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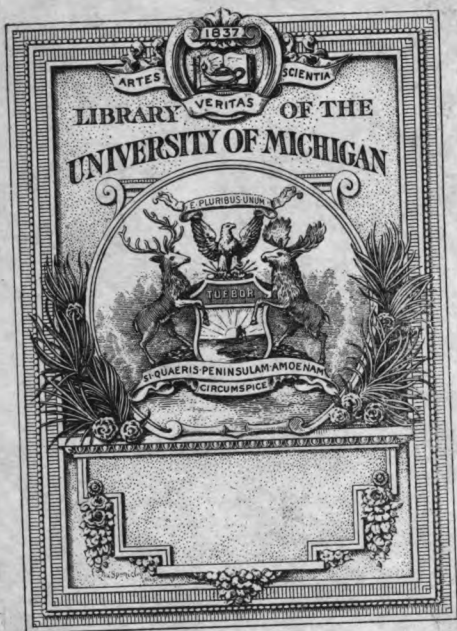
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PROCEEDINGS AND DEBATES

OF THE

CONVENTION

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

TO PROPOSE

47399

AMENDMENTS TO THE CONSTITUTION,

COMMENCED AT HARRISBURG, MAY 2, 1837.

VOL. XIII.

Reported by JOHN AGG, Stenographer to the Convention,

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

HARRISBURG:

PRINTED BY PACKER, BARRETT, AND PARKS.

.....
1839.

PROCEEDINGS AND DEBATES

OF THE

CONVENTION HELD AT PHILADELPHIA.

THURSDAY, FEBRUARY 15, 1838.

Mr. STERIGERE, made a motion to correct the journal in some points where he regarded it as not sufficiently explicit: but, after some discussion in which the motion was opposed, the question was decided in the negative.

Mr. BELL, of Chester, submitted the following resolution, viz:

Resolved, That the use of this Hall be given to Elliot Cresson, Esq. on Monday evening next, for the purpose of delivering a lecture on the subject of Colonization in Africa.

Mr. BELL moved that the convention do now proceed to the second reading and consideration of the above resolution.

Mr. DARLINGTON, of Chester, asked for the yeas and nays on this motion, and they were ordered.

The question was then taken and decided in the negative, as follows, viz:

YEAS—Messrs. Banks, Barclay, Barnitz, Bedford, Bell, Brown, of Northampton, Chambers, Clark, of Dauphin, Clarke, of Indian, Cleavinger, Cochran, Cummin, Cunningham, Curil, Denny, Dickerson, Donagan, Donnell, Fleming, Forward, Fuller, Gamble, Henderson, of Dauphin, Jenks, Keim, Kennedy, Krehs, Lyons, M'Cahen, Merrill, Miller, Nevin, Payne, Porter, of Northampton, Purviance, Ritter, Rogers, Scerrill, Sheltito, Taggart, Woodward, Sergeant. *President*—42.

NAYS—Messrs. Agnew, Barndollar, Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Cox, Crain, Crawford, Crum, Darlington, Darrah, Dickey, Dillinger, Farrelly, Foulkrod, Fry, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Hiester, Hopkinson, Hyde, Ingersoll, Konigsmacher, Maclay, Magee, Mann, M'Dowell, M'Sharry, Meredith, Merkel, Montgomery, Myers, Pennypacker, Porter, of Lancaster, Reigart, Read, Ritter, Russell, Saeger, Scheetz, Sellers, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Thomas, Todd, Weidman, White, Young—51.

Mr. COCHRAN, from the committee to whom were referred the amendments to the constitution as agreed to on third reading, for the purpose of

having the same engrossed, reported the same engrossed accordingly, on the annexed and attached skins of parchment, numbered from one to sixteen inclusive, and recommend the adoption of the following resolution, viz :

Resolved, That the names of the President and Secretary of the Convention shall each be endorsed in his own proper hand writing on each of the skins, with their certificates as evidence of the same.

Which was read, and together with the said amendments, laid on the table.

Mr. SCOTT, from the committee appointed to prepare and report a schedule to the amended constitution, made report :

That they have attended to that duty, and submit the subjoined schedule to the consideration of the convention.

They also report that the provisions contained in this schedule, express, in addition to former reports, their sentiments on all the resolutions which have been referred to them.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained, that

I. All laws of this commonwealth in force at the time when the said alterations and amendments in the said constitution shall take effect, and not inconsistent therewith, and all rights, actions, claims and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

II. The alterations and amendments in the said constitution shall take effect from the first day of January, eighteen hundred and thirty-nine.

III. The clauses, sections and articles of the said constitution which remain unaltered, shall continue to be construed and have effect as if the said constitution had not been amended.

IV. The general assembly which shall convene in December, eighteen hundred and thirty-eight, shall continue its session as heretofore, notwithstanding the provision in the eleventh section of the first article, and shall at all times be regarded as the first general assembly under the amended constitution.

V. The governor who shall be elected in October, eighteen hundred and thirty-eight, shall be inaugurated on the third Tuesday in January, eighteen hundred and thirty-nine, to which time the present executive term is hereby extended.

VI. The commissions of the judges of the supreme court, now in commission, shall not be affected by the second section of the fifth article of the amended constitution. Their successors shall hold according to the tenure therein prescribed.

VII. The commissions of the president judges of the several judicial districts of this commonwealth and of the "legal associate judges" of the first judicial district, now in commission, shall not be affected by the said

second section of the said fifth article. Their successors shall hold according to the tenure therein prescribed.

VIII. The legislature at its first session under the amended constitution, shall divide the other associate judges of the state into four classes. The commissions of those of the first class shall expire on the twenty-seventh day of February, eighteen hundred and forty : of those of the second class on the twenty-seventh day of February, eighteen hundred and forty-one : of those of the third class on the twenty-seventh day of February, eighteen hundred and forty-two : and of those of the fourth class on the twenty-seventh day of February, eighteen hundred and forty-three.

IX. Prothonotaries, clerks of the several courts, (except of the supreme court,) recorders of deeds and registers of wills, shall be first elected under the amended constitution, at the election of representatives in the year eighteen hundred and thirty-nine, in such manner as may be prescribed by law.

X. The appointing power shall remain as heretofore, and all officers in the appointment of the executive department, shall continue in the exercise of the duties of their respective offices until the legislature shall pass such laws as may be required by the eighth section of the sixth article of the amended constitution, and until appointments shall be made under such laws, unless their commissions shall be superseded by new appointments, or shall sooner expire by their own limitations, or the said offices shall become vacant by death or resignation ; and such laws shall be enacted by the first legislature under the amended constitution.

XI. The first election for aldermen and justices of the peace shall be held in March, eighteen hundred and forty, at the time fixed for the election of constables. The legislature at its first session under the amended constitution, shall provide for the said election, and for subsequent similar elections. The aldermen and justices of the peace now in commission, or who may in the interim be appointed, shall continue to discharge the duties of their respective offices until new commissions shall be issued under said election : at which time all previous commissions shall be held to expire.

Which was read and laid on the table ; and,

On motion of Mr. M'SHERRY,

Ordered to be printed.

Mr. WOODWARD, on behalf of a minority of the committee appointed to prepare and report a schedule to the amended constitution, made report :

That they dissent from the sixth and seventh sections of the report of the majority, and they recommend the adoption of the following sections instead of those numbered six and seven in that report.

VI. Within three months from and after the third Tuesday of January next, the governor shall, by and with the advice and consent of the senate, re-appoint one of the then existing judges of the supreme court for the term of three years ; one of them for the term of six years ; one of them for the term of nine years ; one of them for the term of twelve years ; and one of them for the term of fifteen years.

VII. The commissions of the president judges of the eleventh and

thirteenth judicial districts shall expire on the twenty-seventh day of February, anno domini, one thousand eight hundred and thirty-nine;—of the ninth and fifteenth districts on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty;—of the sixth and first districts on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty one;—of the fourth and sixteenth districts on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-two;—of the twelfth and seventh districts on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-three; of the seventeenth and eighth districts, on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-four;—of the nineteenth and fifth districts, and the commissions of the associate judges of the first district, shall expire on the twenty seventh day of February, anno domini, one thousand eight hundred and forty-five;—the commissions of the president judges of the eighteenth and third districts, shall expire on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-six;—of the second and tenth districts, on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-seven;—and of the fourteenth district on the twenty-seventh day of February, anno domini one thousand eight hundred and forty-eight.

GEO. W. WOODWARD,
EPHRAIM BANKS,
HIRAM PAYNE.

Laid on the table and ordered to be printed.

Mr. M'SHERRY, on the behalf of a minority of the committee appointed to prepare and report a schedule to the amended constitution, made the following report, viz :

The undersigned, a minority of the committee appointed to prepare and report a schedule to the amended constitution, recommend the adoption of the subjoined sections in place of the eighth and eleventh sections reported by the committee, viz :

VIII. The commissions of the associate judges of the several courts of common pleas of this commonwealth (as well as of those of the first judicial district,) now in commission, shall not be affected by the said second section of the said fifth article. Their successors shall hold according to the tenure therein prescribed.

XI. All aldermen and justices of the peace now in commission shall continue to hold their offices according to the terms of their present commissions. Whenever the number of these officers in any ward, borough or township, shall be reduced by death, resignation or otherwise, below the number which may be prescribed by law, the vacancies shall be filled in the manner and upon the tenure prescribed by the seventh section of the sixth article of the amended constitution.

J. M. SCOTT,
JAMES M'SHERRY,
W. P. MACLAY.

Laid on the table and ordered to be printed.

SCHEDULE.

The convention resumed the second reading and consideration of the report of the committee appointed to prepare and report a schedule to the amended constitution, to whom was referred the resolution instructing said committee to report when it will be most expedient for the citizens of the state to vote upon the amendments to the constitution, which may be submitted to them for their approbation.

The amendment to the amendment to the said report being under consideration, as follows, viz :

'To strike from the amendment the words "second Tuesday of October." and insert in lieu thereof the words "first Tuesday of November."

Mr. REIGART of Lancaster, said. I presume we may take the question very soon on the matter now before us, and I will give my reason. If the election is to take place in November, according to the amendment now immediately under consideration, it seems to me that it will be more likely to beget political excitement, than if held at any other time, and that parties will array themselves one against the other in reference to these amendments. The election for governor will then have passed, and the parties, according to the success of their respective candidates, will arouse themselves for or against the amendments. Every thing of this kind has been properly deprecated by the gentleman from the city, (Mr. Scott) and I concur with him in the views he has expressed on that point. But I do not agree with him in the position, that a day in November, will be better than the second Tuesday in October. I do not see how political considerations can be mixed up with the question of the amendments, if we fix on the latter day. It is uncertain who will be elected governor, and we may suppose that the election if held at that time, will go according to the merits or demerits of the amendments themselves. I, therefore, go in favor of the second Tuesday in October ; and moreover, I think that a greater number of votes will be polled, than on any other day that can be fixed upon. It is true, that in the cities and towns, the people can go out to the polls at any time, but it is not so with the agricultural interests.

There is another matter which may seem unimportant to the minds of some gentlemen, but which in my estimation is not so. I allude to the expense of a special election. We may differ as to which day will be best ;—but if we do not differ as to the day on which the greatest number of votes will be given, it seem to me that the expense, although a small matter, should be allowed to enter into the computation.

I shall vote for the second Tuesday in October.

Mr. FULLER, of Fayette, said :

I believe there are only three objects connected with this question. The first is, to have a fair and full expression of the opinions of the voters on the amendments which may be agreed to by this convention. This is the first and most important object ; because if there should not be such an expression of opinion, I take it for granted that the minority of the voters of this commonwealth, not being satisfied with many, or most, of

the amendments that may be adopted by the people, will be more willing to make application for further changes in the constitution. But if the amended constitution should be adopted by the vote of a large majority of our people—as I have no doubt it will be, if the election shall be held at a proper time—I believe that all questions of this kind will be put at rest for many years to come.

The question then presents itself, what is the proper time at which to obtain the largest number of votes? So far as any thing has transpired in the course of this debate, it seems to me that no gentleman on either side has objected to the position, that more voters would turn out on the second Tuesday of October, than at any other time. As to the propriety of accomplishing that great and important object, it does not appear that there is any difference of opinion among the members of this convention. The only point of difference in reference to that particular, is, on what day can the object be best accomplished.

It is true that the gentleman from the city of Philadelphia, (Mr. Scott) who proposed the amendment immediately under consideration, objects to the second Tuesday of October, on the ground that the people may become so excited, as he terms it, upon the general election day, that they will not vote calmly and considerately; that their feelings will be wrought up to such a pitch by party excitement as to warp their better judgment. There has been as much excitement in a governor's election and in county elections as ever will be got up by this important subject; and will the gentleman say, that the minds of the independent voters of this commonwealth have been so led away by party excitement, and the heat of party warfare, as to cause them to vote improperly?

If the gentleman intends to advance this doctrine, I should like him to carry it out, and see where it will land him. I should like him to propose some remedy, by means of which, the people can vote clearly and understandingly; but at all events, I think he must concur with me on one point—that is to say, that this whole subject is a proper subject for deliberation and decision, whether coolly or otherwise, by the people themselves.

As to the convenience of the people, that is another point to be considered. How the facts may be in the cities and large towns, I do not so well know; but I should suppose that to people residing there, it will make little difference whether these amendments are passed upon at the general election, or upon a day specially set apart for the purpose. I know, however, that this is not the case in the small towns and villages—with the country people, as they are termed.. This fact has been sufficiently demonstrated in the elections which have taken place during the last fifteen or twenty years. The result may be seen in the general elections which take place on the second Tuesday of October, and the election for electors of president of the United States which is held in November.

If gentlemen will examine the list of returns, they will see that, in the election for electors of president of the United States, the number of votes polled, is infinitely less than the number taken on the second Tuesday of October. It is reasonable that it should be so; we can not expect any thing else. A large portion of the voters of Pennsylvania are agricultural-

sts, or labourers. They do not generally take so lively an interest in the elections as I could desire. They live far from the polls; they are unwilling to spend their time in travelling there, and the consequence is, that many stay at home on the second election. And I have no doubt that this will be the case in the present instance.

As to the proposition for the first Tuesday of June, that appears to me equally as objectionable as the proposition of the gentleman from the city of Philadelphia. It is undoubtedly proper that the people should have time allowed them to examine the amended constitution, and to compare its provisions with those of the constitution of 1790. This I believe to be requisite. They will then be better able to possess themselves of information, and to come to the polls prepared to vote understandingly and wisely.

The next objection which I have to urge against a special election, is the additional expense which must be thereby entailed upon the people. There are in the commonwealth of Pennsylvania, one thousand and four wards, boroughs and townships. Each of these election districts will cost about fifteen dollars upon an average. That will amount to an additional expense of about fifteen thousand and sixty dollars—to be imposed upon the people. But is this all the additional expense which will be incurred? I hold that it is not. Take the average time of the voters—for to the industrious and hard working population of this state, time is money—and a special election will cost every man at least fifty cents. How many voters are there in the state? Say two hundred thousand. So that the whole would amount to a sum of one hundred thousand dollars. It is true that this sum is not actually paid out of pocket by a majority of the voters, but it is a greater loss than if the money were actually so paid. By this calculation, therefore, a special election would involve an additional expense of one hundred and fifteen thousand dollars. Is this nothing? Surely it is a matter worthy of some consideration at the hands of this body.

Now Mr. President, taking into view the first and greatest object which it is our duty to accomplish—that is to say to procure a full expression of the will of the voters of this commonwealth, it is agreed, I believe, upon all hands, that that object can be better accomplished by holding the election on the second Tuesday of October than on any other day.

The next object which we should have in view, is the convenience of the voters. The second Tuesday of October is a convenient day to them. It is a time when the voters arrange their business so as to attend the polls on that particular day—and I repeat, that I suppose all gentlemen must be satisfied that a larger vote will be polled on that day than on any other.

For these reasons, I hope that the convention will fix upon the second Tuesday of October. It will give the most satisfaction to the people.

I shall, therefore, go against the amendment of the gentleman from the city of Philadelphia, and in favor of the second Tuesday of October.

Mr. MILLER, of Fayette, demanded the immediate question.

But there was no second.

And the amendment to the amendment being again under consideration,

Mr. Cox, of Somerset, said :

There are some gentlemen who do not choose either to think themselves, or to let others think. I do not know whether the gentleman from Fayette (Mr. Miller) is one of that class. He may be so; but whether he is so, or not, I shall give my opinion on this question.

My own views are favorable to the report of the majority of the committee. I believe that the first Tuesday in June is the proper day on which these amendments should be submitted to the people. I shall, however, vote for the amendment of the gentleman from the city of Philadelphia, (Mr. Scott) considering, as I do, that the first Tuesday of November is preferable to the second Tuesday in October.

I propose briefly to notice the objections which have been urged against the first Tuesday in June, as well as those which have been urged against the first Tuesday of November.

The gentleman from Luzerne, (Mr. Woodward) says, that June would be too early a date; that the people of the commonwealth would not have the opportunity between this time and the first Tuesday in June, to come to a proper conclusion on the subject. In this respect I think he is in error.

The convention, I take it for granted, will adjourn on the twenty-second day of the present month, according to its resolution. There will then be an interval of upwards of three months, between the day of the adjournment of this body and the day fixed upon by the report of the majority of the committee to wit, the first Tuesday in June. If that day should be agreed upon, those of both political parties who are in favor of the amendments will commence their examination and make all exertions to disseminate information; and they will use such arguments as they may think are best calculated to make the people turn out on that day and vote in favor of the amendments.

They would do so, because they could do it and not be liable to that political influence which is exercised at the October election. He felt sure that they would desire to act upon them at that time, as they would be free from, and unbiased by, party interests and feelings. But, on the contrary, if the amendments were submitted at the October election, those opposed to them would avail themselves of every argument and device to induce their friends to turn out and vote against the amendments. He contended, therefore, that they should be submitted at an earlier day, when the exclusive attention of the whole people of the commonwealth would be directed to that one object. And, no doubt, this would be the case, because between now and June next, the controversy as to who shall be the next governor, would have closed, and which had already become very warm.

There being, then, but one object before the people, they would attend the polls, in a body, and give their votes for or against the amendments, as they might deem them good or bad. This they could do consistently, and without the least prejudice to their party. But if submitted in October, he apprehended that they could not do so.

The gentleman, (Mr. Woodward) objected to the proposition, on the ground that on account of its being a special election, the judges and inspectors, who served at the last October election, would be compelled to officiate there, although many of them might have removed.

Now, he (Mr. Cox) conceived that this objection was entitled to no weight, inasmuch as the law has provided for the filling of all vacancies of this sort. He believed that there was a provision in the act of assembly, relative to the filling of all vacancies on the morning of the election. If any officer or officers were absent, the voters could immediately select individuals to officiate in their stead. In his opinion, there could be no difficulty on that account, and consequently, the objection fell to the ground.

The gentleman from Luzerne, had also made another objection, and he (Mr. C.) must confess that he was astonished to hear a gentleman so well versed in political matters, and so zealous a politician as he was, commit so gross a mistake.

He had remarked that at the time when the delegates to this convention were elected, forty thousand voters did not go to the polls, who had attended them at the governor's election. The gentleman, however, should recollect that, although forty thousand did not give their votes for or against the calling of a convention, yet they did cast their votes on the other questions submitted to them at the same time. He thought the gentleman rather unfortunate in offering this objection. Yes, so little was the interest and anxiety felt by the people in regard to the calling of a convention, that forty thousand voters did not vote at all!

It occurred to him (Mr. C.) that exactly the same state of things might again happen, if the amendments were to be submitted on the second Tuesday of October, as the attention of the people would be directed to other objects. On that day, a new governor was to be elected, or the present executive magistrate be re-elected, and from the present aspect of things, the contest was likely to be a very warm one. Besides, there were likewise members of congress, members of the legislature, and other officers to be elected, at the same time; consequently, the political parties, on both sides, would use every exertion, and employ every means to accomplish their purposes. There had always been a great deal of warmth and party feeling displayed at a governor's election, and as in all probability there would be again at the next, he would ask if, under these circumstances, it would not be highly probable that the people would not come forward and give their votes coolly, calmly and dispassionately, for or against the amendments? He would ask if there was not danger to be apprehended that what had happened in relation to the calling of the convention, might not again happen? He confessed that he thought there was. Indeed, it would not surprise him in the least to hear that thirty or forty thousand of those who voted at the governor's election, should not vote for or against the amendments. He felt assured that this consequence would follow, because the election of a governor would be regarded as of more consequence. He thought, too, that we had a right to infer such would be the result, on account of the little interest manifested by the people of the commonwealth in the labour of this convention. Notwithstanding the frequent notices given by the press of the proceedings of this body, but little attention was paid to them by the people, certainly not near so much as to those of the legislature.

Among the objections—and an important one it was—which he entertained against submitting the amendments in October, was this: that if the contest for governor should be a close one, the supporters of the several candidates, seeing that their favorite was going to succeed, might be governed by selfish motives, and consequently, vote against the amendments, in order that their party might have the disposition of the offices. He regarded this, then, as a strong and insuperable objection to the amendment of the gentleman from Lancaster. The office holders, as a matter of course, would vote against the amendments. Each political party would be anxious to get hold of some of the loaves and fishes, and thus the office hunters would assuredly vote against the amendments, because it would be to their interest to do so. In his opinion, the most appropriate time to submit the amendments would be in June, before the election for governor came on, when they would be decided without reference to other questions.

Objection had been raised against a special election, on the ground that the attendance of voters would not be so great as at the general election. Well, he thought that was a matter which depended upon whether or not the people felt any interest or anxiety concerning the proposed amendments. If they did, then he apprehended that they would turn out whether the election was general or special. He entertained no doubt that a very large majority of the people had thought on the subject and regarded the proceedings of the convention with much interest. Having a regard for the interests and welfare of the commonwealth, they would, as a matter of course, give their votes either for or against the amendments. He could not persuade himself that our honest and patriotic yeomanry, mechanics, merchants, and others of our fellow citizens, would evince so much apathy and disregard in reference to the proposed changes in the constitution of the state of Pennsylvania, as not to express their opinions respecting them through the agency of the ballot box, because they were not submitted to them on the day of the general election. No, he entertained a better, a higher opinion of the people than that. He believed that they would turn out and vote according to the honest conviction of their consciences. True, it might be, that men who felt no interest would not vote—men who had bets on the result—such as bar-room politicians and others of like character, who might, perhaps, obtain little offices or something equally valuable to them, by not doing so. But, he had no doubt, whatever, that the really good and valuable citizens of the commonwealth would give their votes coolly, calmly and deliberately upon the amendments, if submitted to them in June next. They would vote uninfluenced by party considerations, and exercise their judgments freely and without bias. Not regarding whether the amendments were popular or unpopular, they would give their votes with reference alone to their being good or bad.

The impression upon his mind, was, that a more cool and dispassionate decision could be had on the amendments, if submitted in June instead of October—at a special instead of the general election, when those opposed to the amendments, will be busily engaged in urging the claims of their several candidates. And, double the chance would be presented of defeating the amendments in October than in June. The justices of the peace, of which there are three or four thousand, if against the amend-

ments, would turn out and ask—"who do you want for governor? who for the legislature?" &c., and would be very ready to give tickets. But, if they should be in favor of the amendments, they would laughingly say—"there has been voting enough already, and perhaps the constitution is good enough." And, thus a man might be induced to vote on all the other questions, but not the amendments.

He (Mr. Cox) would conclude by saying that he should prefer either June or November to October, as the most eligible time to submit the amendments proposed by this convention to the constitution of the commonwealth of Pennsylvania.

The question was called for by Mr. M'CAHEN and twenty-nine others rising in their places.

And on the question,

Shall the question be now put?

The yeas and nays were required by Mr. FORWARD and Mr. CHAMBERS, and are as follow, viz :

YEAS—Messrs. Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Clapp, Clarke, of Beaver, Cleavenger, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, High, Hyde, Keim, Kennedy, Krebs, Long, Lyons, Magee, Mann, Martin, M'Cahen, Meikel, Miller, Myers, Nevin, Overfield, Payne, Purviance, Read, Riter, Ritter, Rogers, Royer, Saeger, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Taggart, Todd, Weaver, Weidman, White, Woodward—72.

NAYS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Cline, Coates, Cochran, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dunlop, Farrelly, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Jenks, Konigsmacher, Maclay, M'Dowell, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Russell, Scott, Serrill, Sturdevant, Thomas, Young, Sergeant, *President*—45.

So the question was determined in the affirmative.

And on the question,

Will the convention agree so to amend the amendment, viz :

By striking therefrom the words "second 'Tuesday of October,'" and inserting in lieu thereof, the words "first 'Tuesday of November?'"

The yeas and nays were required by Mr. CURLL, and Mr. SHELLITO, and are as follow, viz :

YEAS—Messrs. Agnew, Barnitz, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Coates, Cope, Cox, Crum, Darlington, Denny, Dickey, Farrelly, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Maclay, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Saeger, Scott, Serrill, Snively, Thomas, Todd, Weidman, Sergeant, *President*—38.

NAYS—Messrs. Banks, Barclay, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Clark, of Dauphin, Clarke, of Indiana, Cleavenger, Cline, Cochran, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Magee, Mann, Martin, M'Cahen,

M'Dowell, Miller, Myers, Nevin, Overfield, Payne, Purviance, Reigart, Read, Ritter, Ritter, Rogers, Royer, Russell, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigore, Stickel, Sturdevant, Taggart, Weaver, White, Woodward, Young—82.

So the question was determined in the negative.

The question next recurring was on the amendment of Mr. **WOODWARD**.

