was a writ issued by the convention. Hence the importance of considering these resolutions, and coming to a decision upon them in time to enable the presiding officer to get these writs executed agreeably to the act of assembly.

The material question, then, in these resolutions is, what shall be the day upon which the people shall vote. It has been suggested that an earlier day than the second Tuesday of October should be required, because the people are anxious to vote upon these amendments. In answer to this, I have to say that if the people are required to vote in the month of June, they will not possess the information requisite to enable them to vote.

The tenth section of the act of assembly provides as follows:—

“It shall further be the duty of the secretary of the commonwealth on receiving the returns of the election for and against the amendments proposed by the convention, to deliver the same to the speaker of the senate, on or before the first Thursday of the next session of the legislature, after said returns shall so be received, who shall open and publish the same, in the presence of the members of the senate and house of representatives, on the next Tuesday thereafter.” So far, therefore, continued Mr. W., the day is not a matter of importance.

So far as I had formed any opinion on this subject, before I had examined it with care, I was inclined to favor the plan of holding a special election, and not to having the vote taken on a general election day. But upon a more mature consideration of the advantages and disadvantages attending the general or a special election day, I have come to the conclusion that the general election day would be better than any other. The majority of the committee, as the convention have seen, report the first Tuesday of June. My objection to this is, that it is too early a day to enable the people of the commonwealth to obtain the requisite notice of what these amendments are. We adjourn on the twenty-second day of February;—such, at least, is our hope, and I, for one, shall do nothing to disappoint it. The sixth section of the act of assembly says: “And when the amendments shall have been agreed upon by the convention, the constitution as amended shall be engrossed and signed by the officers and members thereof, and delivered to the secretary of the commonwealth, by whom, and under whose direction, it shall be entered



of record in his office, and be printed as soon as practicable once a week in at least two newspapers published in each county in which two or more newspapers are printed, and in all the papers in each county where not more than two are printed, and in at least six newspapers in the city of Philadelphia: *Provided*, That in each county in which there is a German paper printed, said paper shall be selected by the secretary as one of the papers in which the amended constitution is to be printed until the day of the election that shall be held for the adoption or rejection of the amendments submitted."

How can the secretary of the commonwealth, continued Mr. W., comply with the requirements of this section in so short a space of time, and when he is engaged in the other duties of his office? Some time must elapse, but longer at this season of the year, before the requisite official communication can be made known. Under all these circumstances, therefore, it is obvious to my mind, that the first Tuesday of June (which will be the fifth day of the month,) will be too early a day for the voters of this commonwealth to obtain proper information as to what the amendments are—such information as will enable them to vote advisedly. The people should not only obtain a knowledge of the amendments which we have passed, but also of the reasons which have been urged in this body for and against these amendments. I do not know when the essential parts of our debates will be published, in form, for the inspection of the people; nor do I know whether this convention will think proper to take any order on the subject. But the debates on the prominent parts of our amendments will find their way into the papers. They will reach the people; and, to be servicable, they ought to reach the people before their action is required; and in order that they may act advisedly at the ballot-box as we have acted here, if you please, it is proper that we should afford them time to learn something of the general views of the members of this body, on both sides of the question. The first Tuesday of June, if that should be decided upon as the day of the election, will not allow time for the accomplishment of this most desirable object;—the people will not have sufficient time to acquaint themselves with the reasons for and against the amendments. The second Tuesday of October, or some day in November, as may probably be proposed before we have got through with this question, will enable the people to procure the necessary information. But against any day in June, or in November, or any special election day, there is a strong objection which went far to overrule my own original views on this subject. It is this: When the question was put to the people, whether they would, or would not, have a convention to propose amendments to the constitution, all requisite care was taken for the publication of the notice for arousing the attention of the people of the commonwealth; and yet you find that there were forty thousand voters who did not go to the polls—who did not express their wish either for or against the assembling of this body. What was the reason? Why, the most prominent reason was that the election for the call of this convention took place in November.

[A member having suggested that the election took place in October, Mr. WOODWARD corrected himself by saying, probably in October. But the election for delegates to this body was held in the month of No-

member. What I mean to say is this : that you cannot get out the voters of this state to any special election, or to any election for the President of the United States, as generally as they will attend at the election in October. I assume that it is the desire of all of us that every voter in Pennsylvania should express his opinion. I assume that this convention is anxious that the largest expression of opinion that can be obtained, should be obtained. It is desirable for many reasons that it should be so. It is a constitutional, a fundamental law which is to endure, we trust, for ages yet to come ; which is to govern our posterity, for weal or woe, and which is to be regarded as a matter of the most vital importance for the blessings, or the evils, which it is to bring upon them for the time to come. If, then, this is to be the fundamental law of the land, such an opportunity should be presented to the people as will allow us to secure the judgment of the largest number upon it.

The question, therefore, is what day will best answer the purpose ? What day will best suit the voters ? Will they come to the polls in the month of June. Will they leave their ploughs, their farms and their business in the month of June ? Gentlemen may say that the voters will do so on a matter so important to them. Probably they will be inclined to come,—probably they ought to come. But all experience shews that they will not come—that they will not attend a special election at that time. In some districts of the state, as we all know, large numbers of voters have to travel ten or fifteen miles to reach the place of election—sometimes over a bad road. And about the first of June it is impossible that the labouring classes of this community should be brought to the polls, for the purpose even of voting on the adoption or organization of their constitution. A large portion of our citizens are engaged in the lumbering business, which, as we all must know, takes them from home at that part of the year. It is probably, all things being considered, the most busy time to men in all businesses. Will you, then, submit your constitution to them at such a time ? If the amendments which may have been made by this convention are finally adopted by the people, they ought to be adopted after a full and fair trial by the people. If they are to be rejected, they ought also to be rejected after a full and fair trial. And let no township or man be permitted to say, that no opportunity has been afforded to them to vote understandingly on the law of the land by the time fixed upon for that purpose. Let us fix a day when the people may be brought to the polls, as well by the inducements which the subject itself presents, as by the other questions of interest involved in the general election ;—and then, if the amendments should be adopted, universal satisfaction will be felt ; and if, on the contrary, they should be rejected, I hope that universal satisfaction will also prevail. The main object to be accomplished is, that we should have a clear and an unequivocal expression of the will of the people, given advisedly and understandingly ; and let the amendments stand or fall accordingly.

It is urged as an objection to the second Tuesday of October, that we are to elect our state officers on that day. It is true that on the day alluded to we have to elect a governor, and that two candidates, both of commanding influence, are now before the people for that office. But how is this subject of constitutional reform to be affected by the day on which this political contest is to be settled ? Is it to be supposed that either

party will connect itself with this subject of constitutional reform? Will the democratic party permit the anti-masonic party to make this a question of party politics? Or, on the contrary, will the anti-masonic party permit the democratic party to do so? I do not believe it. I believe, on the other hand, that the anti-masons, the democrats and the whigs—men of all political parties—will array themselves for or against this constitution upon a principle exclusive in itself, and having no reference to any thing else. It will be a question of new constitution or old constitution—of reform or no reform—and the very jealousy which exists between the different political parties in this state, is a guaranty that it will not become the peculiar question of the anti-masons, the democrats, or the whigs.