Mr. **FORWARD**, of Allegheny, remarked that he should vote against the amendment of the gentleman from Philadelphia, (Mr. Scott) and also that of the gentleman from Luzerne, (Mr. Woodward) because he should not like the victorious party, at the general election, to vote upon the amendments whilst under the heat and influence of political party feeling. Many reasons presented themselves to his mind why the amendment of the gentleman from Luzerne ought not to be adopted. He would much deplore the idea that the adoption or rejection of the amendments were to depend on political scramble for the offices of the state.

Is it proper that amidst that scramble, the people should be called upon to give their attention to these amendments, and to decide upon their adoption or rejection in a scene of animosity and party heat, and where local and party influence could be brought to bear upon their judgment?

I am (said Mr. F) also opposed to this day for the reason which has been dwelt upon, for another purpose by the gentleman from Luzerne, (Mr. Woodward) and others who have spoken in this debate; namely, that this question of the adoption or rejection of the amendments should be regarded as a secondary question—that you must blend it with all those political and local questions which belong to the October elections, or, that if you do not so, the people will not turn out to give their votes—thus showing that the question of amendments is regarded by the gentlemen themselves as a subordinate matter that will be merged in the October elections; and thus all those local and factitious influences which can be brought to bear in October, must influence the fate which awaits these amendments—this new form of government—this solemn question which touches the permanent interest of every man, woman and child in this commonwealth.

If it is true, that the people will come to the polls for the purpose of contesting the election of members of assembly, members of congress and county commissioners, but that they will stay away from an election on the amendments to the constitution, it furnishes evidence that the fate of those amendments is to be decided by extraneous influences which ought not to bear upon them.

Sir, it is a solemn affair to change the organic law of the land, and I desire that the action of the people in every thing that relates to such a change should be influenced by those considerations which do enter, and must enter into our elections in October. For my own part, I do not believe that the people will act triflingly in this matter—that they will stay at home when these questions are propounded for their final action.

Whether the amendments which we have made are, or are not, ultimately to become a part of our form of government, I say, I do not believe that the people will stay at home on so solemn an occasion. I think it is paying but a poor compliment to the intelligence and patriotism of the people of this commonwealth, to assume or suppose that they will not attend to this matter.

Is it not better that these amendments should be considered alone?—that the action of the people should be had upon them uninfluenced by those other factitious considerations pressed upon them by political partisans, and which may be adverse to their best interests? Will not the people understand these questions, if they should be put to them in the month of June? I say they will—and I would even fix an earlier day—say, in the month of May.

Will they not, I again ask, understand the subject by that time? And why not? All these amendments have been before them, and gentlemen will recollect that we have been told again and again in the course of the deliberations of this body, that the public mind had already been settled down upon them—and that the people had sent us here only that we might register their will, so fully and decidedly had that will been made known. So far as concerns all the questions which have been before this convention in relation to executive patronage, I have no doubt that the people will be as ready to act upon them in three days as they would be in so many years. As to other matters they may, to be sure, require a little more consideration; but even they might as well be considered and acted upon by the month of June as deferred until the second Tuesday of October. June is a season of leisure; the labors of the summer are not upon the people. They will then act dispassionately with a single view to the questions before them, and not with a view to other questions, taking the foreground, and claiming the most prominent place in their attention.

The newspapers will be alive to the subject; and who doubts that the few amendments which we have made to the constitution—few in number and small in space—will be known to the people through the papers, and that the people will be prepared in the spring to act more dispassionately and with a more single mind, than at the election of October? Look at the influences which are brought to bear upon that election! Before that time, it will in all probability be seen who is likely to be the most successful candidate for the governor's chair, upon which side victory inclines. I say, it will be pretty well understood: and, mark me, the party that is to succeed will not have a special affection for these amendments, whilst the party that is to fail will become the champion of them—both being influenced by considerations which ought not to weigh a feather in the final disposition of the amendments. The strongest party, whichever that may be, is under great temptation to throw down your amendments into the arena of political strife—the very last arena into which they ought to be thrown.

Now, if you fix a day in June, as is proposed by the report of the majority of the committee, the election will take place before the strength of either party is made known—before the country is agitated from one end to the other—before streams of libel shall begin to flow and acrimonious feelings shall begin to sway the minds of the voters. You have all opportunity for a fair and dispassionate vote. But if you defer the settlement of the question until the second Tuesday of October, neither party will be satisfied—the people themselves will not be satisfied.

These, Mr. President, are the reasons which weigh with me, and which present themselves so strong to my mind as to induce me to vote against the amendment of the gentleman from Luzerne. I can not give

my vote in favor of the second Tuesday in October. I do not know that the reasons I have urged will be sufficient to influence any one vote in this convention. I wish, however, that they should be known to those whom I represent, that they may see that I have acted here for what I believed to be their best interests.

Mr. CURLL, of Armstrong, demanded the immediate question.

But the convention refused to second the motion.

And the question again recurring on the amendment;

Mr. DUNLOP, of Franklin said:

I do not concur in the reasons which have been assigned by the very respectable gentleman who last addressed the convention. (Mr. Froward.) None of those reasons have any weight in my mind. I do not see any difference whether the election is to be held on the second Tuesday of October, or in the month of June or November. There is, however, one reason why I do not like a day in June or November—that is to say, the additional expense which will be thereby entailed upon the people. The general election costs about forty thousand dollars. And this convention, I think has already cost the commonwealth money enough, without putting her to the expense of a special election to enable the people to pass upon our acts, when they can as well do so in October.

The gentleman from Allegheny, (Mr. Forward) calls the election in October, a scramble. If one election is so, another is also. But this calling hard names has no influence with me. I do not see why the people can not go to the polls as well on one day as upon another; nor do I think there is any ground for apprehension that this question will be mixed up with party politics. Indeed, it seems to me that the question for or against the old constitution, can not be made a party question. It will be something like the school law. Both parties, it appears to me, will be afraid to touch it; and thus it will be left to stand aloof. It may, to be sure, be said that one party will be in favor of the amendments and another party against them, in the different counties. But suppose that this should be so. What is the odds? Will it not still be a question for the public voice to decide? And does it follow, because it is a party question, that therefore the public voice will not be fairly expressed upon it. I would like to know what the governor is to gain, or what the governor is to lose by it. No one can say who will gain, or who will lose by it. I engage that Governor Ritner can fight out this thing with as much ingenuity as any thing else. I think the people are just as competent to decide at one time as at another. I can not see that it is worth our while to debate the matter. At first I thought that the second Tuesday of October should be the day. Then I felt inclined to favor a day in May or June; but against this latter opinion, I put the consideration that a considerable additional expense must be incurred by the commonwealth.

Mr. PURVIANCE, of Butler said:

We have had this morning no less than three reports made on the subject of the classification of the judges. I am satisfied that the discussion of them will occupy nearly the whole of the balance of our session. At all events, the consideration of them, coupled to the third reading, will consume all our time; and inasmuch as I believe that, in their own minds,

the members of the convention have fully decided what the day of election should be, I hope I shall be sustained in calling 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 amendment?

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

YEAS—Messrs. Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Purviance, Reigart, Read, Riter, Ritter, Rogers, Saeger, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, White, Woodward—82.

NAYS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Cline, Coates, Cochran, Cope, Cox, Darlington, Denny, Dickey, Farrelly, Forward, Hays, Hopkinson, Jenks, Maclay, M'Sherry, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Royer, Russell, Scott, Serrill, Snively, Thomas, Weidman, Young, Sergeant, *President*—37.

So the amendment was agreed to.

And the first resolution as amended was adopted.

The second resolution reported by the said committee being under consideration in the words following, viz :

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."

A motion was made by Mr. **WOODWARD**,

To amend said resolution by striking therefrom all after the word "resolved," and inserting in lieu thereof the words as follow, viz :

"That on the second Tuesday of October next, it shall be the duty of the judges, inspectors and clerks of the general 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 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."

Which motion was agreed to.

A motion was made by Mr. DARLINGTON,

Further to amend the said resolution by adding to the end thereof the words as follow, viz :

" Provided, that it shall be the duty of the judges, inspectors and clerks of the said election, to receive from the said citizens separate tickets for and against the amendment contained in the tenth article, and for and against all the other amendments together."

Mr. DARLINGTON said :

My object in offering this amendment is, to test the sense of the convention whether the amendments shall be submitted to the people in mass, or so far separate as I have designated. And I do it for this reason. One great complaint which has been pressed on the notice of this convention, has been that the people have no mode of providing for amendments to the constitution ; and that, therefore, this convention had been called to make full provision for amendments hereafter desired.

Now, I propose to submit to the people the separate and distinct question whether they will have a clause in the constitution providing for future amendments, in order that they may have the power to resort to an easy mode of amendment if they think proper to do so, and at the same time may, if they think proper, reject all the other amendments. I am myself favorable to a part of the amendments, and are opposed to others. If I am compelled to vote upon them in mass, I will vote against them all ; but if you will allow me to vote separately upon the question of future amendments whereby the people may get what they want, I will vote in favor of that proposition and against others, because I think that, taken altogether, the amendments made in this body are worse than nothing. It is for this reason that I have offered my proposition, and I am anxious that it should be adopted.

In the convention of 1821, called to amend the constitution of the state of Massachusetts, it was agreed that the amendments then made should be submitted to the people in a separate and distinct form. The people voted upon them in such a manner that they could adopt some and reject others, or adopt or reject them all, as the case might be. That provision was found to operate with success. I know that no complaints were made. I see no difficulty in it ; it is a plain and simple matter, and requires that the attention of the voters should be turned only to one single proposition at a time.

There are many men who would be inclined to vote for the amendment providing a mode by which future amendments might be secured, and who, at the same time, would be anxious to vote against all the others. Now, I will ask, is it fair in presenting to the people that which is to be the guide of all their conduct—that which relates to their government—is it fair to deny to the people the right to vote for or against such portions of the constitution as they may think proper—to deny to them the right to take one portion of these amendments and to reject another ? Is it fair to deny them this privilege ? It seems to me, that there can be neither

expediency, propriety nor justice in any objection to the provision of my amendment.

Without, therefore, consuming any further time, I will merely express the hope that a majority of the convention may be found in favor of the proposition.

A motion was made by Mr. EARLE,

To amend the amendment by striking out the word "tenth," where it occurs in the fourth line, and inserting in lieu thereof the word "third."

Mr. EARLE said :

I prefer that a separate vote should be taken on the third article, because I, for one, am willing to vote for all the other amendments together. And, I prefer to do so for another reason, which is an important one. The amendments generally, keeping out of view the third article, are not matters of conscience with any man in the state. They are mere questions of political expediency. Hence, you may offer all the rest together, and any individual may give his vote for them, because he approves of the majority of them as questions of expediency, and without any violation of his conscience—although probably there may be some particular section amongst them to which he can not yield his approbation.

But, sir, there is in the third article a question which is a question of conscience. I received lately the address and proceeding of a convention of all the clergy of the most populous county of Massachusetts, and of all demoninations. And there a resolution was adopted which—with one dissenting voice—and also an address in favor of the natural equality of man as a religious principle—as the principle founded in the Scriptures—in the New Testament.

Now, I do know that there are many citizens who can not conscientiously vote for the amendment we have made to the third article, whatever they may think of it as an abstract question of policy. And I think that it is proper and just to afford a man an opportunity to vote for those amendments which, as a religious man, he can conscientiously vote for ; and also to afford him an opportunity of voting against any thing for which, as a christian man, he can not conscientiously vote.

He hoped, therefore, that this amendment would be so amended as to read "third," instead of "tenth." And, if this amendment should not be adopted, another might. He trusted that a separate vote would be taken on each word.

Mr. DARLINGTON, of Chester, expressed a hope that the gentleman would so modify his motion as to allow of a direct vote being taken on the amendment.

Mr. EARLE, of Philadelphia county, then withdrew his amendment for the present.

Mr. BELL, of Chester, rose to make a few remarks in reference to the course that he had once recommended to be pursued. And, he declared that he would not have troubled the convention, had he not deemed the explanation which he was about to make, due to himself. Early in the deliberations of this body, he had been of the opinion that the amendments should be classified. In looking at what was then done, what had been accomplished since, and what ought now to be done, his mind was fully

impressed that he should vote for a classification of the amendments, in order that the people might vote for the rejection of some of them, while they did so for the adoption of others. He thought it a mode that would be easily understood. He had originally proposed to submit all the amendments to the judiciary, as one proposition—those in reference to runaway slaves, as another—those relating to corporations, as another, &c. As he had already said, he had proposed this course of proceeding, and given notice of his intention to submit a motion to that effect. It had not been his desire, since the commencement of the deliberations of this body, to have said any thing in opposition to the ascertained will of a large majority of it. And, having discovered that his proposition was regarded as objectionable, he would therefore not now trouble the convention with pressing it.

Although he was in favor of classification to the extent which he had just stated, yet he confessed himself opposed to the proposition of the gentleman from Chester, (Mr. Darlington) because he believed that the tenth article would have but few opponents, and be adopted by the people.

He conceived that if the convention had refused to admit into the constitution, the important amendments which had been adopted, it would have been a matter of considerable doubt, whether we should leave this power in the hands of the legislature. But these amendments have taken away the power of the legislature. His intention was to vote against the proposition of the gentleman from Chester.

Mr. DENNY, regretted that the gentleman from Chester (Mr. Bell) had not carried out his idea of a classification of the amendments, instead of submitting the whole *en masse* to the people—the propriety of which course he very much doubted. It was applying to them the principle and application of the previous question, or gag-law, which had prevailed in this body so freely, and they were to be compelled either to accept all, or none. Their mouths were to be stopped, and they were not to be allowed to exercise their own judgment and discrimination in selecting or rejecting such amendments as they choose !

We had differed in this convention respecting the propriety of adopting several amendments, which had afterwards been carried by a bare majority only. We might as well say here, and with equal propriety, that we should vote on all the amendments at once, or that we ought to submit them to the people in the aggregate, for their vote upon the whole together. What opportunity, he asked, would this course of proceeding, give to the people of expressing their opinions in regard to the amendments? None, he apprehended. Some of them, indeed, were quite new to the people, and not in contemplation when they voted for the call of a convention. Many of them were not known to them at the time they voted for the delegates to this convention, and had been for the first time proposed here. It was, then, he maintained, unreasonable to suppose that the people would be so unanimous in opinion as to either accept or reject all.

He doubted not that some of the amendments would be well received, while there were others, respecting which, great diversity of opinion would

probably prevail. A great majority of the people might be found, perhaps, voting against many of the amendments, in favor of which great numbers of the people would vote. He thought that for this convention to say that the people shall not have an opportunity of voting for or against particular amendments, was going too great a length. It was tantamount to declaring that the people shall not have a fair and free choice in making their constitution. We were laying down an arbitrary rule that they must either take all, or reject all. He conceived that the people would not be disposed to sanction a rule of this character. He trusted that the gentleman from Chester, (Mr. Bell) would submit his proposition, and thus give the people an opportunity of voting for the amendments separately.

Mr. HESTER, of Lancaster, had hoped that the gentleman from Chester (Mr. Bell) would have submitted his proposition, as an opportunity would then have been afforded of examining its merits. He (Mr. H.) had been in favor of submitting the amendments separately to the people. As the gentleman from Allegheny (Mr. Denny) had very properly remarked, some of the amendments would be approved by the people, whilst others were rejected. Now, he (Mr. Hester) apprehended that if the amendments should be laid before the people separately and distinctly, great difficulty would arise. The impression upon his mind being, that in consequence of the people's approving some and rejecting others, the tendency would be to make the whole work incongruous. He confessed, however, that he did not know exactly how the gentleman from Chester intended to arrange the details of his plan, and he hoped that he would give the convention information respecting it, in order that they might see whether they could, with propriety, adopt his proposition.

But, laying this aside, he thought that there could be no objection to the proposition of his friend on the right (Mr. Darlington.) He entertained no doubt that the people would think their money well spent, if they could obtain the insertion of the amendatory clause in the tenth article, inasmuch as it would give an opportunity of amending the constitution hereafter, without expense or trouble. This was desirable, as we could not succeed in having the amendments classified, as he (Mr. H.) had supposed we should.

The gentleman from Chester, (Mr. Bell) had observed that the amendment he proposed would be a popular one, and if connected with others might be the means of carrying them. He (Mr. H.) must freely declare, that he now thought it would be an unfair way, to give the people but one of two courses to choose, and that was, either to take the whole of the amendments, or none. It would be to deprive the people of an opportunity, and of the right, which they were entitled to exercise, of making their selection of the amendments which they conceived should be adopted. Indeed, as had already been remarked by the gentleman from Allegheny, (Mr. Denny) that, to say the people should vote on all the amendments at the same time, was carrying out the principle of the previous question, a rule often injudiciously resorted to in this body.

Mr. SCOTT, of Philadelphia, said that he was in favor of submitting the amendments separately. He, therefore, moved to recommit the report to the committee, with instructions to classify the amendments, and report the same to the convention.

He hoped that the report would be so amended, as to give the people an opportunity of expressing their opinions separately on each amendment. This was the reason by which he was influenced in making the motion he had done.

While up, he would avail himself of the opportunity of saying a few words on this subject. He had prepared an amendment, which it had been his intention to offer in committee, but, on reflection, he came to the conclusion that it would be better to propose it in convention. What he anxiously desired was, the vote of this body on the principle, whether the people shall have an opportunity of passing their sense of approbation, or disapprobation, on the amendments, distinctly and separately, or be compelled either to accept, or reject, all.

The amendments, he regarded, as being of various descriptions—perfectly distinct in character, and perfectly capable of being separated from each other, without any previous classification.

We had been told at the outset of the meeting of the convention, that the amendments which were required by the people of the commonwealth, were but few in number—that they had fully deliberated upon the character of the amendments, and that they knew perfectly well what they wanted. This body had been informed, too, that the public mind was fully prepared to receive and to act upon the amendments. He maintained, then, that if this convention was called for the purpose of making a few specific amendments, they, at least, should be afforded an opportunity of voting upon them separately. And, if that were not done, it would not be treating them as rational beings, nor as freemen. He sincerely trusted that they would not be obliged to vote for the amendments *en masse*—the wise and the unwise, all together. He hoped that a vote would be taken on this proposition, so that we might see who of the representatives on this floor were unwilling to trust the people, to give them an opportunity of discriminating between the good and bad amendments, proposed to be introduced into the constitution. He wished the vote to be taken by yeas and nays, and then it would be seen who were for, and who against the motion which he had made.

Mr. FULLER, of Fayette, observed that the subject was worthy of some consideration, especially as the gentleman from the city of Philadelphia had offered so many objections against the proposed mode of submitting the amendments to the decision of the people of the commonwealth of Pennsylvania. He (Mr. F.) had not supposed that any serious attempt would really have been made, to lay them before the people separately, instead of collectively.

So far as he had been able to ascertain the opinion of those whom he represented on that floor, it was, decidedly and unequivocally, that all the amendments should be embodied in the constitution, and voted upon at the same time.

This, he repeated, had been the prevailing sentiment among his constituents; and he believed that it was entertained by the majority of this body. He had no hesitation in avowing it to be the deliberate conviction of his mind, that the people of Pennsylvania could not vote on the amendments if they were not embodied—if they were not laid before them as a whole constitution—so that they might have an opportunity to vote for or against them.

It was reasonable to suppose that the representatives here assembled carried out the views of their constituents, not only as they understood them when they first took their seats, but since, by the instructions which they had received.

He hoped that a majority of this body would see the propriety of submitting the amendments as a whole, and at the period suggested by the gentleman from Luzerne, (Mr. Woodward.) He conceived that great inconvenience would be found in submitting so many amendments separately.

Even granting no more should be made but what the majority might deem right and proper, he would ask if it was not reasonable to suppose that the people would reject or accept them as a whole? Suppose, for instance, that in one county one amendment was rejected, and in another it was accepted, and so on of the rest in all the counties, this would create some difficulty. If, too, the amendments were to be classified, and tickets issued, as proposed, he apprehended that still further difficulties would ensue, as it would create such confusion that the voters would be wholly unable to understand what they were voting for. But if, on the contrary, the whole of the amendments were to be submitted together, they would be understood by the people, who would then vote either for, or against them.

He had hoped that no serious efforts would have been made against the proposition to lay all the amendments, at the same time, before the people. And that hope rested upon this ground: that there could not be any great division of sentiment among the members of this body, as to what were the opinions of their respective constituents, they having so recently interchanged sentiments with them.

From these considerations, then, he trusted that the amendments would be submitted as a whole. Whence came the objection? Why, the gentleman from the city of Philadelphia, (Mr. Scott) as every one knew, had been a strict conservative from the commencement of the sittings of this convention up to the present moment, and wanted no amendments made to the constitution; and yet, strange to say, he objected to the amendments being submitted as a whole, when, perhaps, they might all be voted down!

He (Mr. F.) could not but consider the objection as a most singular one; and the remarks which had fallen from the gentleman from Chester, (Mr. Bell) in reference to the position in which he wished to regard him (Mr. F.) and others as standing, were altogether gratuitous, and founded upon no substantial basis.

From the disposition manifested by the conservative portion of the members of this convention, he believed that they were inclined to vote against all the amendments. He conceived that the opinions which those gentlemen professed to entertain, in regard to them, were totally wrong.

In conclusion, he begged to call upon the friends of reform—not, however, as a political party—to sustain the amendments, and vote to have them submitted as a whole; for, should they not do that, he would pledge his word for it, they would be all defeated.

Mr. Scott, in explanation, said:

The difference between myself and the delegate from Fayette is this:

I believe the people can be trusted, and I am willing to trust them, but he is not. I believe that the people are competent to say, as one distinct proposition, whether they will have the judicial tenure changed; whether they wish the insertion of a clause in the constitution, relative to making future amendments to that instrument; whether they desire the appointing power changed, &c. Yes, I am willing to trust them to say what shall be done, and to vote upon every proposition separately and distinctly. But the gentleman from Fayette is not. I am obliged to reject his intimation, that I have been an entire conservative.

He (Mr. S.) had voted for giving the election of the county officers to the people. He was willing to trust it in their hands, so that he was not a total conservative. The gentleman from Fayette would vote against submitting the amendments separately, because in some of the counties there will be majorities against particular amendments.

Mr. FULLER explained. He had said it might be so.

Mr. SCOTT resumed. Taking it so. Taking the provision relating to the county officers. Suppose that a majority of the people were opposed to that change, ought it in that case, to go into operation against the will of a majority of the people? Suppose a majority of the people were opposed to the judicial tenure:—ought it to go into operation against the will of a majority? Suppose a majority of the people to be opposed to vesting the power of appointment in the senate. Should that be carried into operation, if a majority of the people are against it? Shall we say to the people, you shall take all together, because there is a portion which you dislike, and which you would reject, if submitted to you separately. Is that the way you would get the noxious dose down? Is that the desire of gentlemen? Be it so. He was willing to trust the people: to put each great change to them distinctly, and see whether they will, or will not, act with wisdom and discrimination.

Mr. FULLER said it was true the gentleman from Philadelphia did vote in the way he had stated, but he had generally gone with his colleagues against all amendments. And now there was a hue and cry raised against submitting the amendments as a whole. He did not believe that the people wished to vote on the amendments separately.

Mr. DENNY, of Allegheny, said he did not know of any better plan which could be devised to defeat the whole of the amendments, than to restrain the free action of the people. In the first place it seems, they are to vote on the amendments at the October election, when their minds will be fully occupied with the election of governor and members of congress, and of the legislature: Then they are to be required to vote for the amendments altogether. We are not to trust the people. Gentlemen who are at all times so desirous to advocate popular power, are now unwilling to trust the people. The gentleman from Fayette, (Mr. Fuller) appealed to the friends of reform to go against the proposition for separate votes, because, if carried, it would defeat the amendments. How would it defeat the amendments? The gentleman was always a democrat, yet he calls on gentlemen to rally against this motion, because, if successful, it will defeat the amendments. How? Was he not willing that the voice of the people should determine the fate of the amendments? It always lay at the basis of our institutions, that the will of the people, fully expressed, should be the governing principle. On this ground, then,

he called on all here, who are democrats, to go for the proposition, as the only fair mode of producing an expression of public opinion. The gentleman from Fayette says, it is an inconvenient mode: and that the people cannot vote on the amendments separately, because their understandings were not competent to reach a correct decision. This came from one who had been accustomed to eulogize the competence of the people. I (said Mr. D.) have that confidence in the people, that I doubt not they will understand the amendments, if properly classified, and submitted in a distinct form; and if they are not required to be voted on amidst all the noise and bustle of the October elections. To vote on these amendments would occupy but a few days. The question is of the highest importance, and commends itself to every man's reflection. And it behooves those who have said the most about their confidence in the people, to adopt that mode which will allow the people to vote for such amendments as they are pleased with, and to vote against those which they dislike. There were some of the amendments which he approved, and which his constituents approved, and there are others which they did not. And were they to be compelled to take the whole? Why not let us have our free choice? the people may ask. I can only say to them, I voted in the minority on the question, and we must all submit to the will of the majority. I was willing to submit the amendments separately to the people, in order that every man might have a chance to express his opinion as to each.

Mr. CHAUNCEY, of Philadelphia, would say but a single word. We had arrived at a stage of our proceedings, when it becomes the duty of the convention to say, in what form the amendments shall be submitted to the people, under the eighth section of the act of assembly by which this convention was called together. This was not an original question, as it appeared to him. If it were, there could be no difficulty. The question is, what is the proper mode of submitting the amendments "for the purpose of ascertaining the sense of the citizens." That is the language of the act of assembly; the express terms in which our duty is pointed out. It is to submit the amendments "for the purpose of ascertaining the sense of the citizens." "What is the most rational mode of doing this?" The legislature contemplated that we might do this, if the amendments which this convention might make to the constitution were in such a form, as that the sense of the people might be obtained distinctly upon them, by presenting them in the shape of single amendments; and, they also contemplated, that a different mode might be adopted, if it should seem to us that the sense of the citizens could not be in that manner ascertained. They, therefore, provided that if, in the judgment of this body, it should be found expedient, in order properly to ascertain the sense of the citizens, that the amendments should be submitted in separate and distinct propositions, they should be so submitted.

Now, the question arises, what is the rational mode of conducting this business? How are you best to present the subject to the citizens of this commonwealth, and to ascertain their sense upon the expediency of ratifying the amendments here made? How are you to do it, except by presenting them in such a way, as that the sense of the citizens may be fairly and actually expressed upon them? What do gentlemen think? Is my sense of an amendment ascertained when it is coupled with seven

or eight distinct propositions of a totally different character? Is it ascertained by demanding that my vote shall be given upon the whole of these in one mass? It is an insult to the understanding of gentlemen to say, that we are fulfilling the duty imposed upon us by the legislature, when we offer to ascertain their sense in reference to these amendments, by asking that a vote upon them shall be taken in mass? To what do they relate? To executive patronage. You have changed your system in regard to that. To the tenure of the judicial office. You have changed your system in relation to that. And so from beginning to end; on distinct subjects you have established distinct principles and provisions, and yet you are about to have the sense of the citizens ascertained yea or nay, by asking them to vote upon all in a lump. I did expect that some argument, some reason which might address itself to the intelligence of men, would have been adduced in favor of this mode, if indeed such an argument, or such a reason, was any where to be found. And what is the argument of the gentleman from Fayette, (Mr. Fuller? It is that the wishes of the people are known. Why, then, did the legislature impose upon us the necessity of submitting this at all as a question to the people? If gentlemen come into this convention with the wishes of the people in their hands, or in their pockets, what have we to do with submitting questions to the people. I am not opposed to the wishes of the people. I do not pretend to say how these amendments will fall in with the desires and wishes of the people. I am not prepared to stand up here, and take upon myself to express what the sense of the people will be on the wisdom of these several amendments. I cannot discharge that duty for them, and I apprehend that it is rather a grave and responsible matter for any gentleman to undertake to pronounce a judgment in their behalf. Doubtless, they will be ready at the proper time to pronounce their own. But, Mr. President, we have a plain, rational, and imperious duty to perform—a duty which, I think, the people of Pennsylvania will scarcely forgive us, if we neglect it; that is to say, we have to present this subject to them in such a way, as that the sense of the citizens, (which I believe to be fully competent to decide,) upon the expediency of these amendments may be expressed. And, I say, that it is impossible for us to express a fair expression of the public will, if we require the people to vote in a lump upon all these propositions, distinct as they are in their character, and involving different principles of various operation.

Upon reasonable grounds, therefore, and upon what I consider to be the imperious duty of pursuing the course pointed out by the act of assembly, I am in favor of the motion of my colleague from the city of Philadelphia, (Mr. Scott) to send this matter back to the committee, in order that the amendments may be classified, and that thus an opportunity may be given to the people to accept that which they believe to be good, and to reject that which they believe to be bad.

Mr. MEREDITH said. I have a few words to say, although I do not suppose that my opinion will have any effect on the minds of other gentlemen. There is too much confidence placed in the people, to allow us to expect that the members of the convention will agree to a proposition, the object of which is to leave the question on each amendment, to be decided by the majority of voters, distinctly and separately.

Since the first commencement of the labors of this body, and through-

out its long protracted sessions, we have had various editions of these professions of trust in the people. I believe that the people of Pennsylvania have discovered before now—or, that if they have not, they soon will discover—that those who profess most loudly to trust the people, really desire to persuade the people to trust them. We had last night a declaration of the party principles of one gentleman here. It seems that there is at least one member of this body, who professes to be of a party, and to act upon party principles. That gentleman said, that the desire of his party was to do the greatest good of the greatest number. Whether the gentleman intended to say the greatest good of the ruling party, I do not know, though, from something that fell from another gentleman, I should suppose that this was discarded as a heresy.

Mr. FULLER asked leave to explain. He had never said, that he had any party principles in this body. The remarks which he had made were in allusion to the reform party.

Mr. MEREDITH resumed.

It was not to the gentleman from Fayette that I alluded. I know he has been a great advocate of reform. I have confidence in the correctness of his mind and disposition; and I hope that the day will come, when he will believe that the reform which is most wanting in this commonwealth, is a reform of the principles which he professes and advocates.

I intend, Mr. President, to record my name in favor of the amendment of my colleague from the city of Philadelphia, (Mr. Scott.) This I would do, even if I were assured that no other member of this convention would record a similar vote, and I wish this body to say whether they will, or will not, leave to the people the decision of these amendments in the form in which alone they ought to be decided. What is the reason that the people are to be denied the right of voting against any one of these amendments? What is the reason that they are to be compelled to swallow every thing that we may give them, or else to leave the constitution without any amendment at all? Why is it that the people are to be denied the opportunity of saying, we do not like the alteration you have made in the judicial system? Why is it that they are to be denied the opportunity of saying, we do not like the change in relation to the county officers? Why is it that they are not to be allowed to say, we prefer that our senate should be elected as heretofore, until we see something of a character to satisfy our minds that a change would be for our benefit; but at the same time, we are desirous to adopt a clause which shall enable us, from time to time, to amend our constitution in such manner as we may please? Upon what ground, I ask, are we to say to the people that this privilege shall be denied? Upon what ground are we to say to them, you must either accept or reject the whole;—you must take the whole, or none. Sir, is this the course which we have adopted in our own deliberations? Have we not acted upon each amendment separately? Are we not about to go to the third reading of them, without putting the whole in a lump? Would we listen, for a moment, to a proposition compelling us to vote in a lump, for or against all the amendments to all the articles? No gentleman would venture to bring forward such a proposition here, and why should we venture to put it to the people? I want to know whether there is sufficient republican spirit left in this

body, to let us go to the people on republican principles, to let us treat them as if they were capable of governing themselves—as if they were capable of giving an opinion for themselves? Why cannot we hear the opinion of the people themselves on these various propositions, instead of listening to denunciation against men who will not swallow the whole, as being anti-republican, anti-democratic—men opposed to the will of the people—and fearful to repose any confidence in them? Why cannot this be done? Will any man tell me that he fears, if this is not done, that certain favorite amendments of his own will not be agreed to? If this is the reason, let it be made known, and the sooner the better. We shall then be able to understand precisely where we are. But until that reason shall be assigned, I have yet heard of nothing which would carry even a plausible excuse to the people why we should put the amendments to them in such a manner as to compel them either to take the whole, or to reject the whole. Why did the legislature expressly give to us the power to submit our amendments, distinctly and separately to the people? The eight section of the act of March, 1836, has the following provision:—

“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 hereinafter directed, shall decide whether said amendments are or are not thereafter to be taken as a part of the constitution of this commonwealth: *Provided however*, That if the said convention shall declare it to be most expedient to submit the amendments to the people in distinct and separate propositions, it shall be the duty of the said judges, inspectors, and clerks, to receive ballots prepared accordingly, or in any way which said convention may direct.”

Now, continued Mr. M., why was this full power thus expressly given? Why was it, except under the anticipation, that if the amendments should turn out, as they have turned out to be, numerous and important, to making various principles in the constitution, distinct from each other, and capable of a distinct classification, in that case the right of the people, to vote upon them, according to such classification, should not be taken away? It is true, that if our amendments had been confined to the few and simple points, to which gentlemen, in the first instance, declared that they would be confined, it might have been proper to have submitted the whole of them in mass. But the fact has turned out differently. The most vital parts of the constitution have been changed. I do not contend that it is necessary to put every amendment distinctly by itself; but that the amendments which relate to the same principles, should be put in classes separately, and that the citizens should have the opportunity of saying what part of the old constitution they wish to retain, and what part they wish to alter. This, I apprehend, is a matter of

right, and although we have at this moment the power to put the amendments differently before the freemen, still, I say, it would be an outrage upon the inherent rights of the people of this commonwealth, which they will not be slow to perceive, and which, I trust, they will not be slow to resent.

The gentleman from Fayette, (Mr. Fuller) consoles himself with a very easy way of answering the arguments of those who are in favor of the motion that the amendments shall be voted upon separately. He answers them by saying, that they are against reform, and that they think the present constitution is good enough. So far as concerns myself, I deny now, as I always have denied, that it is competent for any gentleman to shew by my votes, that I am opposed to reform, as reform; or that I wish to maintain any single provision in the constitution, simply because it is there.

He had voted against propositions which were designated as reform amendments, but which he did not so regard. On the contrary, they would introduce much evil into the constitution. He had decided upon them according to the dictates of his honest and unbiased judgment. The word "conservative" did not apply to him in the sense in which it was sometimes used, but to those who were opposed to all reform—who would reject every thing, although they might suppose it even better than what was contained in the constitution. In that sense, then, he could sincerely disavow for himself and colleague, (Mr. Scott) that it had any applicability to them. He (Mr. M.) had voted for some reforms in the constitution—such as he believed to be salutary and calculated to promote the happiness of the people of this commonwealth. But he protested against the principle practically set up here, that because the tenure of good behavior is a republican principle, that, therefore, the people are to be deprived of all the signs, and all the forms, and the spirit of a republican government. It appeared to him that some of the votes which had been given for two or three days past, were as great infringements on the whole spirit of our institutions, as could be inflicted by any act of the most tyrannical minorities, to whom allusion had been made. He insisted that the motion of his colleague, (Mr. Scott) was in accordance with the true republican spirit. He (Mr. M.) desired that the people should have an opportunity of expressing their opinions clearly and distinctly. He trusted that the motion to recommit would prevail.

On motion of Mr. MARTIN, of Philadelphia county,

The convention adjourned till half-past three o'clock.

THURSDAY AFTERNOON, FEBRUARY 15, 1838.

In consequence of the thin attendance of members, a call of the house was ordered, and the proceedings were suspended, as soon as it was ascertained that a sufficient number to constitute a quorum were present.

SCHEDULE.

The convention resumed the second reading and consideration of the second resolution reported by the committee appointed to report to the convention when the amendments to the constitution shall be submitted to a vote of the people.

The question being on the motion of Mr. SCOTT, that the amendment of Mr. DARLINGTON, together with the report of the committee as amended, be re-committed to the said committee, with instructions so to amend it as to give the people of this commonwealth an opportunity to vote upon the amendments separately.

Mr. WOODWARD, of Luzerne, said this proposition, coming from where it did, surprised him much. He had heard nothing in the committee on the subject, and therefore he was surprised; and, before the proposition came to be voted on, it became us to look at it more closely than we had done. It is, in effect, a proposition to postpone the day of adjournment from the 22d of February, to an indefinite period—to continue this session to an interminable extent. If recommitted, (said Mr. W.) my word for it, that committee will not return a report by the 22d of February. You cannot get a report till after the 22d shall have come and gone; so, therefore, it involves the fixing of a day of adjournment beyond the 22d of February. If we sit beyond the 22d, the gentlemen who have these new born ideas about trusting the people will have all the constitution to themselves. He had another reason. We find the engrossed amendments amount to twenty-five in number. This is a proposition to submit these amendments separately to a vote of the people. You have agreed that the vote shall be taken at the October election. The people will then have to elect a governor, members of congress, one-fourth of the senators, all the assembly-men, sheriffs, coroners, commissioners, auditors, and other officers. Therefore, throughout the whole of Pennsylvania you will have six distinct and separate offices to vote for, and, in some parts of the state, eight. They, then, who put this proposition on the ground of confidence in the people, will have twenty-five distinct and separate subjects to present for the vote of the people; and will have to provide, in addition to all the others twenty-five separate ballot boxes for the votes on the amendments. You compel the voters to run through all these boxes, thirty-three in number, to get tickets, and deposit for each separately, and the officers of the election to sit and reserve all these tickets, from six in the morning until ten at night; and this you call trusting the people. You thus not only nullify the resolution to adjourn on the 22d of February, but compel the people to vote on

thirty-three different subjects without light to guide them. Look at it with all the witticisms of the gentleman from Philadelphia, and the subject was done more justice to by that gentleman than it would have been by any one else, in this light, and when he calls in all those who live out of the city of Philadelphia to vote for recommitment, and consider the effects of these thirty-three ballot boxes. The gentleman told us the other day that the whole vote of the party with which he acted, so disgusted were they with the proceedings, would be thrown against the amendments, and that the people would reject them. This from his party was very candid. The whole delegation of Philadelphia could not have devised a mode more calculated to disgust the people of Pennsylvania than this. He was not disposed to disgust any one. He would wish to go according to law, which requires that the votes shall be given "For the amendments," or "Against the amendments." The proviso at the end of the law is this:—

"Provided, however, That if the said convention shall declare it to be most expedient to submit the amendments to the people in distinct and separate propositions, it shall be the duty of the said judges, inspectors and clerks, to receive ballots prepared accordingly, or in any way which said convention may direct."

He therefore dissented from the opinion of the gentleman from Philadelphia as to the mode in which the amendments shall be submitted. Therefore, he thought they should be submitted as amendments. The tickets should be marked, as designated by the act, "For," or "Against the amendments." This was not only the most reasonable mode of submitting the amendments to the people, but, viewing the vote on the amendments, in connexion with all the other subjects which would require the action of the people on that day, the only practicable mode of submitting them. For these reasons, then, he hoped that the motion to recommit the report would not prevail.

Mr. REIGART, of Lancaster, demanded the previous question, and, a sufficient number rising to sustain the call, the previous question was ordered.

The question being "Shall the main question be now put?"

Mr. DENNY asked for the yeas and nays on this question, and they were ordered.

And on the question,

Shall the main question be now put?

The yeas and nays were required by Mr. DENNY and Mr. HESTER, and are as follow, viz:

YEAS.—Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Cleavinger, Crain, Crawford, Cruun, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Fleming, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, High, Hyde, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Mackay, Magee, Mann, Merkel, Miller, Myers, Nevin, Overfield, Payne, Porter, of Northampton, Purviance, Reigart, Road, Ritter, Ritter, Rogers, Royer, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver—66.

NAYS.—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Cline, Coates, Cochran, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dickerson, Dunlop, Farrelly, Hays, Henderson, of Alle-

gheny, Henderson, of Dauphin, Hiester, Hopkinson, Jenks, Konigsmacher, Long, M'Dowell, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Russell, Saeger, Scott, Serrill, Sergeant, *President*—41.

So the question was determined in the affirmative.

And the second resolution, as amended, was agreed to.

A motion was made by Mr. REIGART,

That the convention proceed to the consideration of the amendments to the several articles of the constitution, as prepared and engrossed for final passage.

Which was agreed to.

The PRESIDENT in reply to an inquiry from Mr. SCOTT, said the vote of the convention would not be upon each amended section separately, but upon the entire article, after it had been read, unless otherwise ordered by a majority of the convention.

A motion was then made by Mr. SCOTT,

That the question be taken on each amendment separately on the question of final passage.

Mr. STERIGERE said, the better plan would be to let all the amendments be read over, and if the gentleman from the city of Philadelphia, (Mr. Scott) or any other member of the convention wished to have the question on any amendment taken separately, it might be so taken.

A debate followed, in which Messrs. SCOTT, KERR, HAYHURST, and BROWN, of Philadelphia county, participated.

After a few words in reference to the proper course of proceeding, by Messrs. BROWN, of Philadelphia county, FULLER, STERIGERE, MEREDITH, READ, DICKEY, and MERRILL,

The PRESIDENT said :—

It will be recollected that there was a committee appointed originally consisting of nine members, on the motion of the gentleman from the city of Philadelphia, (Mr. Hopkinson) to whom the amendments made on second reading were sent, to be examined and arranged—with what power the chair cannot say, as that was a matter of doubt. Subsequently, that committee was discharged, and a committee, consisting of three members, was appointed in their place; and after the amendments had had their second reading they were sent to the committee to be prepared and engrossed for a third reading. That committee prepared, but did not engross them. They made a report of them to the convention, and, upon their coming into the convention, the committee also reported certain amendments which they thought necessary; some of which were verbal, and some more than verbal. To reach these amendments, it was necessary to go into committee of the whole. The convention then went into committee. The amendments generally were adopted, though some were not. They were then reported by the committee of the whole, were agreed to by the convention, and were ordered to be engrossed for the question of final passage. So that the articles are now on a third reading. It will thus be perceived that the difference between gentlemen on this point is more verbal than real. The amendments have never been engrossed until now.

The debate was further continued by Messrs. MERRILL and DENNY.

After which, the question on the amendment of Mr. SCOTT was taken, and rejected.

And the amendments to the first article having been then read by the secretary :—

A motion was made by Mr. BROWN, of Philadelphia county, that the question be taken on the whole of the amendments to the entire constitution collectively.

Mr. B. said, he thought that as the convention had refused to give the amendments to the people in broken doses, for separate digestion, the convention ought to be willing to shew that this body was not afraid to swallow the whole in one dose.

The CHAIR decided that the motion of the gentleman from the county of Philadelphia could only be agreed to under a vote of two-thirds.

Mr. BROWN thereupon withdrew his motion.

A motion was made by Mr. STERIGERE,

That the said first article be re-committed to the committee of the whole, for the purpose of amending the amendment made in the fourth section, by striking therefrom all after the word "hundred," in the eighth line, and inserting in lieu thereof the following, viz :—

" Each county now erected which shall, at the time of making any apportionment of representatives, contain one half of the ratio of taxable inhabitants which shall then be established, shall have at least one representative."

The CHAIR said, that the motion of the gentleman from Montgomery, was not in order.

Mr. STERIGERE said, he would then move to postpone the further consideration of the amendments to the said article until to-morrow, for the purpose of making the amendment indicated by him. The amendment, continued Mr. S. as gentlemen will perceive, relates to the number of representatives given to the different counties.

The committee of which the gentleman from Luzerne, (Mr. Woodward) is chairman, have reported a provision that those parts of the present constitution which have not been altered are to take date, and to be considered as if passed at the time of the adoption of the constitution of 1790 ; and that the amendments to the present constitution, if ratified by the people, shall take effect from the time of their ratification, or some other special time mentioned in this report. We are thus about to give a construction or meaning to the constitution, different from what the words themselves imply ; or in other words, we shall make one part of the constitution take effect at one time, and another at another. We have had votes enough here to satisfy us, that this provision will not be allowed to take effect at the same time as the other amendments to the constitution, in the same language in which it now stands.

He believed there was also some disposition to go to some extent beyond the report of the committee. His motion then was to correct the section so as to allow each county, having half a ratio, one member at least. Now, if the amendment he proposed, should be made to the section, there would be no occasion to make the alteration recommended by the committee. It was not his intention to take up the time of the com-

mittee. The further consideration of the article might be postponed till to-morrow, if no objection was offered, or the amendment he had indicated, might be made at this time in about ten minutes.

Mr. PAYNE, of M'Kean county, thought inasmuch as article ten gave the power to the legislature to make future amendments to the constitution, they would every year become satisfied of the necessity of making some amendment in this respect, and would eventually make it.

The question being taken on the motion, it was negatived.

The question next recurring, was on the final passage of the amendments.

Mr. STERIGERE, ask for the yeas and nays thereon, which being taken were—yeas 90 ; nays 28.

YEAS—Messrs. Banks, Barclay, Barndollar, Bedford, Bell, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavenger, Cline, Cochran, Cox, Crain, Crawford, Cummin, Cunningham, Cull, Darrah, Dickerson, Dillinger, Donnagan, Donnell, Doran, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Lancaster, Purviance, Reigart, Read, Riter, Ritter, Rogers, Seager, Scheetz, Sellers, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively Serigere, Stckel, Sturdevant, Taggart, Weaver, Woodward, Young—90.

NAYS—Messrs. Agnew, Baldwin, Barnitz, Chambers, Chandler, of Philadelphia, Chauncey, Coates, Cope, Crum, Darlington, Denny, Dickey, Dunlop, Farrelly, Harris, Hopkinson, Maclay, M'Sherry, Meredith, Merrill, Pennypacker, Royer, Russell, Scott, Thomas, Todd, Weidman, Sergeant, *President*—28.

So the amendments to the first article were agreed to.

The amendments to the third, eighth, fourteenth and fifteenth sections of the second article were then read a third time, and

The question being “ will the convention agree to the amendments made in the second article? ”

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

The question was then taken and decided in the affirmative as follows, viz :

YEAS—Messrs. Agnew, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cox, Crain, Crawford, Cummin, Cunningham, Cull, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, Merrill, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Purviance, Reigart, Read, Ritter, Rogers, Royer, Seager, Scheetz, Sellers, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Woodward, Young—91.

NAYS—Messrs. Baldwin, Chandler, of Philadelphia, Chauncey, Coates, Crum, Darlington, Denny, Farrelly, Forward, Harris, Hopkinson, Keir, Konigmacher, Maclay, M'Sherry, Meredith, Pennypacker, Porter, of Lancaster, Russell, Scott, Thomas, Todd, Weidman, Sergeant, *President*—24.

So the question was determined in the affirmative.

THIRD ARTICLE.

The amendments to the first section of the third article were then read a third time, as follows, viz :

SECT. 1. In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this state one year, and in 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 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 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.

Mr. REIGART, of Lancaster, asked for the yeas and nays on this section as amended.

Mr. STERIGERE, said. The section as it has now been agreed to, alluding to persons being required to reside a year, contains the words "immediately preceding such election;" and so far as relates to the qualifications of persons between twenty-one and twenty-two years of age, it says "having resided in the state one year, and in the election district ten days as aforesaid." Now, I apprehend it is the intention of the convention that persons who previously were qualified voters, but who have removed and returned, should also reside here six months immediately preceding an election. This would not be the construction of the section now, as I read it. And we ought to make it so plain that he who runs may read. I move, therefore, to amend the first section of the said article by inserting after the word "months," the words "immediately preceding any election."

The CHAIR said, that the amendment could not now be inserted without injury to the engrossment.

And objection having been made by Mr. DICKEY ;—

Mr. STERIGERE, modified his motion to read as follows :

"That the convention resolve itself into a committee of the whole, for the purpose of amending the first section of the said article by inserting after the words "months," the word "immediately preceding any election."

Mr. DICKEY, hoped the convention would resist this motion, as it was altogether unnecessary.

And the question having been taken,

The amendment was rejected.

A motion was made by Mr. DARLINGTON,

That the convention resolve itself into a committee of the whole, for the purpose of amending the first section of the said article, by striking

therefrom the word "and," before the word "having," where it occurs the last time.

Which was disagreed to.

And on the question,

Will the convention agree to the amendments made in the said article?

The yeas and nays were required by Mr. CURLE and Mr. CRAWFORD, and are follow, viz :

YEAS—Messrs. Agnew, Banks, Barelay, Bamdollar, Barnitz, Bedford, Bell, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Glapp, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cox, Crain, Crawford, Crum, Cummin, Curil, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Ingersoll, Keim, Kennedy, Konigmacher, Krebs, Long, Lyons, Magee, Mann, M'Cahen, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Myers, Nevin, Overfield, Payne, Porter, of Lancaster, Purviance, Read, Ritter, Rogers, Russell, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver, Woodward, Young—87.

NAYS—Messrs. Baldwin, Carey, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Coates, Cope, Cunningham, Darlington, Denny, Dickey, Earle, Farrelly, Forward, Henderson, of Allegheny, Maclay, Meredith, Montgomery, Pennypacker, Reigart, Royer, Saeger, Scott, Serrill, Thomas, Weidman, Sergeant, *President*—27.

So the amendments were agreed to.

A motion was made by Mr. FAY,

That the convention now adjourn.

Which was agreed to.

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

FRIDAY, FEBRUARY 16, 1838.

FIFTH ARTICLE.

The amendments made to the fifth article were taken up on third reading. The second section having been read a third time, as follows, viz :

SECTION 2. The judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the governor, and by and with the consent of the senate appointed and commissioned by him. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts

of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. But for any reasonable cause, which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two-thirds of each branch of the legislature. The judges of the supreme court, and the presidents of the several courts of common pleas, shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this commonwealth.

Mr. STERIGERE, of Montgomery, said there was a defect in this section. Any judge commissioned for a period of years, as the section now stands, may, when the political hemisphere suits, and the governor and senate are friendly, resign his office before the expiration of his commission, and be re-appointed for a new term, and may thus hold his office longer than the provision of the constitution intended he should. Or, it may thus lead to the transfer of offices. He would move to amend the section by unanimous consent.

Objections being made, the motion to amend was out of order.

Mr. STERIGERE then moved that the convention resolve itself into a committee of the whole, for the purpose of amending the second section by adding to the end thereof the words following, viz:—"But no person appointed to any of said offices shall be re-appointed to the same office, or appointed to any other judicial office of the same grade, during the period for which he was previously appointed and commissioned.

Mr. WOODWARD, of Luzerne, expressed his hope that the motion to re-commit would prevail, and that the section would be amended so as to carry out the principle which had been laid down by the convention. Otherwise, disgraceful scenes may occur. He had thought to make a provision in the schedule to remedy the defect, but found that he could not do it with propriety. Suppose that the term of a judge expires in March, and the governor goes out of office in the preceding January. A new governor would make such appointment as would suit the people. But the judge might go to the previous governor, and give in his resignation three months before the expiration of his time, and be re-appointed. He hoped the subject would be considered.

Mr. DIOKEY, of Beaver, could see no reason for the recommitment. He wondered that his friends from Montgomery and Luzerne had not thought of this thing before. The motion is, in effect, to restrict the executive in the exercise of the appointing power. The executive and the senate are not to be allowed to appoint at their discretion. Appointments must be made to suit particular individuals. Suppose a case exactly the reverse of that stated by the gentleman. Suppose a new governor should appoint an improper person, and remove a proper one. In either case he would impose no restriction: and if a judge should resign before the expiration of his term, he would be willing to leave it to the governor and senate to re-appoint him, if they should think proper to do so.