It was true there would be a variety of subjects before the people, but, then, they would have a long time to reflect upon them, and would be able to pass upon them, discriminately, at the ballot box. His belief was, from the reflection he had bestowed upon the subject, that if the amendments should be submitted to the people on the second Tuesday of October next, the number of votes given for, or against them, would be from twenty-five to forty thousand more than could be obtained in June, November, or any other month that could be selected. Although the interests of the party, with which he acted, might be injured—affected prejudicially, by their being submitted on that day, in preference to any other, still he verily believed that from twenty-five to forty thousand more votes would be given. He should, therefore, vote for that day, irrespective entirely of all other considerations—political, or otherwise. Would any gentleman be unwilling to leave the important work which he had been for several months engaged in perfecting, to the decision of a full jury? Was there a gentleman here who wished his work to be condemned, or approved before that jury, by whose arbitrament we must abide, who could object to its being submitted to them in October? He presumed not. He hoped that the amendments would have a fair trial, and that the whole people would have a full opportunity of declaring whether or not they would ratify the amendments. On the second Tuesday of October, then, in his opinion, we might expect such a trial, and no other day. He hoped, therefore, that the amendment he had offered, would be adopted.

Mr. Scott, of Philadelphia, moved to amend the amendment by striking out "second Tuesday of October," and inserting the words "first Tuesday of November."

Mr. Scott said:

The argument in favor of the second Tuesday of October was, that upon that day a larger number of voters would probably be in attendance at the polls, than on any other day that could be selected in the year. It was thought desirable that upon the question of the adoption or rejection of the amendments, the voice of the great body of voters of Pennsylvania should be heard. Now, he begged leave to observe, *en passant*, that this principle, which he regarded as a sound and salutary one, in itself, was repudiated by the convention, in the morning, when they rejected the amendment offered by his colleague, (Mr. Meredith) to the article in relation to future amendments. He acknowledged, as he had already said, that it was a sound principle, that the larger the number of voters on the question of the adoption, or rejection of the amendments, the better.

But, this was not the only principle which presented itself to our consideration. There was another one of equal importance which ought to be kept in view, in connexion with the other, and that was, the large number of votes upon the adoption or rejection of the amendments, should be pure votes. By which, he meant, votes given calmly and deliberately upon the single question, whether wise or prudent, or unwise or imprudent, to amend the constitution of Pennsylvania. And, upon that question unmingled and unmixed up with party politics—without any excitement whatever, ought the decision to be made.

Now, he did not believe that a larger number of votes would be polled at the governor's election in October, than would be polled for and against the constitution in November, if the convention should adopt the first Tuesday in November, instead of the second Tuesday in October, as the day on which to submit the amendments to the people. He could not conceive it to be possible that a greater number of the freemen of this commonwealth would go to the polls for the purpose of determining who should sit three years in the governor's chair, and not interest themselves so far as to go to vote upon a question as to what should be the frame of their government for the next fifty years, or more, to come. Was it possible, he asked, that the people of the commonwealth of Pennsylvania looked with so much indifference on their fundamental law, that they would not turn out to vote in reference to it? If it were true, then was this convention wrongly and improperly setting here. If it were true that the people were indifferent as to the character of their constitution, the members of this convention have no business to be setting in this hall, spending the time and the money of the people. Certainly not, if those really are their sentiments. It was true that the votes given for holding a convention were fewer than for governor. And, how happened it? Because it was not generally known throughout the commonwealth that such a question was pending.

Sir, by very many of the voters of the commonwealth, it was regarded as a matter not unimportant, but as a matter scarcely having political existence in the belief, and in the minds of the great body of the people. The general sentiment was, that there would be few, or no votes for the call of this convention; that it was a subject which was only thought of by a few individuals; and, under these impressions, it did escape the attention of the great body of the voters of the commonwealth. Hence it was, that the voters upon the question of the call, were fewer in number by many thousands, than the voters upon the other questions which were submitted to the people on the same day. But when the people come to be told that they are going to vote upon questions as to the election of the magistrates—as to the election of county magistrates—upon the question of the change in the tenure of the judicial office—upon the question of bestowing the appointing power partly upon the senate—and upon the question as to the manner in which future amendments to the constitution can be made—when, I say, the people of this commonwealth come to understand, (and by the time indicated in my amendment they will fully understand,) that all these important and momentous matters are to be passed upon by them, shall I be told that the freemen of Pennsylvania are so indifferent, that they will abstain from coming to the polls on the first Tuesday in November, when, on the second Tuesday of October,

they are willing to go there, for the comparatively insignificant object of saying who shall be their governor? If it be true that the governor's election will bring out a greater number of voters, why is it so? The reason is that the bad passions of the heart bring out the voters on the second Tuesday of October. If they do come out for the governor's election in greater numbers than to vote upon matters affecting vitally the interests of themselves and their children, the reason must be that they come to the polls on the second Tuesday of October, for victory and triumph, and not for the purpose of a calm and judicious exercise of their faculties in the questions submitted to them. And if the people come to the polls in October, thus heated and embittered, is this a frame of mind in which they ought to pass upon the question of changing their frame of government? Ought they not to come to so grave a question as this, disembarassed by party politics—free from the heat and ill-blood attendant on political quarrels, and with the whole force of their mind applied, and steadily bent, upon the single consideration whether that frame of government, shall, or shall not, be changed? I repeat, therefore, that if gentlemen tell me, that the second Tuesday in October will bring out a greater number of votes than can be procured on a day specially set apart for the judgment of the people to be taken on the amendments to the constitution, made in this convention, it is for that very reason the operation of which would incapacitate the people to vote on so vital a question; and, in view of which, they ought not to be permitted to vote on that day.

There is also, Mr. President, another reason why I think that the action of the people should be postponed until the month of November. Not only, on the second Tuesday in October, will passion govern where it ought not to be permitted to govern, but I apprehend that the political and party organization of the state, prior to that day, will be such as to prevent the free exercise of the freeman's mind on these topics during the intermediate period of time. I acknowledge that it almost passes the wisdom of man to say, how these questions will operate prior to the second Tuesday of October; but I do see clearly, that in all those counties of the commonwealth in which there was a strong vote given for or against the call of the convention, both the conflicting parties will put their governor, and a vote in relation to the amendments, on the same footing. The cry of one political party will be, our governor and no amendments, whilst the cry of the other political party will be, our governor and the amendments. And thus, through the whole period that has to elapse between the twenty-second day of February, and the second Tuesday of October, the question will be, not what we ought to do upon the adoption or rejection of the amendments; but what shall be the party cry with which we shall head our governor's ticket at the fall election. That such will be the result of holding the two elections on the same day, I do not entertain a doubt. And this is the evil which I am anxious to avoid.

Now, if you postpone the election on the amendments until after the general election shall have passed, how will the matter then stand? There will be an interval in which the passions of men will have had time to cool. The governor will have been in office some time, or, at all events, he will have been elected, if not inaugurated; and then the

freemen of the commonwealth will be enabled to look at the question of the rejection or ratification of the amendments, unbiased by any considerations affecting the choice of candidates for the gubernatorial office. They will bring their minds to this grave question, free from party bias, or the influences of political excitement and warfare.

There is yet a third reason which operates in my mind in favor of the day indicated in my amendment.

The delegate from Luzerne, (Mr. Woodward) seems to think that there will not have been time, if the election is fixed for the first Tuesday in June, for the people to have become informed thoroughly as to the character of the amendments to be submitted to them. For the sake of the argument, I will grant him the position, although I do not admit it in point of fact. I ask him, then, whether he thinks there will be time between the first Tuesday in June, and the second Tuesday of October? What question is it which will mainly agitate the public mind in the meantime? It is the question, who shall be the governor of the state. Does any man suppose that the freemen of your commonwealth will be studying your amendments between the months of June and October? Will they not rather be attending their county meetings, their ward meetings, and their political canvassings, in order that they may see in what manner they will be most likely to carry their candidate? Will that be a time for the considerations of questions so grave as are involved in these amendments? Will not the papers be teeming with violent party addresses? Will not the public mind be directed to the victory or the defeat of one candidate for the office of governor, or of the other? Sir, I feel obliged to apprehend that this will be the case. Then, I am for giving the people a little time to breathe, a little space for calm consideration and reflection. Let them look steadily at what they are about to do. I would let these amendments be laid before them, as soon as practicable after our final adjournment, so that they may have from that time until the summer campaign is fought out. Let them settle that battle, and then give them an interval of three or four weeks once more to reflect upon these amendments, and upon the effect which they are to have on the future welfare of the commonwealth;—and then let them come to the polls in November and pass upon the amendments.