Mr. DYNLOR, of Franklin, expressed his hope that the friends of the independence of the judiciary would agree to this proposition. The offices were not made for the individuals, but for the public; and if we desire that the judges shall be free from extraneous influence, we should refuse to re-appoint them. He hoped, therefore, that every friend of an independent judiciary would vote for this proposition. He would then feel reconciled to this amendment to which he was himself opposed. He cared not about the tenure, so that the judge was free from any extraneous influence. If a judge were to hold office for the tenure of a single year, he would be as independent as we could desire so long as he did not look to a re-appointment, but so long as he should be bowing to power for a re-appointment there would be no independent judiciary. But when a judge could know no object but a fair administration of justice, it is all the independence we should require,—not an independence of the people, but a freedom from all those influences which could have the effect of operating on his decisions. We may then well say we have an independent judiciary. He was astonished at the remarks of the gentleman from Luzerne, that the object was to limit the tenure, and not that judges should be turned out. We had always feared lest a judge might trim his sails to catch the political breeze, and be more assiduous in seeking popularity than in the infusion of equity and justice into his decisions. We have a sufficient number of persons to fill the offices if the judges vacate. We have abundance of lawyers of learning. Let it be understood that judges are not to be re-appointed, and there will be no longer any inducement to swerve from justice.

Mr. WOODWARD said the gentleman from Franklin had misunderstood him entirely, when he supposed that he (Mr. W.) would prevent the re-appointment of a good judge, by the introduction of a constitutional provision. This he would not wish, but he would desire that a judge should not be re-appointed to the same, or any other office of the same grade, while he was actually holding office. The provision did not contemplate a disqualification for re-appointment after the expiration of the term, or he would go against it.

Mr. FORWARD, of Allegheny, did not know if he exactly understood the object of the amendment, but he believed it was that no judge should be re-appointed during the term of his original tenure to the same office, or to any other office of the same grade. Now he looked on this as morally impossible. That a judge would take advantage of favorable circumstances and resign his office for the purpose of being re-appointed? He would not believe that any judge would so degrade himself and his office, or that any governor and senate would participate in such an act. We may imagine subtle contrivances to evade every law, but it was not likely that any such case as this could occur. He wished for a clause to provide against re-eligibility. Introduce a principle which would prevent the re-appointment of a judge, and his objection to the limited tenure would be, in a great degree, removed.

Mr. MERRILL, of Union, said the question was if any judge holding his office had a right to resign. It is proposed to exclude him from the right of re-appointment, if he does. He does not, therefore, return to private life with his rights as a citizen, but is shorn of some of these rights. He can not be re-eligible, because he has been in office for the ten

years previous, and has resigned. If gentlemen would agree to prohibit all re-appointments, it would be well enough. But, because a judge may have been in office ten years, and has resigned, to say that he shall not be re-appointed appeared, to him to be a little too hard.

Mr. DUNLOP, for the purpose of testing the sense of the convention, and preserving the independence of the judiciary, said he would move to strike out the following words at the end of the amendment, "during the period for which he was previously appointed and commissioned." The reformers in this convention were opposed to every thing like life offices. Some were willing to carry out the wishes of their constituents by limiting the judicial tenure to fifteen years, 'Then why would not these go with him to preserve the integrity of judges, by preventing their re-appointment, so that they may have no inducement to shape their decisions according to their own interests. He asked gentlemen to recall to memory some important decision. Governor Snyder's estate at Shinsbrook, hung on a decision of the supreme court. How would the judges decide on such a case if they were dependent on the will of the executive? How could citizens hope for justice if the judges were dependent on the will of the executive? They have none to rely on for justice but the Lord of Hosts, and the honesty of the judiciary. What hope of success would there be for the adverse party in a case in which the executive was concerned, before judges dependent on the will of that executive. Would it not be to put into the hands of the executive the power of oppression? He hoped gentlemen would be induced to agree to give this subject their sincere consideration, and that they would endeavor to prevent the judiciary from being made the tools of the executive. Did not every gentleman know that Governor Hiester had a cause before the supreme court, and that while the supreme court were in doubt as to their decision, he selected a judge to sit on the bench of that court, whose preconceived opinions in his favor he was aware of, and that by this means he obtained a decision propitious to his wishes?

He asked if the gentleman did not suppose that under such circumstances a judge would be left out by the casting vote of the supreme court? What prospect had a private individual under these circumstances? He had better go to the feet of the executive; he had better apply to that officer, and beg that his cause might be allowed to stand over till his influence should have ceased; or else, to have it submitted to some tribunal he could trust, and which both parties believed to be independent. There was not a member of this convention but what might find himself in a like position—dependent upon the will of the executive. He (Mr. Dunlop) held this to be one of the most important questions that had come before this body—a question, indeed, which involved the life and liberty and property of an individual. All these were in danger. We all know what judges are made of. They are like ourselves—influenced and operated upon by their feelings and wishes and interests. Was it possible, then, he would inquire, that an obscure individual in this commonwealth could have any thing like fairness and impartiality dealt out to him, when he had for his opponent, as plaintiff, a man of some consideration, and possessed of powerful influence? He might not have the governor himself, as plaintiff, but his friend by consanguinity, or by party. Every body knew that when a man's mind was balanced—when

it was difficult for him to decide a question—when, after a laborious argument and examination of the subject, a judge found great difficulty in forming a judgment, although a grain of sand might be sufficient to determine the case either way—when, too, a judge might be looking to a re-appointment, his character, reputation and family being at stake, was it not natural to suppose that when the judge knew the governor himself had an interest in the case, that he might be swayed by the fear or favor of the executive? If any one thought otherwise, then he did not understand human nature. To expect firmness under such circumstances, was not viewing man in his true character as he is. It was throwing away the light of history, and shutting our eyes against the truth and the frailties of humanity.

He implored gentlemen to look more attentively to their biographies and other works from which they might learn the real character of men, or else, to lay them aside, and give to this important subject the attention it deserved. The day was fast approaching when those who smiled now on the ruin of their country would bitterly feel the effects of their folly. And this attempt of theirs to overturn the independence of the judiciary would be turned on themselves. He would have gentlemen to bear in mind that his motion did not conflict with the principles which attached to the proposed amendment. He insisted that the effect of reducing the judicial tenure would be to throw more power into the hands of the executive than he now possessed. The very object which some gentlemen had in view—that was to abridge the power and patronage of the governor, would be defeated. Indeed, they were about to bestow upon him more power and influence than he already had. There was not a district of the commonwealth of Pennsylvania on which it would not be brought to bear. He (Mr. D.) would ask every gentleman to consider what would be the condition of his own judicial district. Supposing a judge to be appointed for ten years, and after having served six or seven years of that term, another governor is elected, and new appointments are to be made, so that no judge would be independent of executive influence under such circumstances. A judge would look to the party in power during the preceding years, to the party likely to carry the next gubernatorial election.

Now, he (Mr. Dunlop) would ask whether any man desired to have his life, his liberty, or his property depend upon a judge whose tenure of office rested with the executive, for he might turn him out of office, and thus would his family be deprived of support, and thrown on the cold, unfeeling charity of the world, at an age too, when, perhaps, they would be unable to earn a living. He freely confessed that he would rather that the judicial tenure should be dependent upon the popular will than on the executive. Mr. D. then moved to strike out of the amendment all after the word “grade,” being the words “during the period for which he was appointed and commissioned.”

Mr. PORTER, of Northampton, thought the gentleman from Franklin, was in error with respect to what he had said concerning Governor Hiester. He (Mr. P.) believed that Governor Hiester did not appoint any judge of the supreme court. He was not a friend nor a supporter of his; but he wished to correct the error into which the delegate had fallen.

Mr. REIGART, of Lancaster, had always thought that the gentleman

from Franklin, (Mr. Dunlop) was a conservative before. He should regard it as much more dangerous to give the governor the sole power of appointment, than to give it to the senate. Did not the gentleman from Luzerne, (Mr. Woodward) know that the senate had eyes to see and ears to hear, as well as the executive, and upon whom that body would be a check. The gentleman from Franklin, had argued as if the governor were to possess the sole appointing power. That was no such thing. Did not the gentleman suppose that if while a cause should be pending in a court, the governor were to appoint a judge, would not the senate discover what he had done? Surely they would, and the consequence would follow that they would veto his nomination. He (Mr. R.) would ask whether the effect of this amendment would not be to exclude many a good man from being appointed? If for instance, it should happen that a judge of the court of common pleas, gave universal satisfaction, and the public desired that he should be placed on the supreme court bench, this amendment would prevent the governor from complying with their wishes. Mr. R. hoped that the amendment would be rejected, and that the convention would not resolve itself into a committee of the whole.

Mr. MERRILL, of Union, rose to explain a case referred to by the gentleman from Franklin, (Mr. Dunlop) and partly at the request of the member from Bucks.

Governor Snyder had no interest in the case, but was in possession of the land as guardian of the owners who were minors.

The judges had been of his appointment, and the jury became so suspicious, that he was influenced by some improper motives, that they entirely disregarded his charge. He (Mr. Merrill) would not decide, whether this was a smaller evil, than the one apprehended by gentlemen here. Such however, was the fact, and the cause was tried several times—afterwards seven very respectable men as arbitrators decided according to the judges charge, and the same title was afterwards tried in the circuit court of the United States, and the decision in the same way. He thought this explanation but bare justice to the memory of a memorable and most respected governor of this commonwealth, now deceased; and to the feelings of his children and near relatives, to whom his reputation is deservedly most dear. Besides sir, this is a man of whom history will speak, and it concerns us all, it concerns the cause of free institutions all over the world and in all time to come; that no insinuated or implied impropriety of motive should be suffered to cast a shadow over the fair fame of such a man. His fame is the common property of every citizen; and no property ought to be defended more carefully or more zealously.

Mr. HOPKINSON, of Philadelphia, said he thought that the motion of the gentleman from Franklin, (Mr. Dunlop) had taken the convention by surprise, and might lead to a review of all that it had done. He would ask if it was not the prevailing argument when the subject of the judicial tenure was up before, that there was no danger that good judges would not be re-appointed, and that by limiting them for a term of years, the bad judges would be got rid of without an address to the legislature. It appeared that now the subject was to be gone into again. No one, as he understood, desired that good judges should be got rid of. Now, however, it seemed that a judge, in middle life, who had done his duty and

given entire satisfaction to the people was, *volens volens*, to be turned out.

As he (Mr. H.) had already said, the argument and the principle contended for, had been that if the life tenure was taken away there could be no doubt that good judges would be appointed again. It was argued, too, that they would be independent. But, how that could be so, he was at a loss to perceive. Another argument used was, that if a judge knew that his re-appointment depended upon his good behaviour, he would conduct himself accordingly. Now, however, it seemed that this inducement for judges to be faithful and honest in the discharge of their duties, was to be withdrawn. For the future, then, it was to be a matter of no consideration how a man performed his duty, no consequence how corrupt or exceptionable might be his conduct. He was sure of his office for a certain time, and no longer. He (Mr. H.) would say, at least, if the life tenure (as it had been called) was to be abandoned, let the inducement to good behaviour be retained. Was it to be supposed that a man in the prime of life—of thirty or forty years of age—after being thrown out of office for some years, would be willing to take it again? He apprehended not.

Mr. BANKS, of Mifflin, said, that he was opposed to the motion of the gentleman from Montgomery, (Mr. Sterigere) because it was at all times difficult to apply general rules to meet particular cases. As had been correctly stated by the gentleman from Lancaster, (Mr. Reigart) the governor does not possess the sole power of appointment, for the senate participates in it. And, it was not to be supposed that they would concur in any appointment, unless they were satisfied with it. But, as the constitution now stood, the governor possessed the sole power of appointment, and the senate had no control over him in that respect. At the present time, the judges would not be at liberty to resign for the purpose of being re-appointed. What, he asked, had been the course adopted by judges about to be tried for some misdemeanor in office? Why, finding that the court held out longer than the usual period, they would resign at such a time as would induce the governor to receive their commissions, and thus they were saved the mortification of being arraigned. He maintained that if the amendment of the gentleman from Montgomery, prevailed the effect of it would be to cut off valuable, honest, upright men, whom both the governor and the senate would be willing to re-appoint. The principles of the amendment he (Mr. B.) regarded as being like that which characterized an old law which was in existence in New England, in reference to the punishment of those who practised witch craft. If they were guilty they were to be destroyed, and if they were not, they were to meet the same fate. Whether worthy, or unworthy, these judges were to be cut off.

Now why, he would inquire, not re-appoint a man if he shows himself worthy and faithful in the discharge of his duties? Let those judges be nominated to the senate three months before the expiration of their appointments, if they deserved to be re-appointed. There was no danger to be apprehended from the adoption of this mode of proceeding. The governor of the commonwealth would not venture to nominate unworthy men. He hoped that the convention would not go into committee of the whole.

This body had provided by the fifth article of the constitution that the legislature shall have the power to propose amendments to the constitution, when deemed necessary. Let, then, the constitution, as amended, be submitted to the people, who would either accept or reject it, as they might think proper.

Mr. STERRIGER, of Montgomery, observed that he did not think the argument of the gentleman from Mifflin, (Mr. Banks) a very sound one. The gentleman was entirely mistaken in supposing that his (Mr. S's.) amendment would have the effect of cutting off worthy and competent judges. That would be the result, however, of the amendment of the gentleman from Franklin, (Mr. Dunlop) as had been truly stated by the gentleman from the city, (Mr. Hopkinson.) It ought not therefore, to be adopted. With regard to what had fallen from the gentleman from Mifflin, relative to witches, he would only say that he knew more about them than he (Mr. S.) did, for he had nothing to say on the subject. We had introduced amendments to limit the tenure of the judges to ten years, and he having considered it was liable to evasion, like the rule adopted in this convention, limiting a member to speak but one hour, had thought proper to propose the amendment now pending, and which he trusted would be adopted.

In respect to appointments by the governor, he would remark that all experience had shewn that men had always been appointed by our different executive magistrates from among the political party to which they themselves belonged. Now, he entertained no objection to that. If competent men were not to be found in his (Mr. S's.) party, they might be taken from any other. He cared not what might be the politics of the men—whether they were federalists, anti-masons, or any thing else. Good men would be found in every party, and they would administer justice with perfect equality to men of all conditions. His desire was to obtain the appointment of judges, unassociated by party feeling, if possible. He wished to deprive the judges of all political motives in reference to their re-appointments; and also, to take away from the governor and senate any feeling of this kind entering into the appointments they may make. One political party was as liable to be influenced by political feeling as another. With respect to his amendment, he would observe that it did not provide for particular cases, as the gentleman from Mifflin, (Mr. Banks) had remarked. It was to be a general rule. Believing that the amendment was of great importance, he had consequently drawn the attention of the convention to it.

Mr. FULLER, of Fayette, said that he was opposed to the amendment of the gentlemen from Montgomery and Franklin. For his own part, he could say that he was disposed to let well alone, for what had been obtained was in as good a form as could be got. The inference that was to be drawn from the amendments of those delegates was that there was danger to be apprehended from the governor, and the judges combining together to cheat the people. The gentleman from Montgomery, had said that the language of the section went to show it was the determination of the convention that no judge on the supreme court bench should hold his office longer than fifteen years, and on that of the court of common pleas, ten years; but that, in his opinion, these limitations might be avoided. And, if so, it must be by the governor and senate. He (Mr.

F.) could not believe it possible that such a combination would be entered into to defeat the will of the people. He would vote against the amendment of the gentleman from Montgomery.

Mr. SCOTT, of Philadelphia, regarded the amendment of the gentleman from Montgomery, as calculated to deprive the community of the services of useful, talented, honest and honorable judges. The effect of it would be to render their re-appointment impossible, and thus would the judicial bench of the commonwealth of Pennsylvania, be hereafter deprived of every ornament in the profession who might have adorned it by their learning and talents. Yet, on the other hand, he (Mr. Scott) saw another great evil that would result, if this body should not adopt the amendment. By the change which we had already made in the constitution, we were putting into the hands of the executive one of the strongest possible instruments of corruption. If, then, the amendment of the gentleman from Montgomery, were to be negatived, we should be placing at the feet of the governor, and under the control of the senate, the judiciary for all time to come.

This was one of the grievances—one of the melancholy results of a change in the judicial tenure from good behaviour to a term of years. We now felt that this must necessarily follow from a change of the tenure. We were reduced to the alternative of either bestowing upon the executive one of the greatest instruments of corruption ever bestowed upon power, or of depriving this great commonwealth of the services of eminent and distinguished judges for the future. It was possible that such a state of corruption as this might exist hereafter—as for instance, the executive and the senate being desirous to induce this or that judge, to give an opinion in accordance with theirs, in order that they may carry their point—renew his appointment for ten years, on that score! Of the two evils, then, to which he had adverted, this was the greater, and therefore, he would vote for the amendment of the gentleman from Montgomery. He would now make a remark or two, in reference to what had fallen from the gentleman from Luzerne, (Mr. Woodward) in reference to what had fallen from his colleague, (Mr. Chandler.)

That remark was made in the course of an address to this convention, and probably I ought not to say any thing more in reference to it, because I know that my colleague is fully competent to take care of himself. He needs no aid at my hands. But, in behalf of all our delegation, I beg leave to say, that although they may, and probably do, entertain the hope that the people will not be satisfied with the amendments proposed to them by this body, yet that no vote has hitherto been given, and that no vote will hereafter be given by any member of that delegation on the principle of doing that which would bring the amendments into disrepute.

Our course has been manfully, openly and fairly to resist the adoption of every amendment which seemed to us to be injudicious and improper; but never, in a single instance, have we given a vote with the intention to create disgust. I felt at the time that there was a little unkindness in the observation. I am glad to find, however, that it did not go so far as I had at first thought it was intended to go, because it came from a gentleman who, I believe, would not wilfully do injustice to any man, however much he might differ from him on questions of public policy.

As regards the matter now before the convention, I find myself between

two bitter alternatives—in all kindness of spirit be it said—but nevertheless, I am between two bitter alternatives. I am reduced to the alternative either of voting for that which will deprive the commonwealth of able judges on the one hand; or on the other, of voting to strip them of their legitimate power and authority, for that which might be the instrument of corruption and injury. I prefer the latter alternative to the former, and I shall give my vote accordingly.

Mr. WOODWARD, of Luzerne, said.

I beg leave to say, that I did not make the observation which has been alluded to by the gentleman from the city of Philadelphia, (Mr. Scott) in any spirit of unkindness towards the city delegation. I merely stated a fact from which I endeavored to draw an inference in relation to the question at that time before the convention. Beyond this, I did not intend to go. Nor did I even in that, allude to the member of that delegation who has just taken his seat, (Mr. Scott.)

One of the gentlemen from the city of Philadelphia—whom I took occasion to compliment on his candor—stated, in the course of some observations which he submitted to the convention, that the hope of the party with whom he acted consisted in a belief that the people would be so much disgusted with these amendments, that they would reject them all. And it was to that remark that I alluded, not, as I have said, in any spirit of unkindness, but only because it was made in the course of debate on this floor, and, having been so made, was to be regarded as a legitimate subject of comment by any gentleman who might be disposed to speak of it.

It is a source of some gratification to me to find, that my recollection in this particular is sustained by that of several gentlemen around me, who were present at the time. I assure the gentlemen from the city, one and all of them, that I did not allude to this observation for any purpose of reproach, but simply because it appeared to afford me an argument against the proposition then before the convention.

Mr. CHANDLER, of Philadelphia, rose and inquired, does the gentleman from Luzerne allude to me, as the member of the city delegation, who made the observation alluded to?

Mr. WOODWARD. I do, sir.

Mr. CHANDLER. I do not remember that I ever made use of the words attributed to me, but I do know my feelings to be such as the language used by the gentleman from Luzerne would imply. But I never, at any time since the commencement of the labors of this body, have indulged the thought that any vote of the conservative members would tend to disgust the people.

I have, however, entertained the hope that that which the gentleman from Luzerne and his party did, would be found to be so unpalatable to the people that they would not accept the amendments.

I do not desire that this amended constitution should be adopted by the people. Of my wishes and feelings in this particular I have made no secret. I have taken my position fairly and openly against the principles and doctrines which have been introduced here. I have done so without fear of the consequences; and with a just confidence in the verdict of those who alone have the right to judge me. But whilst I have been

thus opposed to most of the amendments, I certainly would not vote for any thing which I believed to be wrong; and I do not believe that the people would accept any thing that was wrong. And I now, in my place disclaim for myself and my colleagues, any intention of proposing or advocating any proposition for the purpose, or with the remotest view of disgusting the people with the amendments and thus securing the defeat of all of them.

Mr. WOODWARD rose to say, that he had never intimated that here or elsewhere.

Mr. CHADLER resumed :

I am anxious to set myself right in this matter, if not before the people themselves, at least before the representatives of the people here assembled—amongst the chief of whom I esteem the gentleman from Luzerne, (Mr. Woodward.) I should be sorry that he should take away with him any wrong impressions of my sentiments.

My colleague (Mr. Scott) has expressed precisely my own opinion. He never desired that the people should accept the amendments. Nor did I. But he, like myself, desires that the people should have a fair opportunity of saying whether they would accept them or not—that they should not be put to them in a lump, so as to compel them to take the bad for the sake of something good.

As to the proposition of the gentleman from Montgomery, (Mr. Sterigere) I entertain the same opinion towards that, as has been expressed by my colleague, (Mr. Scott.)

I, for one, am opposed to almost every amendment which has been introduced into the constitution, and when I have voted against them, I desire that the people should have an opportunity to do so likewise. I feel as sincere a regard for the best interests of the people as any delegate on this floor, and I can unite with the gentleman from Luzerne and others in their most fervent aspirations in that respect.

I regard all their civil and political rights; and I desire by all my votes here to give them an entire and perfect exercise of those rights in all things; and, amongst others in relation to the amendments which we are about to submit to them, so that they may know what is good and accept it, and may know what is evil and avoid it.

Mr. PORTER, of Northampton, said:

The question immediately before the convention is on the motion of the gentleman from Franklin, (Mr. Dunlop.) The effect of his amendment, if I understand it, would be to prevent the re-appointment of the judges.

I did not distinctly hear the argument in favor of the original proposition, but, from the little I did hear, I suppose it is intended to prevent the governor from finessing on the subject of appointments; or, in other words, to prevent a judge from resigning before his term of service is quite out, in order to get a new appointment for ten years. I am afraid that this might interfere with the republican doctrine of rotation in office—which according to the construction of the office-holders, means to go from one office into another; but which, according to the construction of the people, means out of office, and not in. If this latter is the intention of the amendment, I do not know that I should be in favor of it; because

after you have once put a man into office, he is scarcely fit for any thing else and you had better keep him there. But I do not want to part with this principle of rotation in office. I suppose the amendment of the gentleman from Franklin would prevent re-appointment. I will go for this principle, if you will give such a salary as will procure good judges, and enable them to lay up something for the future, or else to pension them off.

I think the gentleman from Franklin had better modify his amendment to read something in this way.

Mr. DUNLOP rose to inquire, whether the gentleman from Northampton, (Mr. Porter) was in joke or in earnest,

Mr. PORTER resumed.

Funny gentlemen always suspect their neighbors. I was merely about to throw out some views for the consideration of the gentleman from Franklin.

As to the proposition of the gentleman from Montgomery. (Mr. Sterigere) I do not like it for this reason. If you have a president judge of the court of common pleas who is a competent man, and has acquired experience, you can not, according to the terms of that proposition, make him judge of the supreme court. Now, I can not agree to this. But there is another point in which the proposition is objectionable.

Mr. STERIGERE asked leave to explain.

The proposition which he had made, did not, he contended, go to prevent the appointment of the judges to any superior station—either to the supreme court, or any other place.

Mr. PORTER resumed.

Let us see what the terms of the amendment are, and what is the construction which is most likely to be placed upon them. It says:

“But no person appointed to any of said offices shall be re-appointed to the same office, or appointed to any other judicial office of the same grade, during the period for which he was previously appointed and commissioned.”

Now, continued Mr. P. I should like to know whether some difficulty might not arise about the word “grade?” Probably, my friend had better alter the phraseology a little; although, under all the circumstances of the case, I think it would be better to leave the section in the form in which it now stands. I do not think it will be of much use to go into committee of the whole.

As to the amendment of the gentleman from Franklin, (Mr. Dunlop) I do not see how any gentleman can expect such a proposition to meet the favor of this convention; unless he will agree to modify it in the manner which I intimated a few minutes since—that is to say, to give the judges a very handsome salary out of which they may lay up sufficient for their future wants, or else, after their term of service has expired, to put them on half pay for life.

I believe that the independence of a judge will measurably depend on the character of his mind. It may be affected in some degree by the tenure of the office, but of one thing I am certain, that it will not have a good effect to ostracise your judges in the manner here proposed. I have, for

my own part, great objections to losing the services of a judge when once he has been appointed to the bench. I do not like this tenure for a term of years, with a low salary, but I shall like it still less, if after once appointing a man to the judicial office, you are to cut him off from re-appointment.

The amendment of the gentleman from Montgomery, I repeat seems to me to be unnecessary, because it is based upon the presumption that there is to be connivance or finesse between the governor and the judges.

The question was then called for by Mr. ~~HIESTER~~ and twenty-nine others rising in their places.

And the question being taken,
Shall the question be now put?

It was determined in the affirmative.

And the motion to amend the said motion was disagreed to.

The question was called for by Mr. STERIGERE and twenty-nine others 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 motion?

The yeas and nays were required by Mr. STERIGERE and Mr. REIGART, and are as follow, viz:

YEAS—Messrs. Hiester, Mann, Miller, Scott, Sellers, Sterigere, Woodward—7.

NAYS—Messrs. Agnew, Baldwin, Banks, Barclay, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Clapp, Claik, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavenger, Cline, Coates, Cochran, Cox, Crain, Crawford, Crum, Cummin, Cunningham, Curls, Darlington, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Dunlop, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helfenstein, Henderson, of Allegheny, Henderson, of Dauphin, High, Hopkinson, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Myers, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Read, Ritter, Ritter, Rogers, Royer, Russell, Seager, Scheetz, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, Weidman, White, Young—105.

So the motion was rejected.

And on the question,

Will the convention agree to the amendments made in the said fifth article?

The yeas and nays were required by Mr. KONIGMACHER and Mr. REIGART, and are as follow, viz:

YEAS—Messrs. Agnew, Banks, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavenger, Crain, Crawford, Crum, Cummin, Cunningham, Curls, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Helfenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Keim, Kennedy,

Krebs, Long, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Overst, Id, Payne, Purviance, Reigart, Read, Ritter, Ritter, Rogers, Scheetz, Sellers, Seril, Shellito, Smith of Columbia, Smyth of Centre, Snively, Sterigore, Stiles, Sturdivant, Tazart, Weaver, White, Woodward, Young—85.

NAYS—Messrs. Baldwin, Bell, Chandler, of Philadelphia, Chauncey, Cline, Coates, Cochran, Cope, Darlington, Denny, Forward, Harris, Hopkinson, Ingersoll, Jenks, Knigashor, Masby, M'Sherry, Merelith, Merrill, Meikel, Pennypacker, Potter, of Lancaster; Porter, of Northampton, Royer, Russel, Seago; Scott, Thomas, Todd, Weidman, Sergeant, *President*—32.

So the question was determined in the affirmative.

And the amendments made in the said article were agreed to, after having been.

On motion of Mr. M'SHERRY,

Amended by unanimous consent, by making the word "court," in the fourteenth line of the second section, read "courts."

SIXTH ARTICLE.

The following amendments made to this article, were taken up, and read the third time :

SECT. 1. Sheriffs and coroners shall, at the times and places of election of representatives, be chosen by the citizens of each county. One person shall be chosen for each office, who shall be commissioned by the governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of the said offices shall be filled by an appointment, to be made by the governor, to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid.

SECT. 2 The freemen of this commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as may be directed by law. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

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 court 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.

SECT. 6. A state treasurer shall be elected annually, by joint vote of both branches of the legislature.

SECT. 7. Justices of the peace or aldermen shall be elected in the several wards, boroughs, and townships, at the time of the election of constables by the qualified voters thereof, in such number as shall be directed by law, and shall be commissioned by the governor for a term of five years. But no township, ward or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward or borough.

SECT. 8. All officers whose election or appointment is not provided for in this constitution, shall be elected or appointed as shall be directed by law. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. No member of congress from this state, or any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this state, to which a salary is, or fees or perquisites are by law annexed; and the legislature may by law declare what state offices are incompatible. No member of the senate or of the house of representatives shall be appointed by the governor to any office during the term for which he shall have been elected.

SECT. 9. All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well; and shall be removed on conviction of misbehaviour in office or of any infamous crime.

SECT. 10. Any person who shall, after the adoption of the amendments proposed by this convention to the constitution, fight a duel, or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this state, and shall be punished otherwise in such manner as is, or may be prescribed by law; but the executive may remit the said offence and all its disqualifications.

Mr. **HIESTER**, of Lancaster, asked the unanimous consent of the convention, to move to amend the tenth section, by striking therefrom the words—"after the adoption of the amendments proposed by this convention to the constitution."

Mr. **H.** said, that there was no meaning to be attached to these words, they were superfluous, and had much better be stricken out.

Mr. **PORTER**, of Northampton, said, that he would coincide with the gentleman, provided, he would move that the convention resolve itself into a committee of the whole.

Objection being made to the introduction of the amendment,

Mr. **STERIGHE** moved that the convention resolve itself into a committee of the whole, for the purpose of amending the tenth section thereof, by striking therefrom all after the words "section 10," and inserting in lieu thereof the following, viz:

Every person who shall fight a duel, or send a challenge for that purpose, or shall aid or abet in fighting a duel, shall be disqualified from holding any office of trust or profit in this state, and shall also be liable to be indicted and punished according to law; but the governor may remit such disqualification and punishment."

Mr. S. said, that he had voted against the section both in committee of the whole and in the convention, on the ground that he thought it an improper one. We were now on the third reading of the amendments, and must therefore consider all the principles as settled. He was opposed to making any change, except as to matters of form. The language used, had been borrowed from the constitution of another state, which, perhaps, had been made in great haste, and it required some little alteration.

He agreed with the gentleman from Lancaster, (Mr. Hiester) in his remark that the words he proposed to have stricken out were unnecessary and superfluous. They ought to be struck from the section. If we looked further into the section, we would find the language there somewhat exceptionable. We found it laid down that no one, in any manner connected with a duel, shall hold any office of "honor or profit in this state."

Now, he maintained that there are not in Pennsylvania, offices of honor, nor are there any honors of nobility conferred. But there are offices of trust both under the state and general government: and if there was any exclusion at all to a man's holding office, it was to an office of profit. The proposed change was to substitute *truth* for *honor*. His amendment embraced the language of the old constitution, relating to impeachments. The concluding sentence of the section, as it now stood, was in these words—"but the executive may remit the said offence and all its disqualifications."

He (Mr. S.) confessed that he did not exactly understand this language. The governor might remit the disqualification, but he could not remit the offence.

Mr. S. asked for the reading of his amendment, so as to compare the language with that of the section.

Mr. READ, of Susquehanna, asked for the previous question, and the call was sustained.

The question being, "shall the main question be now put?"

It was decided in the affirmative.

And the question being,

"Will the convention agree to the amendments made in the sixth article?"

Mr. REIGART asked for the yeas and nays, which were ordered.

The question was then taken, and decided in the affirmative, as follow, viz:

YEAS—Messrs. Agnew, Banks, Barndollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clark, of Indiana, Cleavenger, Cline, Cochran, Crawford, Cunningham, Curll, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Heffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigsmacher, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, Merrill, Meikel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Purviance, Reigart, Read, Riter, Ritter, Rogers, Saeger, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigera, Stickel, Sturdevant, Taggart, Todd, Weaver, White, Woodward, Young—93.

NAYS—Messrs. Baldwin, Chandler, of Philadelphia, Chauncey, Coates, Cope, Cram, Crum, Cummin, Darlington, Hopkinson, Long, Meredith, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Royer, Russell, Scott, Terrill, Thomas, Weidman, Sergeant, *President*—22.

So the question was determined in the affirmative.

SEVENTH ARTICLE.

The amendment made in the seventh article, was read a third time, and follows, viz :

SECT. 4. The legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken.

And the question being,

“ Will the committee agree to the said amendment ? ”

Mr. MEREDITH, of Philadelphia, explained some remarks which he had made, and which had been misconstrued by the gentleman from Luzerne, (Mr. Woodward) who had charged him (Mr. M.) and those who acted with him, with wishing to make the amendments as odious as possible, in order that they might disgust the people. He would say in reply, that they might have been more justly charged with voting too constantly against amendments.

Mr. WOODWARD, said :

I will a second time explain. Some days since a gentleman from the city of Philadelphia, (Mr. Chandler) declared, if I understood him correctly, that the reliance of the party with which he acted, was on the hope that the people would be so disgusted with the amendments of this convention, as to reject them.

Yesterday, a colleague of that gentleman, (Mr. Scott) introduced a proposition to this body, and I, in speaking to that proposition, made allusion to the other gentleman from the city, (Mr. Chandler) and remarked that the hope on which he had said his party relied, was a forlorn hope ; but, at the same time, that if it even had been the design of any one to bring forward a measure by which to disgust the people of Pennsylvania, the wisdom of the city delegation could not have designed any thing more effectual for that purpose, than the very proposition then under consideration. But I expressly acquitted the author of that proposition, of any such design. I spoke hypothetically.

Once for all I will say, that I never intended to intimate, because I never suspected, that any delegate from the city of Philadelphia, or elsewhere, would so far forget what was due to his own character, as to propose to insert in the fundamental law of the land any provision, calculated to disgust the people of this commonwealth. I alluded merely to the expression of the hope to which the gentleman from the city of Philadelphia, (Mr. Chandler) admitted that he and his party were reduced, in relation to the whole subject of constitutional reform, and which hope, I went on to say, if realized at all, could only be realized by some such measure as was then proposed. I am sorry that my words gave any offence, for they were not intended to do so.

Mr. MEREDITH. I do not wish the gentleman from Luzerne, (Mr. Woodward) to suppose that I have taken any offence. I have no idea of that kind. But I thought that what I had said on a former occasion, had not been altogether understood.

Mr. SCOTT said. The explanation given by the gentleman from Luzerne, (Mr. Woodward) half an hour ago, was perfectly satisfactory.

I rise now merely for the purpose of making a single remark as to the amendment introduced here yesterday by myself; I mean that, as to submitting the amendments separately and apart. I want to call the recollection of the gentleman from Luzerne to the fact, that that idea, although not borrowed from, followed closely upon the action of this body on the tenth article. The convention have declared, in the tenth article, that when the legislature shall propose more than one amendment, they shall be submitted in such manner and form, that the people may vote separately and distinctly upon them. So that if my proposition yesterday, could even hypothetically have the effect of disgusting the people, I take occasion to say, that the example was set by the action of the majority of the convention on the tenth article.

And the question on the final passage of the said amendment was then taken.

And on the question,

Will the convention agree to the said amendment?

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

YEAS—Messrs. Agnew, Banks, Barndollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Crain, Crawford, Crum, Cummin, Cunningham, Curl, Darlington, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiesler, High, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, R. & L. Riter, Ritter, Rogers, Royer, Russell, Seager, Scheetz, Sellers, Ferrill, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Todd, Weaver, White, Woodward, Young—105.

NAYS—Messrs. Baldwin, Chandler, of Philadelphia, Chauncey, Cochran, Cope, Harris, Hopkinson, Pennypacker, Weidman, Sergeant, *President*—10.

So the amendment was passed.

The amendment in the tenth article of the constitution, were then read a third time, in the words following, viz :

ARTICLE TEN.

Any amendment or amendments to this constitution may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of the members elected to each house, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the secretary of the commonwealth

shall cause the same to be published three months before the next election, in at least 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 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 after being so agreed to by the two houses, as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this state voting thereon, such amendment or amendments shall become a part of the constitution, but no amendment or amendments shall be submitted to the people oftener than once in five years: Provided, That if more than one amendment be submitted, they shall be submitted in such manner and form, that the people may vote for or against each amendment separately and distinctly.

And on the question,

Will the convention agree to the said amendment?

The yeas and nays were required by Mr. CURLL, and Mr. CRAWFORD, and are as follow, viz:

YEAS—Messrs. Agnew, Banks, Barclay, Barndollar, Barniz, Bedford, Bell, Bingham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Cochran, Cox, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gable, Gearhart, Gimore, Grenell, Harris, Hastings, Hayhurst, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Ingersoll, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Magee, Mann, McCahen, McDowell, McSherry, Merrill, Merkel, Miller, Myers, Nevin, Overfield, Payne, Porter, of Lancaster, Purviance, Read, Ritter, Rogers, Russell, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Toggari, Todd, Weaver, Woodward, Young—87.

NAYS—Messrs. Baldwin, Carey, Chandler, of Philadelphia, Chauncy, Clarke, of Beaver, Coates, Cope, Cunningham, Darlington, Denny, Dickey, Earle, Farrelly, Forward, Henderson, of Allegheny, MacLay, Meredith, Montgomery, P. nypacker, Reigart, Royer, Saeger, Scott, Serrill, Thomas, Weidman, Sergeant, *President*—27.

So the question was determined in the affirmative.

A motion was made by Mr. REIGART,

That the rule for going into committee of the whole, be in this case dispensed with, and 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.

The said motion being under consideration,

A motion was made by Mr. MEREDITH,

That the the convention do now adjourn.

Which was agreed to.

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

FRIDAY AFTERNOON, FEBRUARY 16, 1838.

Mr. COCHRAN, of Lancaster, moved that the convention proceed to the second reading and consideration of the resolution attached to the report of the committee to engross the amendments for the question of their final passage, which was made on yesterday, and which is as follows, viz:—

Resolved, That the names of the President and Secretary of the convention shall be endorsed, each in his own proper hand-writing, on each of the skins, with their certificates as evidence of the same.

The motion being agreed to, the resolution was considered and adopted.

SCHEDULE.

The convention proceeded in the consideration of the following motion submitted by Mr. REIGART, of Lancaster:

“That the rule for going into committee of the whole be in this case dispensed with, and 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.

Mr. BELL considered it important that this motion should prevail, and that the report should be at once considered. The object, he presumed, was to adopt the report promptly.

Mr. REIGART asked for the yeas and nays on this question, and they were ordered.

The question was then taken, and the motion (requiring a majority of two-thirds) was decided in the negative, as follows, viz:—

YEAS—Messrs. Banks, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Clapp, Claivinger, Crain, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donnell, Fleming, Foulkrod, Fuler, Gamble, Gearhart, Gilmore, Grenel, Harris, Hastings, Hayhurst, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, McChen, McDowell, Merkel, Myers, Overfield, Payne, Porter, of Lancaster, Reigart, Ritter, Ritter, Rogers, Royer, Saege, Scheetz, Sellers, Shellito, Smyth, of Centre, Stickel, Thomas, Todd, Weaver, White, Woodward—59.

NAYS—Messrs. Agnew, Baldwin, Bell, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cochran, Cope, Cox, Darlington, Denny, Dickey, Doran, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jinks, Konigsmacher, Long, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Purviance, Russell, Scott, Serrell, Sergeant, *President*—32.

So the question was determined in the negative.

The convention then resolved itself into a committee of the whole, Mr. MERRILL of Union in the chair, on the report of the committee appointed to prepare and report a schedule to the amended constitution.

The first section of the said report being under consideration, as follows, viz:

First—All laws of this commonwealth in force at the time when the said alterations and amendments to the said constitution shall take effect, and not inconsistent therewith, and all rights, actions, claims and

contracts, as well of individuals as of bodies corporate, shall continue as if said alterations and amendments had not been made."

Mr. WOODWARD, of Luzerne, said he found that there had been omitted one important word. He would therefore move to amend the section, by inserting after the word "actions," in the third line, the word "prosecutions."

The question being put, the amendment was agreed to.

The section, as amended was then agreed to.

The second section was then read as follows, viz:—

Second—The alterations and amendments in the said constitution shall take effect from the first day of January, eighteen hundred and thirty-nine.

No amendment being proposed, this section was agreed to.

Third—The clauses, sections and articles of the said constitution which remain unaltered, shall continue to be construed and have effect as if the said constitution had not been amended.

Agreed to.

Fourth—The general assembly which shall convene in December, eighteen hundred and thirty-eight, shall continue its session as heretofore, notwithstanding the provision in the eleventh section of the first article, and shall at all times be regarded as the first general assembly under the amended constitution.

Agreed to.

Fifth—The governor who shall be elected in October, eighteen hundred and thirty-eight, shall be inaugurated on the third Tuesday in January, eighteen hundred and thirty-nine, to which time the present executive term is hereby extended.

Mr. PORTER, of Northampton, moved to amend the fifth section, in the second line, by striking therefrom the word "January," and inserting in lieu thereof the word "December;" and by striking from the third line thereof the word "nine," and inserting in lieu thereof the word "eight," and by striking therefrom all after the word "nine," in the third line.

Mr. WOODWARD, of Luzerne, said that the effect of the amendment moved by the gentleman from Northampton, (Mr. Porter) would be to add a few weeks to the term of the new governor, and which the committee had added to the old term of the governor. The people would not know what amendments were adopted till the meeting of the legislature on the first Monday of December next. The legislature would convene under the old constitution, and the new constitution would go into effect on the first day of January, 1839.

We should thus have a governor in office under a constitution that does not go into operation for nearly two months after he has become chief magistrate of the commonwealth. He having been sworn to preserve the old constitution, must be inaugurated under the new.

Mr. PORTER said, that his object was to direct the legislature to meet at the usual time, as if there had been no amendments made to the constitution. He had supposed it would be as well to let matters go on as usual until the new constitution should have gone into effect. When his

excellency the present governor of Pennsylvania was elected, it was understood that he was to hold his office until the 1st of January, 1839. He had neither part nor lot in placing the chief magistrate where he now was—for he did not vote for him—nor did he mean to lend his aid to continue him in the high station which he at present filled. yet, as he had before remarked, that personage was elected till 1838. If he should be elected in October next, he would expect to serve till 1842. When the legislature meet, they must have a governor, and they would prefer to have one who was elected by the voice of the people, rather than one who was not. If the present governor had answered the expectations of the people, they would request him to serve them longer. But, on the contrary, if he had disappointed them, they would not bestow their votes upon him.

Mr. Cox, of Somerset observed that he was quite indifferent whether the amendment of the gentleman from Northampton, (Mr. Porter) went into operation or not. In his opinion the present chief magistrate of the commonwealth was an able and efficient officer, and he believed that the people would intimate as much in October next by re-electing him.

Mr. Banks, of Mifflin could not pretend to say whether the amendment would be advantageous to one party or the other, or whether either would agree to its adoption. With regard to what had fallen from the gentleman from Northampton, (Mr. Porter) as to the period when a newly elected governor should commence the duties of his office, he would merely say that the committee were unanimous in making no difference between the old and the new constitution in that respect.

The question being taken on Mr. PORTER's amendment, it was negatived.

And the fifth section was agreed to.

The sixth section of the said report being under consideration, in the words as follow, viz :

"Sixth—The commissions of the judges of the supreme court now in commission, shall not be affected by the second section of the fifth article of the amended constitution; their successors shall hold according to the tenure therein prescribed."

Mr. WOODWARD, of Luzerne, moved to amend the section by striking therefrom all after number "six," and inserting in lieu thereof the words as follow, viz :

"Within three months from and after the third Tuesday of January next, the governor shall, by and with the advice and consent of the senate, re-appoint one of the then existing judges of the supreme court for the term of three years, one of them for the term of six years, one of them for the term of nine years, one of them for the term of twelve years, and one of them for the term of fifteen years."

Mr. PORTER moved to amend the report by striking out all after "shall" in the second line, to the word "constitution" in line three.

The CHAIR said the motion was not in order.

Mr. PORTER then modified his motion so as to strike out of the amendment from the word "shall" in the second line to "of" in line three, and

insert "recommission;" and in the fourth line strike out all after "years."

Mr. WOODWARD said, that before the question was taken, he wished to say a few words in relation to the governor and senate conjointly exercising the power of appointment. That was a matter which had been settled, and could not now be changed. If, after the new constitution should have gone into effect, the governor and senate were to re-appoint the supreme court judges for fifteen years, and they should all live to go out at once, the supreme court bench would then be entirely revolutionized. All of them would probably be driven from the bench in order to make way for the introduction of new judges—men, perhaps, who had had no experience. He was opposed to any and every proposition the object of which was to turn all the judges out at the same time; and also, to every arrangement which went to give to one governor the appointment of five judges at once. Circumstances might throw such power into his hands, but it should not be given by constitutional provision.

That is a contingency against which no legislation can guard; but I am altogether opposed to placing in the constitution, or in the schedule, a provision which will necessarily, at a certain period, throw into the hands of the governor the appointment of so many officers. It is better to distribute them along a series of years—allowing them to be in for a series of years—so that we shall always have experience in the incumbents, and the governor will not have the appointment of five judges at one time.

The plan proposed by the minority of the committee is, that the present judges of the supreme court, whom it might seem hard to turn out at once, shall be re-appointed; that one shall be re-appointed for the period of three years—one for the period of six years—one for the period of nine years—one for the period of twelve years—and one for the period of fifteen years. You will then have got five judges upon the bench—the same men who are now there. The commission of one of them must expire every three years—so that one commission will expire in the term of one governor, and, unless death interferes, one governor will have the appointment of only one of the judges of the supreme court. You will also avoid the evils which must inevitably arise from the entire change of all the judges at one time.

Another feature of the report of the minority is, that it leaves to the governor and senate the assignment of the different periods to the different judges. The governor has an opportunity of discriminating, which this convention does not, and can not possess. If we should now go on to provide that a particular judge should go out at the end of three years from the adoption of this constitution, and another at the end of three years, death may remove them before this principle can go into operation. He, therefore, thought it would be better to leave this matter to be disposed of by the governor and the senate, and to allow them to arrange the then existing judges of the supreme court, through their several successive periods, precisely in such manner as they, in view of all the circumstances, may think best and most advisable.

These are briefly the reasons which have influenced the minority in the report they have made, and which influenced my own mind against

the adoption of the amendment of the gentleman from Northampton, (Mr. Porter.)

Mr. PORTER, of Northampton, said :

I confess that the inclination of my own mind, would be to give to the present judges of the supreme court, the tenure for which they were in the first instance commissioned. I know not how far the principles of those gentlemen who are so keen for reform may carry them ; but, for my own part, I feel a great repugnance to violate the understanding—to say the least of it—which subsisted at the time the present judges were commissioned. It is to be borne in mind that, at the time they came on to the bench, they either quitted inferior judicial stations, or at all events a handsome practice at the bar, in order that they might take the stations which they now occupy. At the time they entered upon the duties of these stations, it was with the understanding, agreeably to the constitution and the laws of the commonwealth, that they were to hold their commissions so long as they behaved well. I do not apprehend, however, from what I have seen of the temper and disposition of this convention—and inasmuch as the judicial term has been reduced down to fifteen years for the judges of the supreme court—I do not, I say, apprehend that the proposition to retain those judges in their stations for the term for which they were originally commissioned, will meet with the favor of a majority here. Entertaining this belief, I think that we ought to come to the nearest step which will bear any thing like a resemblance to justice in relation to them.

How does the matter now stand ? You have agreed to alter the constitution of the commonwealth in such a manner, as that the judges of the supreme court shall hold their offices for the term of fifteen years only, if they shall so long behave themselves well. I think that the present incumbents are entitled to retain their stations to the extent of the new tenure thus created—that they are entitled to do so by every principle of honor and public faith. I have a regard for the condition on which they originally received their commissions ; and if I can not secure the fulfilment of that, I will at least appeal to the magnanimity of a majority of this convention to say, whether the present incumbents are not entitled to the benefit of the extension of their terms to the utmost limit to which the judges of the supreme court are to be entitled for the time to come to hold their seats on the bench ?

The gentleman from Luzerne, (Mr. Woodward) has expressed his apprehensions as to the consequences which might result, if these judges were all to be changed at one time. And I must here be permitted to call the notice of the convention to the singular phraseology of the minority report. It says :

“ Within three months from and after the third Tuesday of January next, the governor shall, by and with the advice and consent of the senate, re-appoint one of the then existing judges of the supreme court for the term of three years ; one of them for the term of six years ; one of them for the term of nine years ; one of them for the term of twelve years ; and one of them for the term of fifteen years.”

Now, continued Mr. P., the governor may say, I appoint the chief justice for three years. No, says the senate. I appoint another judge

for six years, says the governor. The senate says, no; we will have the chief justice for fifteen years, and you shall appoint one of the other judges for three years. Suppose that both the governor and the senate remain firm in their resolution. How is the difficulty to be settled? I feel disposed, as regards the present judges, to leave out all this matter of discrimination, to let them all remain where they are for fifteen years.

Suppose, for instance, that the governor commissions the chief justice for three years, and the senate says no. The governor commissions one judge for three years—another for nine years—another for twelve years—and another for fifteen years. The senate agree as to one, and disagree as to all the others. How are you going to get out of this difficulty? And why require the action or assent of the senate on a matter which this convention is competent to settle in relation to the continuance of the judges? Here, then, is a difficulty, which, to my mind, is insurmountable; and I will thank the gentleman from Luzerne, (Mr. Woodward) or any other member of the convention, to get us out of the difficulty if it is possible to do so.

What is the next argument? The gentleman from Luzerne, says that the appointment for fifteen years would operate so as to let all the judges go out at once. I should like to know how many of the existing judges have been in office for fifteen years, and whether it is likely they will all go out together at the end of fifteen years. I apprehend it is not; and that, in the course of nature they will go out at intervals, and their places can then be supplied. But if the argument is good in one instance, it is also good in another. If the judges are to be turned out neck and heels, when the term of their commission expires, what odds does it make whether they go out at intervals or all together? For myself, I do not believe that, excepting in times of high political excitement, there would be "one fell swoop" made of your judges. Although I fear, and always have feared, for the effect of political excitement on the appointments of your term judges, but that fear does not pervade my mind to so great an extent as to induce me to believe that all the judges of the supreme court will be turned out at once. They will consist, no doubt, of men of different political parties—for a man must be a very consistent politician in these times who goes straight for fifteen years. I have seen strange things in my day. I have seen many men, who, in former years were considered orthodox, and who are now declared to be heterodox; and some men who were thought heterodox then, are declared to be orthodox now. But the main objection I have to urge, is, that at the time you commissioned the gentlemen who now fill these stations, they understood—the government understood, and the people understood, that they were to have the benefit of the term for which they were appointed; and as you have altered the term, and they have been guilty of no official misconduct, they ought to be entitled to remain in their stations during the entire term on which you have now fixed—that is to say, fifteen years. I dislike this way of getting rid of men who have been guilty of no fault. Does it comport with the stability of your judicial decisions—does it comport with the stability of your republican institutions, that your judges should be put out of office without having committed any fault, and merely for the purpose of giving effect to the views of reform that are now entertained.