In favor of my amendment then, Mr. President, and looking at the matter, in every point of view in which it can be regarded, I submit that justice to the commonwealth—justice to the interests of the commonwealth—justice to posterity—justice to the great questions which are at stake between the old and the new constitution, requires that, do what you will on other matters, you should hold the election on this subject distinct and separate from the election held for the selection of an officer to fill the governor's chair. And I am not able to see any force in the objections which have been urged against the day set apart in my amendment—that is to say, until the first Tuesday of November. There will be time enough, if that day should be adopted, to collect and gather all your returns—for presenting them to the secretary of the commonwealth, to be by him presented to the legislature. It will be in time for the proclamation of the governor, it will be in time for the inauguration of the new governor under your amendments, if they shall be adopted. In short, it will be in time for every thing, and I can see no necessity for calling upon the

people to give their vote upon these great questions earlier than the day I have named—which will give time enough, and not more, to elapse between the vote, and the day when, under the act of assembly, the vote must be announced to the people through the medium of a proclamation by the governor. You can not give the people too much time for reflection.

If the cause of reform, as it is called, ought to be triumphant, if the amendments which have been made are just and wise, surely the friends of those amendments do not suppose that they will become weaker in the affections of the reform party, or of the people, by being disseminated, and carefully deliberated upon through every part of the commonwealth. If, on the other hand, the amendments should be discovered to be unsound and unwise, in the name of God, give to the people of Pennsylvania time to ponder upon the results. Do not press them to vote, before sufficient time has been allowed to read all that can be read, to hear all that can be heard, and to receive all the light which it is possible for them to receive. What they do, is to be done, either that it may endure for a long term of years; or, if imprudently done, it will in all probability be the cause of ceaseless agitation, until we again travel over the same scenes which we have witnessed in this commonwealth during the last eighteen months, and in this convention during the last eight months.

In every point of view, then, in which it can be regarded, it seems to me that my amendment ought to prevail in preference to either of the other propositions.

Mr. BANKS, of Mifflin, said. When this question was first likely to be thrown before the convention, with a view to its action, I endeavored to satisfy myself as to what day it would be proper and most desirable that these amendments should be submitted to the people. Believing, as I now believe, and as the determination of the convention indicates, that we shall be able to adjourn finally on the 22d day of this month, my mind settled down, in the first instance, upon the day on which the people are to meet in the respective school districts in this state—to wit: on the first Tuesday in May, to vote upon certain propositions to be laid before them, according to the school law of June, 1836. But upon further reflection, after having conversed with gentlemen who know very well the condition of the state, who understand the density and the sparseness of the population in different parts, and taking into account the difficulties there would be in communicating the requisite information to every part of the state, I become convinced that the people would not be sufficiently informed on the subject to enable them to vote understandingly on the first Tuesday in May. It became my duty then to satisfy my mind as to what other day could best be set apart for this purpose. I then thought of some day in June. That, however, would be about the commencement, or somewhat before the commencement of the harvest; and when I took into account that there were many persons in the state engaged in carrying on the lumber business on our waters, I came to the conclusion that it would not answer to hold the election on any day before the harvest. I am now fully satisfied that it will not be convenient or expedient for the people to assemble at the polls, in any of the county districts, before harvest. In the harvest time it can not be done. If any time is fixed upon before the general election, it should be after harvest.