To submit to the good sense of this convention, whether it is proper or right that these judges who have been guilty of no offence—men who are unimpeached, and, for aught I know, unimpeachable, should be turned out neck and heels, after having served the public faithfully for many years, and turned out, too, without even the form of a trial.

Mr. FORWARD, of Allegheny, said :

I am strongly opposed to the report of the minority of the committee, and for reasons which to my mind are perfectly satisfactory.

In the first place, there is no provision made for the chief justice. Is it intended that within three months after the third Tuesday in January, the chief justice may be superseded by one of his associates ? Is this the intention ? This point is met by saying that the chief justice may be re-appointed. But look at the naked proposition ! What is it ? You have the judges of your supreme court, five rivals for the favor of the governor all at once. Would such a scene be creditable to this great commonwealth—would it be creditable to the supreme court—would it be creditable to the executive government, that five of your highest judges should be all at once at the feet of the governor suing for preference ? What must be the feelings of the supreme magistrate in such a state of things ? What is he to do without giving offence ? Here five persons are brought before him, and he is compelled to take his election between them. Will you impose upon your chief magistrate so invidious an office ? And the senate too ! What will be its situation ? Here you have your judges going before the governor with all their pressing importunity, suing for preference, all at the same time, and entreating the senate of the commonwealth for their favor. Thus you have them before the executive and the senate in a position which is disreputable to the state.

But, sir, this is not all. What must be the feelings engendered among these men, who are thus, by the action of this convention, to be made of necessity, rivals for office ? Do you imagine that this competition which you are about to fasten upon them, will produce nothing like a feeling of rivalry ? Do you imagine that there will be no fear, no jealousy, no heart burnings among them ?

What will be the condition of the supreme court ? It will be one of discord, of mutual distrust, and mutual resentment. Think you that the man who is successful, and gains office for fifteen years, will ever find his brethren reconciled to him while he remains upon the bench ? Will there be no question among them which is the most worthy ? Will the judge who is put aside, deem himself less worthy than the other ? Will his friends think that he is so ? Sir, there will be distrust ; and that harmony which is requisite to the dignity of the bench, and the administration of justice, will be banished.

The condition of the inferior courts is a different thing. There are no competitors, made so by your provision. And where is the reason for this ? Recollect that we are making this restriction and imposing this duty on the governor, and this necessity upon the judges. And why are we doing so ? Why not say at once that this man shall hold his office for the term of fifteen years—another for the term of twelve—another for the term of nine—another for the term of six, and another for the term of three ? Is their judicial reputation any secret here ? Are their personal

claims any secret here? Are they not known to us well? Why then should we not fix ourselves the terms for which they are to be retained? Why throw this task upon the governor? Why upon the senate? Why produce difficulty among the members of the senate? Why should there be this rivalry? Why this supposition of foul dealing? There is no apology for it; there can be none. Let us then take the task upon ourselves, and thus prevent that discord which must arise in the court, and which never will be healed? Let me tell gentleman that, by adopting the course to which we are here invited, we are doing a great prejudice to the senators before the supreme court—that we are injuring the fountains of justice, that we are throwing every thing into confusion, and producing heart burnings and enmities—marking the man, graduating the man, saying who is the most worthy, and who is not so. And to what end is all this? May not you exercise this power as well as the governor? May not you exercise it as well as the senate? Is it true that these judges are better known to the senate than to us? Dispose of them as you will; but do not cast this invidious office upon others. I can see no excuse for refraining from this work, if we adopt such an amendment at all. If you go thus far, go to the end. Mark your men first rate—mark them second rate—mark them third rate—mark them fourth rate—or else go to the date of their commission.

Is there any danger in permitting these men to hold their offices? Are we blind? Do we profess a total ignorance of their capacity—a total ignorance of their fitness for office? I ask gentlemen, are they acting upon the ground of principle? If so, why will you put one man out, and another man in? Where is the difference? How will you make it out? Why will you make any difference between them? If they are equal, why not make it a lottery? Why not let them cast lots, and see who shall be fortunate, and who shall not? Turn the wheel of fortune, and take the uppermost. But why is it that you are thus going to distinguish between them, and to say that one shall go out at one time, and another at another? Sir, this stands on no principle, but some dream of expediency, some imaginable policy which points to this course as the proper one. There is no principle in it—none at all. How is the fact in relation to these judges? Why will you disturb this court unless you give a reason for it? Is there a lawyer within the sound of my voice who is ignorant of the character of the judges of the supreme court? If they are worthy and competent men, age and death will do the work fast enough. It is to them you may look to graduate the scale.

If they were worthy men, why, he would ask, should we not let them remain in office for fifteen years, or turn them all out at once? He was opposed to the principle of graduation. Let all go out at once, if sound unworthy. If the judges were honest, upright and honorable men, why should they not be allowed to hold their offices for fifteen years? If they were honorable and worthy and creditable to the court, why should they not be allowed to remain? Would you break in upon the comforts of those aged men, long removed from the arena of young and ambitious lawyers, and now in the decline of life, verging upon the vale of years? You have come on them with this torture, with these invidious distinctions, to bear them down to the ground. They, who are almost pennyless—very poor—who expected to hold their offices so long as they were

competent to perform their duties now without saying that they are unfit—without charging them with any faults—be told that they must go out. Yes, without any allegation against them of having either neglected or violated their duty, they are to be thus dealt with by the power which commissioned them to hold during good behaviour.

He was opposed also, to the introduction of the principle of graduation into the inferior courts, though of less importance there than in the supreme court. The terms of office were proposed to be regulated by dates of the commissions of the judges, and the re-appointment of those officers is to be left to the new governor. Why, he asked, should that be done? What reason could be assigned for it? Would he be better acquainted with their characters than we are? He thought that it would be better for this convention to name those judges who shall go out of office, and re-appoint those who shall remain, instead of leaving this duty to be performed by the governor, as the judges would each become rivals for his favor with a view to obtain the longest term of appointment. By adopting this course of proceeding, much dissension, heart-burning, and discord, which would probably otherwise prevail, would be removed. He was of opinion that the responsibility which was proposed to be thrown upon the governor, was of such a character as never could be exercised without producing great difficulty and leading to results which might be much regretted.

Mr. BROWN, of Philadelphia county, said he agreed in the main, with the arguments advanced by the gentleman from Allegheny, (Mr. Forward) and was not only willing, but desirous that the convention should take whatever responsibility attached to this subject, on itself. He thought that we ought to classify the dates of the commissions, and to say which of the judges shall go out and which shall remain in office. It was unnecessary for him to add any thing to what had been said by the delegate from Allegheny, in reference to the impropriety of leaving to the governor the responsibility and difficulty of arranging this highly important matter. His (Mr. B's.) intention was to move an amendment at the proper time, providing that the commissions of the present judges shall expire in the order of their date at periods of three years.

Thus, as he had said, each judge would go out of office three years after each other, and the youngest judge would serve out his term of fifteen years. He should much prefer that this body would take the responsibility connected with this arrangement, instead of throwing it upon the governor of the commonwealth. For one, he was perfectly willing to bear his share of it. The first term that would expire would be that of Judge Rogers, whose commission was dated 1826, and would end in 1842. Now, the age of that gentleman was not so great, but that he might be re-appointed for fifteen years. The next was Judge Huston, appointed in 1836, and from whom there was nothing to hope or to fear. He has six or seven years to serve, by the expiration of which time, he would be about seventy years old. The third would be Chief Justice Gibson, whose term expires in ten years, and which would bring him to the verge of seventy, a period when he ought to quit the bench, or the people might dispense with his services. Judge Kennedy's commission would expire in thirteen years, when he would be about seventy years of age, and the period would have arrived when he, also, ought to retire

from the bench, as well as Judge Sergeant who had between fifteen and sixteen years to serve, according to the plan which he (Mr. Brown) had laid down.

This was a good age for the judges to retire; and he did not think that any injustice would be done to them by requiring that they should then retire; or that injury would be done to the commonwealth by continuing their services so long. He was not going to say any thing against or for them. All that he desired to do was to carry out the principle, he had indicated with a due regard to them and to the wishes and welfare of the people of Pennsylvania. He was satisfied that it was the wish of the citizens of this state that the services of the judges should expire at stated periods. Like the gentleman from Allegheny, (Mr. Forward) he did not wish to see the judges pandering to the purposes of the governor for one year, or even one day, with a view to obtaining the longest term of appointment. He trusted that the amendment of the gentleman from Northampton would not be carried into effect.

Mr. Scott, of Philadelphia, said that the simple question before the convention, was between the proposition of the gentleman from Northampton, and that of the minority of the committee. He thought there were too strong objections to the plan proposed by the delegate from Luzerne, which it would be difficult to get over. He would state what he believed to be these two strong reasons. This convention had solemnly said, by the vote adopting the amendment, which was afterwards confirmed by other votes, that it was their opinion that the tenure of the judges of the supreme court should be fifteen years, provided they should so long behave well. That is the declared sentiment of the convention, which they have required to have introduced into the fundamental law.

The proposition of the gentleman from Luzerne, is that the tenure of one of these judges shall be reduced to three years, one to six years, one to nine years, and one to twelve years, and that the one remaining judge only shall hold for fifteen years. Now, he would ask every man if that was not the operation and meaning of this amendment. The governor will appoint one for three years. His tenure will only be for three years, and so with the rest. And although the convention have said the tenure of the supreme judges shall be fifteen years, yet we are now called on to agree to discharge a judge twelve years before he shall reach the end of the constitutional tenure. When the tenure of fifteen years was adopted was it not said that this was a tenure essential to secure the independence of the judiciary. Will the convention now say that they had no good reasons for the adoption of this tenure of fifteen years, and that therefore, they will appoint the judges for three, six, nine and twelve years? This then he considered to be a strong reason why the proposition of the gentleman from Luzerne should not be adopted.

Another and the second reason was this; and it was a reason which would last through all time. Take the individuals who now occupy the bench, one of them is to go out at the end of three years. At the end of three years he will therefore be a candidate for re-appointment. Another is to go out in six years, and at the end of that time, he hopes also for a re-appointment. Another is in the same situation at the end of nine years, and another at the end of twelve years, and this principle

would be going on and operating forever. He would ask if this was the position in which any citizen of Pennsylvania would desire to see that supreme court placed to which the lives and liberties of the whole people have been trusted? Would not the inevitable tendency of this state of things be to destroy that independence and stability which are so essential in that tribunal. This was another and a powerful objection to the plan proposed by the amendment of the gentleman from Luzerne.

Now, I know very well, that this objection to a certain extent applies to the case of your judges whose commissions run for fifteen years without rotation. But if they should all live, that is a difficulty which will occur only once in fifteen years. There would be ten years during which the citizens may look for an impartial administration of justice, and a period of four or five years during which some apprehension may be entertained.

For these two reasons which, to my mind, are far beyond all personal considerations, having reference to the gentlemen now in commission, I think that almost anything would be better than the proposition of the gentleman from Luzerne, (Mr. Woodward.) The proposition of the gentleman from Northampton, (Mr. Porter) is infinitely to be preferred.

Mr. MEREDITH, said. I have a few words to say on this question. I am not disposed, nor would it be of any use to quarrel with the decision of the convention, that the tenure of the judges of the supreme court shall be for the term of fifteen years. You have come to that decision. A part of the system which this convention seemed desirous to carry out, was to diminish executive patronage.

In order to diminish that patronage, and for no other cause that I can see, you have thrown upon the people the election of persons to fill certain small offices—of small emolument and of petty trust;—and this you have done in order that you might clip the claws of that monster—the executive. Now, unless you wish to show that your aim has been only to throw dust in the eyes of the people, you must carry out the principles you profess in the present instance in such a way as at all events to decrease executive patronage; for the people of the commonwealth will not be slow to perceive that although you have carried out your principle in small matters, you have utterly failed to do so in matters of grave import.

Sir, you will perceive, and they will perceive, that while upon one hand you have done this, you have on the other, under cover of reducing the judiciary within the power of the people (to whom in fact you have given no power over them) introduced on the part of the governor and his organs in the senate, a principle of intrigue in the appointment to office—a principle which will give rise to the worst kind of log-rolling.

After reducing executive patronage in the manner I have described, you have given to the governor and the senate every ten years as to the judges of the court of common pleas, and every five years as to the associate judges, the power of a new appointment. What will be the consequence? Look at your proposed rotation of the president judges of the court of common pleas. Look at your district courts. Look at your associate judges going out every five years. Will not every governor who can succeed in holding office two terms, now have the appointment of the

associate judges? Instead of having the appointment of clerks of the court and justices of the peace, he will have the appointment in every county of at least two associate judges. And, taking the rotation as it now stands under our amendment, how many presidents of the districts of our commonwealth will the governor have to appoint—and whom he would not have to appoint if you had not taken this extraordinary method of reducing executive patronage? Is there any party here so blinded as not to see through this? Does any man suppose that the people will be so wheedled by this as to suppose that the power of the executive is diminished in this way? I ask any man to look at the schedule reported by the minority, and to see in the term of six years, aye, or of three years, how many president judges will be laid at the feet of the executive. There is not the most remote township in the mountains, in which the hope of executive patronage will not reach the heart of every man who is engaged in politics.

Having done all this, what is proposed to be done—again under the color of reducing executive patronage? What are we going to do now? In addition to all the chances of vacancies which have heretofore existed, and must necessarily exist, under any system by death, superannuation, and now by expiration of terms, you are going to give to every governor who shall be elected, whether he holds the office for two terms, or for one, the certainty of one appointment to the bench of the supreme court. This is the course which this convention, in the exercise of its ardent patriotism, in its desire to cut down executive patronage, and to preserve the purity of our institutions are going to pursue, in order that political aspirants may never be without an opportunity of looking to that reward which is to be had for party services from an executive who may be willing to make an appointment to suit his party views. I do not mean to say, that the executive would make an appointment totally unworthy. Many of those men who have been most active, have been, and will be entirely fit for the station. But I say that you are here laying down a principle that one, at all events of these commissions, shall be in the power of the executive in every term. And, in addition to this, comes all the chance patronage which may fall in.

Now, I want to know how the accumulation of patronage is thus to be prevented? You are going to take a certain evil which is represented to be so great, that the mere possibility that it might happen fifteen years hence, is to be the reason for the present course,—I say you are going to take that very step at the present moment; because as to all evils that can be spoken of, it is just as bad to leave to a governor and senate to say which of the judges shall be appointed for three years, and which for fifteen, as to leave the whole open.

I shall not go upon what my colleague, (Mr. Scott) and the gentleman from Allegheny, (Mr. Forward) have said, as to the spirit of discord which you are introducing into this tribunal; but I say that, for every public purpose, the evil is as great to leave to the governor the selection of the judges, as it would be to leave to him to turn them all out, or to re-appoint them at the end of fifteen if they should all live—the improbability of which is so great as to be almost counted among the things that are impossible. There are five judges on the bench of the supreme court, some of whom have been declared to be old. You may leave it to Pro-

vidence, you may leave it to the hand of death to make the selection. Does not every man here believe that, in the course of fifteen years, many, if not the whole of them will be incapable, even if they should survive so long. Why then should we shut our eyes to this fact? and why are we to turn them out in terms of three, six, nine, twelve, and fifteen years? I ask the members of the convention who desire to carry out their own principles—I ask those who are desirous really to prevent the accumulation of executive patronage, whether they are carrying out their own principles—whether they are preventing the accumulation of executive patronage in the course they are pursuing? I tell them that instead of diminishing it, they will, if they adopt the amendment of the gentleman from Luzerne, (Mr. Woodward) be pursuing a course which will certainly increase it.

For these reasons, as well as for others which have been advanced, I trust that the individual members of the convention will consider the matter well, and that they will carry out the principle which they have themselves adopted.

Mr. DICKEY said. There is another principle involved in this question, and in view of which I desire to bring forward an amendment, though I cannot now do so, because there is an amendment pending to the amendment. The principle is this: We are now framing an amended constitution, agreeably, as we believe, to the wishes of the people, and upon new principles in some respects—amongst others, by the establishment of a limited judicial tenure.

Now, it seems to me that when this new constitution goes into operation, it should operate equally upon all the judicial officers now in existence. I cannot see why the judges of the supreme court, who were appointed during good behavior, have any more claim upon the consideration of this convention, than the justices of the peace who were appointed also during good behavior. And I cannot see why the same principle should not be extended to the president judges of the court of common pleas, as to the judges of the supreme court. It appears to me that there is no good principle in it. The proper principle is, either that all the judicial officers disposed of by the constitution should go out or be re-commissioned;—that if there is any claim on account of the tenure during good behavior, it is as good in relation to the judge of one court, as of another. If, therefore, the principle of the amendment of the gentleman from Northampton, (Mr. Porter) is adopted in one case, it should be in another. It should operate in relation to the president judges for ten years, and the associate judges for five years. As to the justices of the peace, I do not know how it might operate, because they are to be elected; but they also were appointed during good behavior; and gentlemen do not seem to think it hard to limit them to the term of five years. I should like to have offered an amendment, which will test whether we are ready to carry out the principles of reform which we have ourselves established.

Mr. PORTER said, that in order to give the gentleman from Beaver, (Mr. Dickey) a chance to offer his proposition, he (Mr. P.) would withdraw his own amendment for the present.

So the amendment to the amendment was withdrawn.

A motion was then made by Mr. DICKEY,

To amend the said amendment by striking therefrom all after number "six," and inserting in lieu thereof, the words as follow, viz: "The commissions of the judges of the supreme court, the commissions of the president judges of the several judicial districts of this commonwealth, and of the legal associate judges, and the commissions of the other associate judges of this state, shall expire on the twenty-seventh day of February, A. D. 1839."

Mr. DICKEY explained, that he had fixed upon this particular date, because it was the day named in the schedule as that on which the amendments to the constitution should take effect.

Now, as he had before said, the constitution ought to operate equally on all. All the judges had been heretofore appointed during good behavior, and if the reasons for the change of this tenure were good, as relates to the supreme court, they are also good in reference to president judges and associate judges; and if they were sufficient as to these, they were so also as to justices of the peace.

Mr. CURLL, of Armstrong said, the amendment of the gentleman from Beaver met his approbation, except that he thought the time too short for the judges of the supreme court. If the gentleman would so modify his amendment as to make the term of the judges of the supreme court expire in five years, he would agree to all the rest. At all events, he preferred the amendment in this form, to that in which it had previously been offered.

Mr. DICKEY asked for the yeas and nays on his motion, and they were ordered.

Mr. FORWARD, of Allegheny, asked for a division of the question, so as take the question as to the judges of the supreme court first. There were some political judges, who were always meddling through the newspapers, or at the polls, in all times of party excitement, for whom he felt no kind of sympathy. As to the supreme court, he could not vote for so speedy a change.

The CHAIR decided that the motion was not divisible.

Mr. FORWARD acquiesced, and withdrew his call for a division.

Mr. BELL, of Chester, considered that the question now before the convention was one of as much importance as had been presented for consideration, since the assembling of the body, and he was sorry to see any difficulty in deciding on a principle which was founded in justice and common honesty. You have a number of judges who have accepted their offices under a constitutional condition, on which they have a right to rely, on which they have relied, and which has been sanctioned in the most solemn manner. What was this condition? It was that they should hold their offices so long as they should continue to behave well. We might as well interfere with the other condition, and strike off a portion of their salaries. Such judges as may come in hereafter, will accept their offices on the new conditions, and will have no reason to complain. You take gentlemen of talents from the bar, and induce them to relinquish a lucrative practice—perhaps four thousand or five thousand dollars a year—for the purpose of accepting sixteen hundred dollars; and the only reason for their consenting to this sacrifice, is the constitutional pledge—

and no one will deny that there is such a pledge—that, while they behave well, they shall enjoy the station to which they are appointed. Many of these, having spent the best years of their life, and become gray, are now at an age when it is impracticable for them to return to the bar with any hope of obtaining a support. Thus, in the event of their removal from office, they would be cast on the cold charity of the world. He would emphatically ask of the members of this convention if, as men, as christians, as honest men, in the face of the constitution, they were disposed to do this great wrong. If they desired to get rid of an unpopular judge in a particular district, would they be guilty of the great wrong of removing all? And is not this amendment offered for the purpose of getting rid of some despotic and tyrannical judge? And in order to get rid of one man, are we, who are assembled to recommend amendments to the constitution, to disregard the interests of the state, and to violate the public faith solemnly pledged, by sweeping from the bench the whole judiciary of Pennsylvania? He would ask gentlemen to point to a case where a similar wrong has been committed. States have amended their judicial system, but he asked gentlemen to point out any state where, by introducing a principle peculiar to this, operating on the judges, they have been subjected to a punishment so severe and so undeserved. Does not the constitution point out the way in which judicial officers are to be punished? Is it not by removal from office?

If he was guilty of malfeasance in office, the constitution prescribes for his punishment by removing him from office. Was he (Mr. B.) to be told that removal from office was not a punishment? Why, in his opinion, it must operate as a punishment. Let gentlemen look and see what is the salary of the president judges. Indeed, they were so low as not to permit of their saving any thing for a wintry day. These gentlemen were very poor, and they had but one object in view, and that was the fair and impartial administration of the law. And, having performed their duties fully, fairly, and faithfully to the satisfaction of the people, yet they were to be turned out of office—deprived of their livelihood, and compelled to begin the world anew among younger and more bustling men, whose habits and society they had long been strangers to, and which were unsuited to men having occupied the stations they had done. He regarded this removal of honest and faithful judges as a great hardship—as inflicting upon them the punishment which was awarded to those who were guilty of any misdemeanor in office. He would conclude what he had to say, by expressing his sincere hope that the amendment of the gentleman from Northampton, (Mr. Porter) would be rejected.

MR. HOPKINSON, of Philadelphia, recollected that an amendment of this character was introduced into the convention, when it was sitting at Harrisburg. That, however, was a matter which had now gone by, and, therefore, it would be improper in him to trespass upon the time and attention of this body. The convention had heard the argument on both sides, and he should cheerfully submit to its decision. The remarks which he had to offer would be very brief. He would then beg leave to recall to the recollection of gentlemen, whether or not, when the subject of the judicial tenure was before the convention at Harrisburg, the argument was directed against the principle, and not against the supreme court judges. The argument then set up was, that life offices were

odious to the people, and the object in view was, to root out this principle from the judiciary. It was said, too, that if it was not done, there would be great murmuring and discontent among the people. The argument, he repeated, then was confined to the necessity of rooting out this evil. He thought that many gentlemen said they did not care what the length of the term of office was—twenty or fifty years—provided that the principle which was odious to the people was got rid of. It had since been stricken from the constitution, and nothing like life offices were to be found in it. Having gained their object—having succeeded in destroying a principle so offensive, did he ask too much of their justice—their generosity, when he requested them to carry out their new regulation with as much mildness and consideration as they could in reference to the present incumbents upon the bench. He hoped that as they had accomplished the great object of their wishes, they would return to the feelings and the dictates of humanity and say, “we will establish our principles—we will carry them out in a way that will be the least oppressive and inconvenient to those who may be affected by them.” He asked what principle there was in the report of the minority? Was not the proposition therein contained of a personal character? Was there any principle in it? He was well aware that it had been said there was nothing personal intended as to the judges. We all knew, however, that some remarks had been made against the judges as well as the justices of the peace. But, with respect to those highly respectable men who sat on the bench of the supreme court, not a member on this floor had ventured to whisper a syllable against them. He himself knew something of those judges. They were men above all reproach.

With regard to the amendment, he entertained no doubt that he understood the object of it. It was to get rid of these men. Was there any principle in this? What, he inquired, was contended for? Why, that no judge shall hold his office longer than fifteen years. That was the principle. Now, any thing beyond this was personal, and would have no other tendency than to get rid of those judges now in office. In front of him sat a gentleman who, in the outset of his remarks, said he would avoid all personal criminations, but as he proceeded, he forgot himself, and indulged in some. Why, he (Mr. Hopkinson) asked, would gentlemen here, after having established the principle they required, go beyond it, and thus destroy worthy, high-minded, and honourable men. Who are they? Look at the supreme court bench, and there would be seen men of talent and learning—men who have grown old and gray in administering the law of the land—men who have held and expected to hold during good behaviour, but now, it seemed, they were to be turned loose on the world, without the means of support and of comfort in their declining days. He would tell the farmers—(and there were many now sitting on that floor,) that when they should leave their seats here and arrive at home, they would be busily employed in endeavoring to secure an abundant harvest for his future support. The farmer relies only on the rains from Heaven and the heat of the sun to reward him with an ample harvest. But what, he (Mr. H.) would inquire, became of these judges if turned out of their offices,—these men whose places were to be supplied by those who could not be removed till the expiration of their terms? Would they go back to their homes cheerfully and joy-

fully? No; they would return sad and gloomy. This, then, became a personal consideration. But, when we were debating about principle, all personal considerations were to be put aside. They should find no place in the heart and head of any man. If the principle was an odious one—if life offices were distasteful, and should not be suffered longer to exist, still we could not go so far as to desire to see men of refined taste and cultivated minds,—men whose course of life had been wholly unexceptionable, sunk down in poverty—degraded, he might say, and deprived of all those comforts and necessities which he heretofore possessed. We all know that our republican institutions do not allow of giving our officers high salaries—nothing more than would barely procure the common necessities of life. We do not here, as is done in England, give retiring pensions to our judges, consequently their salaries while in office are all they have to expect. He could not believe that the people of this commonwealth would sanction the insertion of such a provision as this, because it was not founded on the principles of humanity.

I do think, (said Mr. H.) too, that justice requires this thing to be well thought of. Remember, sir, I do not now raise the question how far this is a constitutional or an unconstitutional act. It would be against power, for that question is gone by. I say, I will not agitate that question now; but I ask that it may be brought in as an auxiliary incentive to those who have the power to use it like men of kindness and of justice. I do say that when you reflect that these men came into office under the constitution of Pennsylvania, that they have been in office for years, without complaint, under a solemn constitutional contract that they should hold their offices during life or good behaviour; when you reflect that probably they abandoned a lucrative practice to take their seats on the bench, I say, these are fair considerations to press upon the minds of gentlemen here, that they ought to take care so to carry out this provision as not to involve the faith plighted under the old constitution.

I have not touched upon any of the arguments which have been already given. I will only express the hope that the present judges will be permitted to hold for the rest of their lives under the conditions on which they were appointed, or, at all events, that they shall hold their seat for fifteen years.

On motion of Mr. M'DOWELL,

The committee rose, reported progress, and asked leave to sit again.

Mr. HAYHURST hoped that leave would not again be granted.

A motion was made by Mr. M'DOWELL,

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. WOODWARD and nineteen others, and are as follow, viz :

YEAS—Messrs. Baldwin, Barnitz, Bell, Brown, of Lancaster, Carey, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cline, Cochran, Cope, Cox, Darlington, Denny, Dickey, Donagan, Donnel, Doran, Dunlop, Fleming, Forward, Harris, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Jenks, Konigsmacher, Long, Maclay, M'Dowell, M'Sherry, Meredith, Merrill, Montgomery, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Russell, Scott, Serrill, Sterigere, Thomas, White, Young, Sergeant, *President*—52.

YAYS—Messrs. Agnew, Banks, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Cleavinger, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dillinger, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hayhurst, Hastings, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Magee, Mann, M'Cahen, Merkel, Miller, Myers, Overfield, Reigart, Read, Ritter, Rogers, Royer, Saeger, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Sturdevant, Taggart, Todd, Woodward—57.

So the convention refused to adjourn.

A motion was made by Mr. DARLINGTON,
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. MANN and nineteen others,
and are as follow, viz :

YEAS—Messrs. Agnew, Baldwin, Barnitz, Bell, Carey, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Darlington, Denny, Dickey, Donagan, Doran, Fleming, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Knigmacher, Long, MacLay, M'Dowell, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Russe l, Saeger, Scott, Merrill, Snively, Sterigere, Thomas, White, Young, Sergeant, *President*—47.

NAYS—Messrs. Banks, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dillinger, Donnell, Dunlop, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Heiffenstein, Heister, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, M'Cahen, Merkel, Miller, Myers, Overfield, Payne, Porter, of Northampton, Reigart, Read, Ritter, Rogers, Royer, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weidman, Woodward—63.

So the convention refused to adjourn.

The question being, " shall the committee have leave to sit again ? "

Mr. READ, of Susquehanna, said the effect of refusing to grant leave would be to bring the matter immediately before the convention, where there could be action on it without delay, and we should have the question under the control of a majority. He hoped, therefore, that the convention would refuse leave for the committee to sit again.

Mr. MEREDITH, of Philadelphia, would have no objection to this course, if the convention were full. It was an important subject. He protested against taking the question now. Several gentlemen had gone away. It would be better to postpone the question until to-morrow morning.

Mr. DICKEY, of Beaver, hoped the committee would have leave to sit again. No amendments could be offered unless in committee. He objected to this side way of attaining an object.

Mr. SCOTT, of Philadelphia, expressed his hope also that the committee would sit again. He should grieve exceedingly if the leave were not given, and for the same reasons assigned by the gentleman from Susquehanna for a different course. He would ask the freemen on this floor who represent the free people of Pennsylvania, to look at the reason. Because the majority could control the minority ! What ! does the gentleman mean to tell us that there is an ascertained, picked, packed majority here ! He thanked God that now the people would know this

fact. He grieved to see this spirit prevailing when we are so near the close of our labors. If a majority of this body be thus organized to put down the minority, all he would ask, on behalf of a minority of the committee, was, that we might be permitted to enjoy the same freedom of action on this subject which we have enjoyed on other questions, by going once more into committee of the whole.

Mr. BANKS, of Mifflin, said he had not suffered any thing which fell in the course of the debate on this floor, to put him out of temper. He would now merely ask the gentleman from Philadelphia whether he will lose any advantage by the refusal to grant the committee leave to sit again? If he could shew that he would be deprived of any right by this course, he would be able to make out a stronger case for the consideration of the convention.

If he thought that the gentleman from the city of Philadelphia would lose any right—any advantage which he would have in committee, he would vote affirmatively again. He, however, thought that the gentleman would not, and he (Mr. B.) should, therefore, vote in the negative. He felt satisfied that nothing would be gained by going into committee, but time would be saved by not doing so.

Mr. STERIGERE moved that the convention do now adjourn.

Mr. SHELLITO, of Crawford, asked for the yeas and nays; whereupon Mr. STERIGERE withdrew his motion.

Mr. DUNLOP, of Franklin, rose, and said that he saw it was the determination of the majority of the convention to turn out the present judges. He meant of the democrats,—those attached to loco focoism. Why, he asked, need gentlemen on the other side show so much feeling in regard to this matter, particularly when it was recollected who it was that desired to turn them out?

Mr. HIESTER, of Lancaster, here rose to a point of order.

Mr. DUNLOP was about to proceed with his remarks, when

Mr. HIESTER again called him to order.

The PRESIDENT pronounced the gentleman from Franklin (Mr. Dunlop) to be out of order.

Mr. DUNLOP said he would appeal from the decision.

Mr. COX moved an adjournment.

Mr. M'CAHEN asked for the yeas and nays, and being taken, the motion was decided in the negative;—yeas 46, nays 53.

YEAS—Messrs. Agnew, Baldwin, Barnitz, Bell, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Cope, Cox, Cummin, Curll, Darlington, Denny, Dickey, Doran, Dunlop, Forward, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Konigsmacher, MacLay, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Porter, of Lancaster, Purviance, Russell, Saeger, Scott, Serrill, Sterigere, Sturdevant, Taggart, Thomas, Todd, Weidman, Sergeant, *President*—46.

NAYS—Messrs. Banks, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chandler, of Philadelphia, Cleavinger, Crain, Crawford, Crum, Darrah, Dillinger, Donnell, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, M'Cahen, Miller, Myers, Overfield, Payne, Porter, of Northampton, Reigart, Read, Ritter, Rogers, Royer, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Woodward—53.

So the question was determined in the negative.

Mr. READ 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.

And on the question,

Shall the committee of the whole have leave to sit again ?

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

YEAS—Messrs. Agnew, Baldwin, Barnitz, Bell, Carey, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Cope, Cox, Cummin, Darlington, Denny, Dickey, Forward, Hays, Henderson, of Dauphin, Hopkinson, Jenks, Maclay, M'Sherry, Meredith, Merrill, Montgomery, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Russell, Saeger, Scott, Serrill, Thomas, Sergeant, *President*—36.

NAYS—Messrs. Banks, Barndollar, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Cleavinger, Crain, Crawford, Crum, Curll, Darrah, Dillinger, Donnell, Dunlop, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, M'Cahen, Merkel, Miller, Myers, Overfield, Payne, Reigart, Read, Ritter, Rogers, Royer, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Taggart, Todd, Weidman, Woodward—58.

So the question was determined in the negative.

A motion was made by Mr. REIGART,

That the convention do now adjourn.

Which was agreed to.

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

SATURDAY, FEBRUARY 17, 1838.

Mr. BEDFORD rose and addressed the chair as follows :

Mr. President: In presenting to the convention, for its consideration, the resolution I hold in my hand, and am now about to offer, I have been actuated principally by two reasons. In the first place, by a desire to see the cause of education promoted in this commonwealth by the establishment of public schools throughout the state, so that the benefits of education may be placed within the reach of all persons desirous of obtaining it. And in the second place, to give to the members of this convention and all the citizens of the state an opportunity of expressing their views in relation to this highly important subject apart from any entangling connexions with other proposed amendments concerning which the opinions of the people widely differ, and upon which they must decide by the ballot box.

When an amendment some days since was offered to the first section of the seventh article of the constitution, by the gentleman from Philadelphia county, (M'Cahen) very similar to this resolution, I was placed under the disagreeable necessity of voting against its adoption, in the place it must then have occupied in connexion with the other amendments, apprehensive that by uniting the opposition to the other proposed changes in the constitution with that known to exist in some sections of the state to the establishment of public schools, the result would be a defeat of all the amendments. But by presenting this separately from the others all would be accepted by a majority of the votes of the people.

The conservatives of this convention, who have invariably voted against every amendment adopted, declared themselves in favor of the amendment proposed by the gentleman from Philadelphia county, and voted in favor of it.

But, sir, if such an amendment had been agreed to in connexion with the others we are about to offer to the people, how could these gentlemen or their constituents—being conservatives—give any aid to it at the ballot box while opposed to the amendments as a whole?

This proposition of taking a separate vote of the people upon this question, if agreed to by the convention, will admit of a fair expression of public opinion in relation to it.

I am aware, sir, that many gentlemen, who occupy seats upon this floor deem such a constitutional provision entirely unnecessary, because, as they assert, the legislature may at any time make suitable enactments upon the subject. But the law that is passed this year may be repealed the next. So that our school system which is the basis of the intelligence of the people, must be liable to change with the political policy of our law makers, and, therefore, be liable to perpetual fluctuation and uncertainty. Let it not be supposed that the patriotic and intelligent citizens of Pennsylvania, possessing a soil of remarkable fertility, whose whole surface is chequered with canals and rail roads, with hills and vallies resting upon inexhaustible beds of mineral treasures, will hesitate to adopt this propo-

sed amendment to their constitution, by which the benefits of education will be speedily and permanently extended to every part of our highly favored commonwealth. True, all public funds are drawn from the people, but how small would be the expense incurred compared with the vast amount of benefit to be derived from the universal diffusion of knowledge throughout a nation of freemen. In vain would it be to form a constitution upon the most liberal principles for any but an enlightened and virtuous people. Let the mass of the people be well informed and we have nothing to fear for our civil institutions, from intriguing politicians or aspiring demagogues.

Mr. BEDFORD then submitted the following resolution, viz :

"Resolved, That the following amendment be submitted to a vote of the people, at such time and in such manner as the legislature may direct; and, if a majority of the votes of the qualified voters of the state who shall vote thereon, shall be cast in favor of the said amendment, it shall become, and be the first section of the seventh article of the constitution, and the first section of said article, as it now stands, shall after the adoption of the said amendment become null and void :

"The legislature shall continue to provide by law for the establishment of common schools throughout the state, in such manner that all persons residing therein may enjoy the benefits of education."

Mr. BEDFORD moved that the convention do now proceed to the second reading and consideration of the resolution, and, on the question, he asked that the vote might be taken by yeas and nays. The yeas and nays were then ordered.

The question being taken. it was decided in the negative, as follows, viz :

YEAS—Messrs. Banks, Bedford, Bigelow, Brown, of Philadelphia, Clarke, of Indiana, Cline, Crain, Cummin, Denny, Doran, Earle, Fleming, Gamble, Grenell, Ingersoll, Kennedy, Lyons, Magee, M'Cahen, Miller, Overfield, Porter, of Northampton, Serrill, Sill, Smith, of Columbia, Sturdevant, Woodward—27.

NAYS—Messrs. Agnew, Barclay, Barndollar, Barnitz, Bell, Bonham, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Cleavinger, Coates, Cochran, Cox, Crawford, Crum, Cunningham, Cull, Darlington, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Dunlop, Farrelly, Forward, Fry, Fuller, Gearhart, Gilmore, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Konigsmacher, Krebs, Long, Maclay, Mann, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Nevin, Pennypacker, Porter, of Lancaster. Purviance, Reigart, Read, Ritter, Royer, Russell, Saeger, Scheetz, Scott, Sellers, Shellito, Smyth, of Centre, Snively, Sterigere, Stickel, Taggart, Thomas, Todd, White, Young—77.

Mr. KONIGSMACHER, from the committee appointed on the subject of the distribution of the Debates and Journals of the convention, reported the following resolution, viz :

Resolved, That the Debates and Journals of the convention ordered to be printed and deposited in the office of the secretary of the commonwealth, according to the resolution of the 11th of May last, be forwarded to the persons, officers and bodies respectively, to whom they have been ordered, to be distributed by the secretary of the commonwealth, in the same manner as is provided for the forwarding of the laws of this commonwealth.

And on motion,

The said resolution was read the second time, considered and adopted.

Mr. COPE, from the committee on accounts, reported the following resolutions, viz :

Resolved, That the president draw his warrant on the state treasurer in favor Charles F. Muench, for the sum of five hundred dollars, on account of binding the German Debates.

Resolved, That the president draw his warrant on the state treasurer in favor of Samuel Shoch, for six hundred and forty-five dollars and six cents, in full for a balance due to him on settlement of accounts, as rendered up to this day.

And on motion,

The said resolutions were severally read the second time, considered and adopted.

Mr. COPE, from the committee on accounts, made the following report, viz :

That soon after their appointment they caused written obligations to be executed by the printers and binders in the employment of the convention taking security for the faithful performance of their duty, which agreements the committee deposited in the office of the secretary of the commonwealth at Harrisburg. The committee propose also to deposit in the same office, the minutes of their proceedings and the papers remaining in their possession; and as the duties of the stenographer, and the printing and binding will necessarily remain unfinished at the final adjournment of the convention, and as some additional expenses will be incurred by the secretary, for which provision should be made, the committee recommend the adoption of the following resolution, viz :

Resolved, That the accounting officers of the commonwealth of Pennsylvania, be charged with the final settlement and payment respectively of the accounts of the stenographer, the printer of the English Debates, the German Debates, the English Journal, the German Journal; the binder of the English Debates, the binder of the German Debates, and of the secretary of this convention.

And on motion,

The said resolution was read the second time.

And being under consideration,

A motion was made by Mr. DUNLOP,

To postpone the further consideration of the said resolution, until Monday next.

Which was agreed to.

Mr. COPE, from the committee on accounts, made a report, setting forth the sums due to the president and members of the convention, for their daily pay and mileage during their session in the city of Philadelphia, beginning on the 23d day of November, 1837, and ending on the 22d day of February 1838; which said report concluded with the following resolution.

Resolved, That the president draw his warrant on the state treasurer in favor of the president and the several members of the convention, for the sums set opposite their names respectively.

And on motion,

The said resolution was read the second time, considered and adopted.

The PRESIDENT proceeded to authenticate the engrossed amendments on sixteen sheets of parchment, by signing on each sheet a certificate as follows :

" Certified to be one sheet of the engrossed amendments to the constitution.

" JOHN SERGEANT, President.

" Attest—S. SHOCK, Secretary."

Which certificates were also attested by the Secretary ; and the same having been gone through, and each sheet proclaimed as signed, the President announced, that in obedience to the resolution of the convention, the engrossed amendments contained in the said sixteen sheets were duly authenticated in manner aforesaid.

A motion was made by Mr. PORTER, of Northampton,

That the committee of the whole be discharged from the further consideration of the report of the committee to prepare and report a schedule to the amended constitution, and that the convention proceed to the second reading of the said report.

Which was agreed to.

Whereupon,

The said report was read the second time.

The sections to the fifth inclusive, were severally considered and agreed to.

The sixth section being under consideration in the words following, viz :

"SECTION 6. The commissions of the judges of the supreme court, now in commission, shall not be affected by the second section of the fifth article of the amended constitution. Their successors shall hold according to the tenure therein prescribed."

Mr. SOCTT said :

There being a difference of opinion between the majority and the minority of the committee on the schedule, it is my duty to state the considerations which induced the majority to agree upon this report. I will do so as briefly as I can, but I am anxious that the ground on which we have gone should be distinctly understood.

The convention will perceive, from reading the section, that the committee have carefully recognized in it the principle which this body has adopted as to the tenure of the judicial office. They have carefully recognized that principle in the language,—“ Their successors shall hold according to the tenure therein prescribed.” The committee conceived it to be their duty to introduce into this section a clear and unequivocal recognition of the principle adopted by this convention.

Then, there arose the consideration—and a very important one it is—whether this principle ought to be permitted to bear upon the judges who are at this time in commission. The majority of the committee thought that this change of tenure ought not to be brought to bear upon those judges, and I am authorized to state very briefly the reasons why we thought it ought not to be brought to bear upon them.

The majority of the committee regarded the judges of this commonwealth who are now in commission, as holding their offices upon the pledge of the faith of this great commonwealth, given to them at the time they accepted their commissions, that they should retain them so long as they behaved themselves well. We thought that it was not competent for this commonwealth, even through the medium of a convention of her citizens, to violate her faith. No matter how strong the inducement might be from policy to change the tenure, we regarded the preservation of her plighted faith as a principle of too great importance to be violated even by a convention.

The question then is, whether the faith of the state has been thus pledged to the judges now in commission ?

I will ask the convention to follow me for one moment into an argument on this subject. They will find, by turning to the first section of the fifth article of the constitution of 1790, that it is there declared, "that the judicial power of this commonwealth shall be vested in a supreme court, in courts of oyer and terminer and general jail delivery, in a court of common pleas," &c.

Thus the constitution declares, that you shall have a supreme court, and a court of common pleas. They are constitutional courts. Your commonwealth, under the existing constitution, could not subsist without them.

The next section of the same article says :

"The judges of the supreme court and of the several courts of common pleas, shall hold their offices during good behavior "

Thus, when these gentlemen went into office under a constitution declaring these courts a part of the constitutional form of government and giving to them as judges of those courts the right to retain their offices so long as they should behave themselves well—when they, under the faith of this constitution and under the faith of this tenure, laid down their former pursuits in life, whatever they were, and consented to go upon the bench, did they not do it under the faith of the commonwealth herself plighted through the medium of her constitutional agent—the executive—that they should never be disturbed in their offices so long as they behaved themselves well? Sir, the very language of their commission is in accordance with this doctrine. It is follows :

PENNSYLVANIA, ss.

In the name, and by the authority of the commonwealth of Pennsylvania, GEORGE WOLF, governor of the said commonwealth, to _____, of the city of Philadelphia, Esq., sends greeting: Reposing especial trust and confidence in your patriotism, prudence, integrity, justice, and abilities, Know you, that I, George Wolf, have appointed and assigned, and hereby appoint, assign, and commission you, the said _____, one of the associate justices of the supreme court of the commonwealth of Pennsylvania: To have and to hold the said office of associate justice, exercising all the power and jurisdiction, performing all the functions and duties, and receiving all the emoluments thereof, according to the constitution and laws of the commonwealth, for so long a time as you shall behave yourself well.

Given under my hand, and the great seal of the state, at Harrisburg, this third day of February, in the year of our Lord, one
[L. s.] thousand eight hundred and thirty-four, and of the commonwealth the fifty-eighth.

By order of the governor.

JAMES FINDLAY,

Secretary of the Commonwealth.

[ENDORSEMENT.]

PHILADELPHIA, ss.

I, Alexander M'Caraher, recorder of deeds for the city and county of Philadelphia, do certify, that on the fifth day of February, A. D. 1834,

the within named ——— personally appeared before me, and by virtue of a commission of *dedimus protestatum*, to me directed, was duly sworn to support the constitution of the United States and the constitution of the state of Pennsylvania, and to execute and perform the duties of one of the associate justices of the supreme court of the commonwealth of Pennsylvania, with fidelity, and according to the best of his judgment and abilities; and that the within commission is recorded in Commission Book G R W No. 1, page 552.

[L. S.] In testimony whereof, I have hereunto set my hand and seal of office, the day and year aforesaid.

A. M'CRAHER, Rec.

In the supreme court of the Commonwealth of Pennsylvania:

EASTERN DISTRICT, SS.

I do hereby certify, that the within commission, and the foregoing certificate of the record thereof, &c., have been duly recorded by order of court, in the minute book of the said supreme court, in and for the eastern district of Pennsylvania.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said supreme court, at Philadelphia, this fifth day of [L. S.] February, A. D. 1834.

WILLIAM DUANE,

Prothonotary Supreme Court, Eastern District.

This, continued Mr. S., is a copy of one of the commissions of the judges of the supreme court, given under the sanction of the great seal of this commonwealth—that instrument by which alone the commonwealth can enter into a contract—which is an evidence of her plighted faith as strong as man can devise.

Does not this commission, thus drawn and thus attested, affirm to the individual holding the office, that, so long as he behaves himself well, he shall retain that commission?

It may be important to this commonwealth to change the tenure of the judges of her supreme and other courts. I am bound to believe that it is important to her to do so, because she has so declared it to be by a majority of the votes of this convention. I, therefore, in obedience to that vote, believe it to be important that she should change the tenure of the judges of the supreme court. But, at the same time, I put it to gentlemen that it is equally important, to retain distinct and inviolate the faith of this commonwealth, plighted either to individuals, corporations, or public officers. It is a principle of deep importance to her.

The report of the majority, as it seems to me, has put this matter upon a fair footing. It shews to you, that we did not desire to interfere with the change of tenure, as it has been established here. The report acknowledges the change, and says that it shall go into operation; but it says that it shall operate upon the successors of the present holders, and that, in the mean time, the present holders shall retain their commissions, so as to preserve the faith of the commonwealth untouched and inviolate.

I do not look upon it as a question of kindness or magnanimity, towards those who now occupy the bench. Those motives would not have the slightest influence with me in my vote. If I believed that the

great interests of the commonwealth were promoted by an immediate change, I would consent to make it; but, believing as I do, that those interests would be best promoted by adhering to our plighted faith, I must, so far as I can, endeavor to persuade the great body of this convention to agree with me in the views I take on this question. If they do not agree, then I will go with a majority for any principle which will approach most nearly to that which seems to me to be so closely connected with our honor and our integrity.

There is another matter to which I entreat attention. I approach the convention on this subject with no other desire, God knows, than that they should do what is right.

He had neither personal connexion, party connexion, nor could he say even an *intimate* connexion with any gentleman on the supreme court bench of the commonwealth. He had no personal predilections to indulge. He desired only that the majority of the convention might do what, on mature reflection, they conceived to be upright, proper, and purely beneficial for the commonwealth at this time, and for the future.

He would say, that it was capable of being demonstrated, as clearly as any arithmetical proposition could be, that unless the present terms of the judges were continued as they now stood, or the new term introduced into the constitution should be extended, he thought that the judicial tenure, hereafter, instead of being a tenure for fifteen or ten years, would become a tenure for about six years and a half only. And, he said, he would show how that was to be brought about.

If, then, this convention abolished the commissions of our present judges, they would, by so doing, establish this great principle—not a just principle, but one momentous in its consequences—viz: That when the constitution is amended in reference to the judiciary, the convention has a right to abolish all the existing commissions. Should this convention agree to destroy the commissions of the existing judges, then would they set a precedent for all future time.

Look at the tenth article of the amended constitution. What does it declare? Why, that the constitution may be hereafter changed; that it may be altered by a majority of the senate and the house, after a vote taken by each branch at two different sessions, and a vote of a majority of the people. There was only one restriction. What was it? The fact was, the amendments had been passed so hastily recently, that he scarcely knew what had really been done. The restriction was, he thought, that amendments should not be made to the constitution oftener than once in five years.

How long, he inquired, would it take to agree upon making amendments to the constitution? One legislature may agree to pass on the subject in January, February, or March of the first year; and the second, in January of the next year, and in three months afterwards, the proposed changes, if they think proper, may be adopted. Let the principle be once established, that changes may be made in the constitution every five years—that the commissions of the judges may be altered at the end of that period, and thus by this operation was the term of the judges reduced from fifteen years to six and a quarter. It was quite clear to his mind, that no judge could calculate upon holding his commission for a longer period.

Suppose that we made the tenure of the judges of the supreme court fifteen years, and of the other courts ten, and it being conceded that we could now abolish the present commissions, might it not be done in six years and a quarter, after the people shall have adopted the new constitution? He did not believe that it was the desire of the friends of reform to effect a change of that sort. He thought that the term of fifteen years was neither too short nor too long, for the supreme court; nor was ten years too long a tenure for the judges of the court of common pleas. He hoped that gentlemen would go with him to preserve the tenure, at least, to this extent, and that commissions thus granted should not be infringed. He did not regard it as at all material to consider what had been done by other states. What the commonwealth of Pennsylvania had to consider was, whether she ought to do right or wrong. That, however, was a question easily settled. For his own part, he believed that Pennsylvania was disposed to do what was right. He did not think it necessary that she should look for a pattern elsewhere. She ought to stand upon her own foundation, and set an example to all the freemen of the Union, on such a subject as the one under discussion.

He could not help alluding to a fact which had come to his knowledge almost within the last twenty-four hours, that New York, who had altered her judiciary a few years ago, had become dissatisfied with it. And, most of the states, it appeared, who had altered their constitutions in that respect, had likewise grown dissatisfied. The state of New York, he was informed, was about to propose amendments in regard to her judiciary. On the 2d of January, 1838, a report was made to the legislature, of the changes which the commissioners appointed to investigate the subject recommended for adoption, in regard to some of the courts, on the 15th May, 1837. They close their report with this section:

“Section 11.—This article shall not be so construed as to render vacant the offices of chancellor, and justices of the supreme court for the time being; but they shall be respectively members of the court of chancery, and of the supreme court as herein organized.”