In relation to the amendment of the gentleman from the city of Philadelphia, (Mr. Scott) it seems to me that, in his action on this matter, he has gone entirely beyond the Ganges. If you allow the general election to pass, and throw the election on the amendments over until the month of November, you will prevent the people from going to the polls on account of the cold weather; the season is altogether such as to prevent men who are not the most robust from turning out.

There is also another matter to be considered in relation to a special election. If you authorize a special election, and you cast upon the different counties of the state, large and small, an extraordinary expense for which, I apprehend, they will not thank you. The expense will range in the counties, from three hundred to one thousand dollars, according to the number of districts in each county. The officers of the election being the same in number for every district, and the expense depends much on the number of districts in the county. And when we know that the people will certainly turn out to attend the governor's election, on the second Tuesday in October, and that a more full expression of sentiment might thus be realized by taking the vote on the amendments upon that day, why should we put upon them the necessity of attending a special election, and impose upon the counties an extraordinary expense, which can quite as well be avoided. I can see no good purpose which is to be answered by doing so.

The gentleman from the city of Philadelphia, (Mr. Scott) who is always shrewd, intelligent, and able in the communication of his sentiments upon every subject to which he addresses himself, has one peculiar feature in the argument with which he has supported his proposition—that is to say, that the people, in times of general election, are induced to go out to the polls from the bad passions which pervade their hearts. This seems to me to be a very extraordinary argument, and it is one which I have never before heard. Carry out this idea, and what would be the consequence?

If it be true, as the gentleman alleges, that the people turn out to vote on the general election day because they are stimulated to do so by the bad passions which are rankling in their hearts, it must be wrong to trust them with voting for the officers of the commonwealth, or upon any other question. This is a doctrine which I confess myself at a loss to understand, and, if I mistake not, the gentleman, with all his intelligence, can not explain it to the satisfaction of this audience. It is not thus that I have been instructed in relation to the political rights of the people of this state. The desire of my heart, and the desire of my constituents is, that all the freemen of this commonwealth should be at all times permitted to cast their vote in favor of, or against, particular candidates for particular offices, and in favor of, or against, particular measures. And I have been taught to believe that they could do this, that they could exercise this inestimable right of freemen, without giving way to the bad passions which corrupt and degrade mankind. I still believe that they can do so, and there is no conviction with which I should more reluctantly part. I can not, therefore, subscribe to the doctrine of the gentleman from the city of Philadelphia, (Mr. Scott) and I think that there are few gentlemen in this body who will yield their assent to it.

If, Mr. President, the amendments to the constitution, which may be



agreed upon by this convention, are worth any thing, if they are worthy of the consideration of the people, and of their deliberate action, why not submit those amendments to them at a time when it is reasonable to expect they will turn out in their strength to approve or reject them.

For my own part, I have no fears in regard to my course on this question. Equally sure am I, that the gentleman from Philadelphia, (Mr. Scott) has none. I am sure that he would rather that every man in the state, who is entitled to a vote, should go to the ballot box, and express his approval or disapproval of what has been done in this body, than that he should stay at home and take no interest in the result.

It could not be the desire of any man in favor of the rights of freemen, that any one of the people shall be prevented from voting for or against the amendments. It is our desire to do the greatest good to the greatest number. This is the object of the majority—radicals or conservatives. Why not then give that day for taking the vote of the people when the greatest number will be likely to attend. I believe there is no day on which so great a number can be brought to the polls as at the October elections. These are the reasons which have induced me to come to the conclusion I have reached; and they are satisfactory to me.

Mr. CHAMBERS, of Franklin, preferred the report of the committee to either of the amendments—that report which provided for submitting the amendments to the people early in June. He was desirous that the vote should be taken at a time which would admit of the people giving to the subject the consideration it deserves, and when the fullest expression of public opinion could be obtained. Well, would a day early in June admit of this? So far as the circumstances of the people I am acquainted with are to be considered, I think it will. The most important articles and amendments had the action of the convention long since. The terms of the justices of the peace, so important to the people, were settled in the summer. The terms of the judges, an all-important question to the people, were decided some months since. So far as regards our constituents, the amendments had therefore undergone their consideration. If the amendments were now to be presented, what is the time which would elapse before the beginning of June. More than three months will intervene, and this is sufficient time for the people to be satisfied. He desired to call the attention of the convention to what had been the course in other states on this subject. In New York the amendments were adopted in November, 1821, and were submitted to the people in the following January. The amendments were submitted at a special election, held two months afterwards, and then passed upon and adopted. In Virginia, the amendments were adopted by the convention, on the 15th of January, 1830; and were submitted to the people, at a special election in April, only three months afterwards. In Massachusetts, the amendments were adopted by the convention on the 9th of January, 1821, and were submitted to the people on the second Monday in April. Thus, it appears that in these three states, in which the constitution had been revised, the amendments were submitted to the people within three months. As regards time, therefore, we have the assurances of other bodies, which have submitted amendments to the people, that three months was amply sufficient for the purpose; and this too, when the conventions were in session only one or two months, while, in our case the attention of the people has been fixed upon us for months past.

He would also prefer a special to a general election, for the reason that the amendments are of importance enough to engross the attention of the people. He did not wish them to be mixed up with other subjects, but thought they should be passed upon separately; that the vote should be free from the operation of all other influences; and that the matter should be passed upon dispassionately. As was said by the chairman of the committee who reported the amendments, they are not to be regarded as the amendments of a party—not for the conservatives, or for the democrats, or for the anti-masons, but for all the people of the commonwealth—and as they may be for all time, they should be passed on irrespective of all other considerations. It will be so when party organization is not brought to bear on the people.

It is, however, alleged that there is danger that the people will not be brought out on a special election, although there will be such an important question to vote upon as constitutional provisions. Yet we know that this same subject has brought them to the polls when they elected delegates to this convention. The votes given then, on the call of a convention, were about 30,000 or 40,000 less than were given for governor. The people did then overlook the importance of this matter in their anxiety to elect their governor. But when there was a special election for the choice of the delegates, the votes were more numerous than those taken in the preceding October. It was the convention to which their attention was then directed, and they did come out, and one of the largest votes was obtained in November.

Believing, then, that the people may be brought out at a special election, and that the question of the adoption or rejection of the amendments may be important enough to command the attention of the people, he preferred a special election; and he preferred a special election in June to one in November, because it was a season of the year at which the farmer had the most leisure. The other interests of the state may be brought to the polls at any time. Merchants, manufacturers, mechanics, professional men can attend at all seasons. The places of voting are generally in towns or villages. It is the farmer, and those engaged in agriculture, to whom the time is important, and the question is, what season will best suit their interests. The last of May, or the beginning of June, was in his opinion, the most convenient.

He was aware of the impatience manifested by gentlemen and of which he was sorry to say, there had been too much exhibited for some time past. He was proceeding to show that it would be more for the convenience of the farming interest to submit the amendments to the people about the end of May or the beginning of June. The farmers, in particular, would then be more at leisure. It is the season for planting corn and cutting grass. It was a time of year, too, when aged, infirm, or delicate persons might attend an election without exposing themselves. But, the month of November was a season of great engagements, when, too, the weather was so inclement as to prevent the aged and infirm from attending the polls. June was a much preferable month. It was so, also, on another account, because a fuller expression of popular opinion would be given than could possibly be expected immediately after the excitement created by the general election. In order to obtain a full expression

of public opinion on the amendments, the best course was to select a period of the year as far distant from any exciting time, as might be convenient to the voters, who could attend the polls without a sacrifice of their interests.

On motion of Mr. Cox,

The convention adjourned until half past nine o'clock to-morrow morning.

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**TO THE**  
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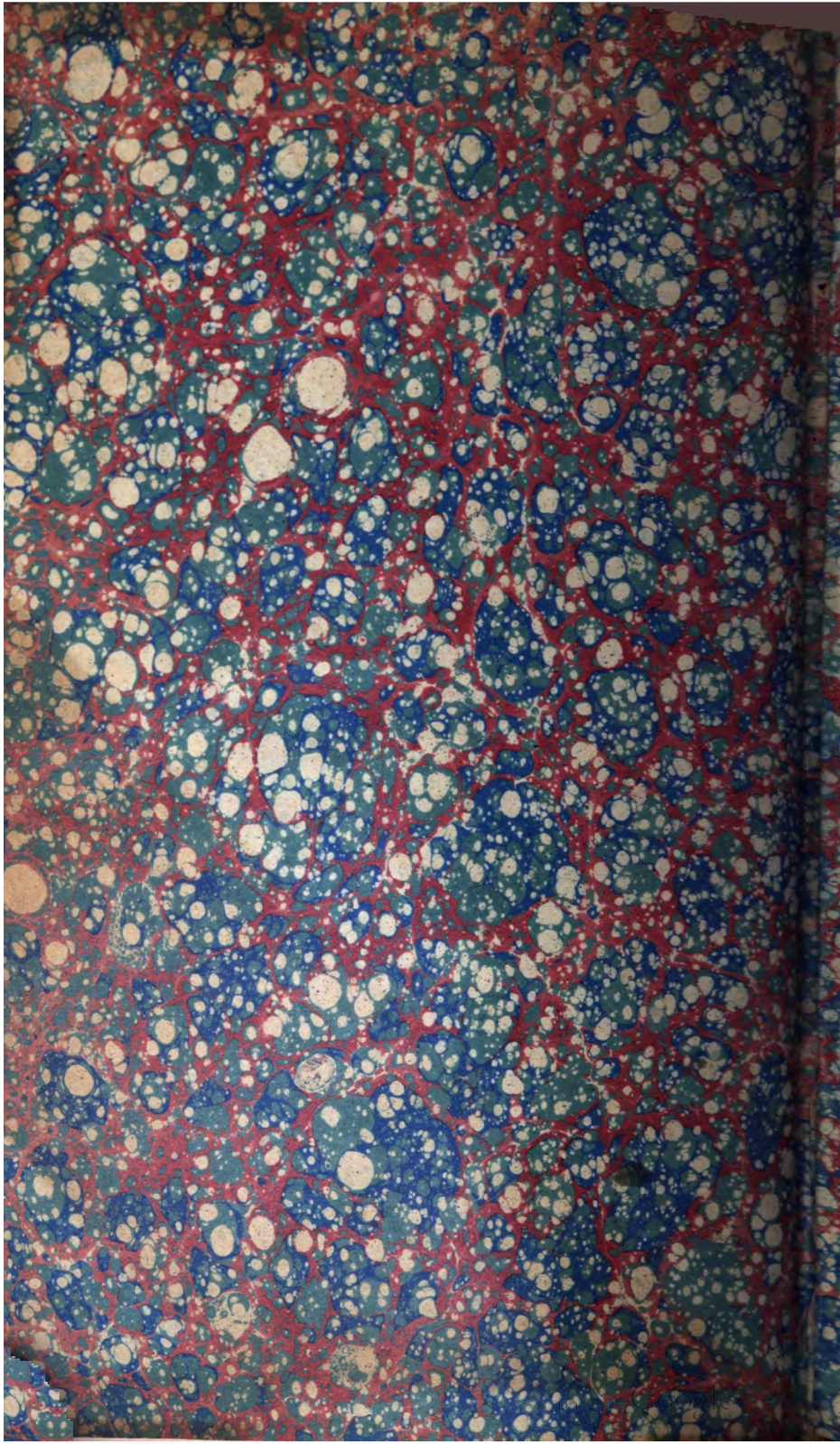
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END OF TWELFTH VOLUME.











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