Thus, then, it appeared that the commissioners said, when about to make various changes, that they ought not to interfere with those judges who held commissions under the existing constitution of New York. He wished gentlemen to understand that the majority committee in adopting this principle did so under the impression that it protects the judges of the supreme court, the associate judges, and the justices of the peace. In regard to the latter, he would admit that the principle does not apply so strongly as to the others, because they do not hold their offices under the judicial tenure, but by an act of assembly. He was willing to admit that if there was any one court where the principle of superiority should be more absolute than another, it was the bench of the supreme court. We all know it is the highest tribunal in cases of the last resort, and exercises a supervisory power in all matters involving life or liberty. That court has sufficient to do to defend itself against the inferior courts. Owing to the contests continually going on between these tribunals, and the appeals made by them to the supreme court, it was only right and proper that a superiority should be given to it. If any distinction was to be made in respect to the courts, it should be in favor of the supreme court. If the convention would say that the proposed new tenure should not apply to the present judges of the supreme court, he should regard

the principle as less injurious, for he conceived it would be impolitic, at least, to abolish the whole of the existing commissions, and to bring upon the bench an entirely new body of men. He had done his duty to the committee, and he would now leave the matter to the decision of the convention.

Mr. DICKEY, of Beaver, moved to amend the section, by striking therefrom all after the words "section six," and inserting in lieu thereof the following, viz:—

"The commissions of the judges of the supreme court, the commissions of the president judges of the several judicial districts of this commonwealth, and of the legal associate judges, and the commissions of the other associate judges of this state, shall expire on the twenty-seventh day of February, A. D. 1839."

Mr. D. said, he would not detain the convention long by laying before it the views which he entertained. This was undoubtedly a subject deserving of the calm consideration of every delegate. He thought that his proposition embraced what the people desired. In his opinion the notions of a great many members here ran entirely counter to the feelings of the people. When they called this convention, they did not imagine that it was going to consume six months in preparing amendments for their decision, at an expense, too, of at least \$300,000, besides printing a library consisting of five hundred books. He maintained that the new constitution, if adopted, should operate on all the judges alike, as is the case under the existing constitution. If, as seemed to be admitted by the gentleman from Philadelphia, (Mr. Scott) the principle of good behavior is applicable to the present judges of the supreme court, and if there was a pledge given that they should remain in office during good behavior, or for life, as some professed to regard the tenure, then it ought to be kept inviolable.

The gentleman said that these judges have a claim to our sympathy and justice. This being conceded, he (Mr. D.) would go further and say that the same remark would as properly apply to president judges of the court of common pleas, the associate judges and the justices of the peace. He apprehended the gentleman was in error when he declared that the justices of the peace are not entitled to look for the same treatment as the judges of the supreme court, because they do not hold by the same tenure. Now, he would admit it; but he presumed that the people had not sent their delegates here to destroy equality between men, to make distinctions between one class of men and another. It was to be recollected that although the justices of the peace are not so high a grade of officers as the judges, yet they are paid in proportion to the services they render, and therefore they have the same right to claim our sympathy and justice as others have.

There were, he thought, but two principles in this matter. Either the principle contended for by the gentleman from the city of Philadelphia was correct, or that proposed to be incorporated in the new constitution—treating all the judicial officers alike. If we continued the judges of the supreme court under the tenure of good behavior, all the others must be put on the same footing. Many judges there were who performed their duties as faithfully as those of the supreme court, and he could see no good reason why any difference should be made between one class and another.

Mr. SCOTT explained. He, perhaps, had not expressed himself as clearly as he might have done in relation to the justices of the peace. The number of the judges of the supreme court was fixed by the constitution ; but, as respected the justices of the peace, the number was regulated by the legislature.

Mr. DICKEY said, then they were all to be destroyed by one "fell swoop." It was true that the number of justices of the peace are regulated by law ; and it was estimated that they at present amount to three thousand, and the principle which the gentleman maintained belongs to the supreme court was not to apply to the justices of the peace.

Mr. SCOTT asked the gentleman to read section eleven of the second minority report. Mr. S. then read the following :

"Section 11. All aldermen and justices of the peace now in commission shall continue to hold their offices according to the terms of their present commissions. Whenever the number of these officers in any ward, borough, or township, shall be reduced by death, resignation, or otherwise, below the number which may be prescribed by law, the vacancies shall be filled in the manner and upon the tenure prescribed by the seventh section of the sixth article of the amended constitution."

Mr. DICKEY proceeded :

He was perfectly aware of these facts. But, it appeared, that as respected the three thousand justices of the peace, of whom he had spoken, no attention was to be paid to them, because they are located among the farmers of the country, who are equally interested with the rest of the community in the administration of justice, and they are, by one fell swoop, to be swept overboard. He believed that it was contemplated by the people that these justices of the peace should not hold during life, but be elected by the people. He thought, however, that the people did wish to extend the principle to the supreme court judges, the president judges and the associate judges. The people expected that the judges would be appointed anew, and the justices of the peace elected. These offices were not made for this man or that man, but for the benefit of the whole people of the commonwealth.

He contended that good, able and efficient judges ought not to be dismissed from the bench. He could not, for one moment, suppose that the people ever contemplated we would attempt to change the appointing power. We, nevertheless, had settled that matter, viz: that the governor shall nominate and the senate confirm. But, he would ask, did not the minority report distrust the very power, the authors of it had previously expressed their confidence in ? The report went on to say that the judges shall be continued in office for various specified terms, thereby showing an unwillingness to trust the legislature. For his own part he should like to know what power it was that we could not trust with the appointment of nineteen judges. It certainly would never do to tell the people this. Gentlemen had said that the regulation of the terms of the associate judges and judges of the court of common pleas should be left to the legislature. Why would not they themselves take the trouble to fix the periods when these offices shall go out ? Why were they so anxious to avoid taking upon themselves any responsibility ? Why not, too, specify the time at which the commissions of the president judges shall expire ?

The minority committee had reported a section providing that the governor shall, by and with the advice and consent of the senate, re-appoint, next year, one of the then existing judges of the supreme court for the term of three years, one for six, one for nine, one for twelve, and one for fifteen years. Now, he wished to know whether it was sympathy which had led the gentlemen of the minority committee to report a section of this character? It was a strange kind of sympathy indeed. Mr. D. concluded by reiterating his opposition to the introduction of the graduation principle, and insisting that the constitution should be so framed as to operate on all the judges alike. He asked for the yeas and nays.

Mr. HIESTER, of Lancaster, said:

My friend from Beaver, (Mr. Dickey) expressed great solicitude on last evening, when the convention was about to refuse again going in to committee of the whole on the report of the committee on the schedule, lest he should be deprived of an opportunity of again proposing his amendment in convention. To cut off the heads of all the judges in the commonwealth "at one fell swoop"—to use his own expression. I for one was disposed to aid, so far as it was in my power, to give him that opportunity which he has now had. And I am pleased with it, on his account, and trust he will not desert his favorite bantling in the hour of its greatest need, as he did a week or ten days ago on another occasion when one of his bantlings received a kick from every member of this body, and he himself denied it paternity, by failing to come to its rescue. But he must not expect to get my vote for so wild and extraordinary a proposition. That five judges of the supreme court, nineteen of the presidents, and legal associates, of the courts of common pleas, and about one hundred other associate judges shall go out of office immediately after the adoption of the proposed amendments to the constitution, at the same time. Thus revolutionizing your whole judiciary, and giving your next governor and senate all those vacancies to fill at once. And what will be its further effect. In five years thereafter the governor then in office and the senate will again have all the associates to appoint. In ten years all the president judges of the courts of common pleas, and all the associates. And in fifteen years all the judges on the bench of the supreme court, and all the associates excepting those that may have been commissioned between each period to fill vacancies, occasioned by death or resignation. And in this way, instead of having less excitement and agitation at the election for governor—one of the objects for the attainment of which the people desired the executive to be deprived of a part of his patronage—you would at those periods at least, when the numerous important appointments are to be made, have more excitement than ever.

Sir, the people would be surprised and shocked at such a sudden and unexpected revolution as the delegate's proposition contemplates. He has frequently told us that he was a moderate reformer, and that the people whom he represented wanted but few changes or amendments. And is this a specimen of his moderate reform. Sir, if there has at any time been a more radical proposition introduced in this convention, I have no recollection of it. It would be changing and unsettling your whole judiciary, and well might the people be shocked and alarmed if the delegate's amendment could receive the sanction of this body.

Mr. President, I am for introducing the limited tenure system of the judiciary gradually, and am therefore in favor of adopting the report submitted by the delegate from Luzerne, (Mr. Woodward) on behalf the minority of the committee on the schedule. That report proposes that two of the president judges of the courts of common pleas shall go out of office annually after the adoption of the amendments to the constitution according to the seniority of their respective appointments. Here then you have a governing principle, that those longest in office shall go out, or be re-appointed first, which is founded in reason and justice. And according to this classification, one third of the whole number of those judges will go out of office during the constitutional term of each governor.

I am also in favor of the plan proposed in that report for the present judges of the supreme court to go out of office. That is, that their offices shall expire in three, six, nine, twelve and fifteen years respectively. But, sir, I am decidedly opposed to the manner in which that report contemplates accomplishing that object, for the reasons so forcibly presented on yesterday by the gentlemen from Allegheny and Northampton, (Messrs. Forward and Porter) and which it is unnecessary here to repeat.

My rule is, never to employ another to do that which I understand and am capable of doing myself, and I would apply it in the present case. We all know those judges either personally or by reputation, and are therefore as well qualified to classify them or determine when they shall respectively go out of office, unless re-appointed as the governor and senate can be. My plan would be to let their offices expire, according to seniority of appointment, the same as in the case of the president judges of the courts of common pleas. And thus there would be one appointment to make for that court during each governor's term, besides filling the vacancies occurring from time to time by death or resignation.

The committee's proposed arrangement to divide the associate judges into four classes, in the manner to be prescribed by law, appears to me also to be deserving of favor. There is a symmetry and an adaptation in the whole of these classifications that to my mind ought to recommend them to the favor of the convention. And by which the new system of the limited tenure of office of the judges would be imperceptibly brought into harmonious action. I flatter myself therefore, that that report will be adopted, and that the amendment offered by the delegate from Beaver, will receive the fate which one of so ultra radical and extravagant a character merits.

Mr. BROWN, of Philadelphia county, moved the immediate question, which was sustained.

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 amendment?

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

YEAS—Messrs. Bigelow, Clapp, Dickey, Harris, Read, Sturdevant, White—7.

NAYS—Messrs. Agnew, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darlington, Darrah, Denny, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop,

Barber, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Lancaster, Porter, of Northampton, Reigart, Riter, Rister, Rogers, Royer, Russell, Seeger, Scheetz, Scott, Sellers, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickle, Taggart, Thomas, Todd, Weidman, Woodward, Young, Sergeant, President—108.

So the question was determined in the negative.

A motion was made by Mr. WOODWARD,

To amend the said section by striking therefrom all after the words "section 6," and inserting in lieu thereof the following, viz :

" Within three months from and after the third Tuesday of January next, the governor shall, by and with the advice and consent of the senate, re-appoint one of the then existing judges of the supreme court for the term of three years, one of them for the term of six years, and one of them for the term of nine years, one of them for the term of twelve years, and one of them for term of fifteen years."

The said amendment being under consideration,

A motion was made by Mr. PORTER, of Northampton,

To amend the amendment by striking therefrom all after the word "sixth," and inserting in lieu thereof the following, viz :

"The judges of the supreme court who shall be in commission at the time of the adoption of the amendments to this constitution, shall hold their offices for the term of fifteen years thereafter, if so long they shall behave themselves well."

The said amendment to the amendment being under consideration,

The question was called for by Mr. BROWN, of Philadelphia, and twenty-nine others 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 amendment to the amendment ?

The yeas and nays were required by Mr. BARCLAY and Mr. INGERSOLL, and are as follow, viz :

YEAS—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Bell, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clark, of Dauphin, Cleavenger, Cline, Coates, Cochran, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Doran, Dunlop, Earle, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Jenks, Kennedy, Konigsmacher, Long, M'Sherry, Meredith, Merrill, Merkel, Payne, Penypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Riter, Royer, Russell, Seager, Scott, Serrill, Sill, Snively, Sterigere, Sturdevant, Thomas, Todd, Weidman, Sergeant, President—62.

NAYS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Crum, Cummin, Curll, Darragh, Dillinger, Donnell, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hiester, High, Hyde, Ingersoll, Keim, Krebs,

Lyons, Maclay, Magee, Mann, Martin, M'Caben, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, White, Woodward, Young—58.

So the question was determined in the affirmative.

And the amendment as amended was agreed to.

And the section as amended was agreed to.

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

"The commissions of the president judges of the several judicial districts of this commonwealth and of the "legal associate judges" of the first judicial district, now in commission, shall not be affected by the said second section of the said fifth article. Their successors shall hold according to the tenure therein prescribed."

A motion was made by Mr. WOODWARD,

To amend the said section by striking therefrom all after the words "section 7," and inserting in lieu thereof the following, viz :

"The commissions of the president judges of the eleventh and thirteenth judicial districts shall expire on the twenty-seventh day of February, anno domini, one thousand eight hundred and thirty-nine;—of the ninth and fifteenth districts, on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty;—of the sixth and first districts on the twenty seventh day of February, anno domini, one thousand eight hundred and forty-one;—of the fourth and sixteenth districts, on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-two;—of the twelfth and seventh districts, on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-three;—of the seventeenth and eighth districts, on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-four;—of the nineteenth and fifth districts, and the commissions of the associate judges of the first district, shall expire on the twenty seventh day of February, : nno domini, one thousand eight hundred and forty-five;—the commissions of the president judges of the eighteenth and third districts, shall expire on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty six;—of the second and tenth districts, on the twenty-seventh day of February, anno domini, one thousand eighth hundred and forty-seven;—and of the fourteenth district on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty eight."

The said amendment being under consideration,

A motion was made by Mr. REICART,

To amend the said amendment by striking therefrom all after the word "commissions," in the first line, and inserting in lieu thereof the following, viz :

"Of the several president judges of the eleventh, thirteenth, ninth and fifteenth judicial districts, shall expire on the twenty-seventh day of February, anno domini, one thousand eight hundred and thirty-nine. The commissions of the several president judges of the sixth, first, fourth and sixteenth judicial districts shall expire on the twenty-seventh day of February, anno domini, one thousand eight hundred and forty-four. And the

commissions of all other president judges of the other judicial districts in this commonwealth, and the legal associate judges of the first judicial district shall severally expire at the expiration of ten years from the date of their respective commissions, if so long they shall behave themselves well."

And the said amendment being under under consideration,

Mr. REIGART of, Lancaster, said :

I have offered this proposition in the hope that it may be adopted. Not, however, that I am in favor of the principle, but as the convention has limited the judicial tenure, they will probably grade these judges, and it seems to me that the plan I have proposed would be the most proper.

Mr. R. read the dates of the commissions of the several judges of the courts of common pleas, and briefly explained, by reference to them, the operation of his amendment. He would not, he then said, offer further reasons in favor of its adoption, as he felt satisfied that the convention was not in a mood to receive them, but would leave the matter in their hands.

Mr. BROWN, of Philadelphia, said :

The proposition now before us, certainly seems to me to be reasonable ; but after the vote which this convention has just given in relation to the supreme court—establishing the principle that the judges now in office shall hold for the term of fifteen years—I would look upon the adoption of this measure, or of the report of the minority of the committee, as one of the most iniquitous proceedings that could go forth from this convention. The adoption either of the one or the other, would be making a distinction between the judges of the two courts, which I apprehend the people will never justify. I deny the position that the judges of the supreme court have any greater hold on the affections of the people, than the judges of the court of common pleas. We are here to establish principles, and those principles, permit me here to say, with entire respect to the gentleman from the city of Philadelphia, (Mr. Hopkinson) are deeply connected with men. It is a term of office, and this question is inseparable from the individuals that fill that office. I did hope that the convention was willing to graduate all these judges, in such a manner as not to appoint too great a number at one time.

I shall now vote against any graduation of the present judges of the court of common pleas ; so long as the judges of the supreme court are to be allowed to remain for fifteen years, I will go for ten years for every president judge, and for five years for every associate judge. I trust that this convention will be disposed to act in accordance with the principle it has laid down, and that every friend of reform will pause before he makes a distinction, for which, I apprehend, our efforts towards reform, will not make up. The people will demand to know, why the judges of the supreme court should be sheltered from the operation of this new provision in your constitution, whilst others are to be thus ruthlessly thrown out.

I shall vote against the proposition, because it is not in accordance with what we have already done by our votes in relation to the judges of the supreme court, and I would not give to the one what I would not give to

the other. If the judges of the supreme court had been graduated, I should have given my vote to deal with the judges of court of common pleas in the same way.

Mr. BELL, said :

I agree with the gentleman from the county of Philadelphia, (Mr. Brown) that both justice and propriety demand that no distinction should be made between the judges of these courts ; but more especially do justice and propriety demand, that we should reject the amendment of the gentleman from Lancaster, (Mr. Reigart) which proposes to inflict a punishment, and which punishment is to fall first on those who are least able to bear it.

For what reason are the judges of the supreme court to retain their offices for fifteen years, but that justice and propriety dictate that they should do so ? I ask, and I challenge a reply, what reason is there that we should make this distinction proposed by the gentleman from Lancaster, (Mr. Reigart) that we should take the four oldest judges in Pennsylvania, and turn them out within one year after this constitution shall have been adopted—men who have been on the bench for fifteen years—who have withdrawn from the bustle of life, who have left their business to take their seats on the bench, and who, by their habits have now become incompetent to take a more active part ? If this system is to be adopted, begin with the youngest who would have the best chance again to enter on the legal profession. If opportunity is afforded me, I will submit an amendment, embracing an idea which has been suggested by another delegate.

In regard to the judges of the supreme court, it is hopeless to attempt retain the tenure of good behaviour ; it is evident that some term of years is to be fixed. If, therefore, the amendment of the gentleman from Lancaster be rejected, as I trust it will, I shall submit an amendment to the consideration of the convention, providing that the present president judges of the judicial districts and the associate judges of the first judicial district shall hold office for ten years after the adoption of the amended constitution. If that should fail, and the convention insists on a classification, I shall propose to reverse the order.

Mr. EARLE, said, that being cut off when the question as to the supreme court judges was discussed, he had been compelled to choose between two evils, of the motion of the gentleman from Luzerne, (Mr. Woodward) and the motion of the gentleman from Northampton, (Mr. Porter) and that, too, without the remotest prospect of an opportunity to express his disapprobation of either proposition, or to say which he would prefer.

If, continued Mr. E., gentlemen legislate in this manner, they must expect that their legislation will not be satisfactory, either to themselves or any one else. I do not think that our decision in relation to the judges of the supreme court, should prevent us from adopting the principle proposed in relation to the judges of the court of common pleas. I voted for that decision, because it was the best I could get under the gag-law, which prevented me from expressing my sentiments.

Mr. REIGART modified his amendment, so that each of the president judges should continue to hold office for the term of ten years from the date of their commissions. [But, subsequently, Mr. R. withdrew this modification, and renewed his proposition in its original form.]

Mr. EARLE resumed :

I say, I do not perceive that the vote we have taken in reference to the judges of the supreme court, should have any bearing upon our course in the matter now before us, because the choice we had to make between the motion of the gentleman from Northampton, and the motion of the gentleman from Luzerne, was a different choice to that which we now have. The motion of the gentleman from Luzerne, in that instance, did not propose a classification. Of the two motions, between which we had to choose, we adopted one; and the other was, that the governor and the senate, immediately after the adoption of the new constitution, should commission the present judges of the supreme court, fixing the terms at three, six, nine, twelve, and fifteen years. I am not able to discover how this convention possesses the power to make the senate and the governor agree how they will commission the judges. The one motion thus appeared to me to be impracticable; and, therefore, I voted for the other.

My own opinion, in regard to the supreme court and the court of common pleas, is to leave to the legislature—to the house of representatives if you please—to determine the vacancies at certain periods. Make your arrangements for the number of vacancies which you say shall occur, and let the house of representatives of the previous year, determine the rest. This would be my plan. I do not believe that the judges have a contract binding upon the commonwealth, because the constitution of 1790, gave to the people power to modify their government in such a manner as they might think proper, and their judges accepted of their offices under that power, and with a full knowledge of its existence. Nevertheless, there is a certain sense of equity, and I am willing to admit that judges who have received office under the present tenure, and who have done their duty faithfully, do possess an equitable claim, at all events, to a reasonable notice before they are dispossessed of their offices. I will not say, as a gentleman from the city said, that I would not turn them out like an old horse on to the common, but I will say that I would not treat them as you would a negro. Still, I am of opinion that the people have a right to determine their offices after a reasonable notice of preparation, and I think it is right also, that the people should determine the offices of those who have not given satisfaction.

He understood that the judges in this district had given satisfaction, but in some other districts they had not. He thought it would be better to leave it to the legislature to say what judges shall cease to hold their offices, and then the governor and senate could act according to circumstances. He entertained but little hope that an amendment of this sort would be adopted, and had thrown out these few remarks merely to see if there existed any disposition to support it.

Mr. WOODWARD, of Luzerne, said, he had supposed from the vote that was last taken, that the same principle would have been carried out in reference to the terms at which the offices of the present judges of the courts of common pleas, should expire. And, inasmuch as this would be a most afflictive judgment to a large portion of his constituents, he deemed it to be his duty, at least, to state their wishes, and to ask a candid consideration of their rights from the representatives of the people of this commonwealth, in convention assembled.

The report of the minority committee, was a system, and it was not like the proposition of the gentleman from Northampton, (Mr. Porter) a mere accidental suggestion, and upon which sufficient consideration and reflection had not been bestowed by that delegate, who had not foreseen the consequences that would result from its adoption.

With regard to the committee, he would say that they had, after giving to the subject the most anxious consideration, brought forward a system. What was it? Was it to turn venerable and faithful men out of office, as the gentleman from Philadelphia, (Mr. Hopkinson) had said, like an old horse? Certainly not. Neither himself nor any other member of the committee contemplated or desired such a thing. He would vote against turning out one of the supreme court judges, while able to perform the functions of his office. The object of the report had been defeated. The time, however, might come when the judges' commissions would expire in the midst of summer, by the death of the parties, and when, too, the legislature was not in session. The consequence of which would be, that none could be appointed until the meeting of the senate, as their concurrence must be had to all nominations. So that a new court would have to act until the meeting of the senate, when they might all be turned out, because it refused to confirm the nominations.

Now, this might be the consequence of adopting the amendment of the gentleman from Northampton. It certainly was not so forbearing to the judges of the supreme court as the report of the minority. Gentlemen all round the house had observed that the same rule should be applied to the court of common pleas as to the supreme court. That was a sentiment in which he heartily concurred, and which agreed with his sense of honor, honesty, and fairness.

The gentleman from Chester, had gone great lengths, when he asserted that no man who considered himself honest could vote against the tenure for life.

He regarded the remarks that had fallen from the gentleman from Philadelphia county, (Mr. Earle) in reference to the propositions pending, and their placing him in a trying and unpleasant position, as very happy, and coming with infinite force. There could be no doubt that there were some men on the bench, who had grown old, rich, and unworthy of office, and who, too, were unable to perform their duties, and yet, forsooth, there were gentlemen to be found here, who would continue them in office, and as a scourge to the people. This was one effect of the breaking up of the system. If the judicial tenure was to be changed, he would ask if it should not be done cautiously, carefully, and so as to prevent existing evils, and the occurrence of others?

By the amendment of the gentleman from Lancaster, (Mr. Reigart) it was proposed to continue in office every judge in Pennsylvania for ten years from the adoption of this constitution. He confessed that he could not speak with entire freedom of judicial incumbents, in a convention where he was told that the judges held their seats under the plighted faith of the commonwealth—where he knew that the honor, and honesty, and all the virtues of our nature require us to allow them to remain as long as they possibly can do where they are. But, he only represented his constituents, when he said, upon their authority, and from an acquaintance and knowledge of them, which was as old as himself, that the continu-

ance of the president judges for ten years, would not be acceptable. He would venture to assert, that in the four counties which he had the honor to represent on that floor, not four men could be found who would vote for the principle of the amendment of the gentleman from Lancaster. Then, he would ask, was he to remain silent to let this issue go by default? Was he not to protest against a principle which would be so unacceptable to the people of the district he represented? He would maintain that a man who had been in office from the year 1815, who had become rich, and grown old and incapable of performing the duties of his office satisfactorily to the people, ought to give way to one who can.

His (Mr. Woodward's) opinion was, that offices were created with a view to the benefit of the whole people, and not a few individuals. If an incumbent became incapable from any cause, to perform and administer the duties of his office in reference to the object for which it was established, the people have a right to demand a change of the incumbent—to insist on the performance of his duties in such a way as will secure their interests. This was his understanding of the rights of the people, with regard to these offices. He could not subscribe to the maxim—"a man once in office, always in office"—and that it was made for him, and he could not be deprived of his commission without violating his rights. This was not the theory of our government, nor was it the common sense of the country. When a man was unfit to discharge the duties of his office, it was honor, and honesty, and the interests of common policy, that he should give way to another who can perform the duties. He wished to know why the people in the second district, or the eleventh, twelfth, or any other, had not as great a right to be considered as this highly favored city, and to demand the upright and proper administration of their judicial offices? Surely they had, equally as much so as either the city or county of Philadelphia. What had they done, that we should saddle upon them for ten years hence, men notoriously unsatisfactory to them? Why should they have this evil thrust upon them? Had they not performed all their duties to the government? Had they no rights to protect? Was it not important that a cause should be fairly and ably investigated on the part of the state, as well as the other party concerned? There were many such districts in Pennsylvania, besides those to which he had alluded, in a similar condition with respect to their judges not being qualified to administer justice on the bench. Now, he would like to know why all the people of Pennsylvania should not be secured in the prompt, equal and fair administration of justice?

We were now about changing our constitution—about introducing a new principle into it, in reference to the judiciary. Why, he asked, should a man be turned out of office ten years hence, who had held it for twenty-five years? Was there any chance of his being a more efficient and competent judge ten years hence, than he was at present? He entertained no prejudice against any judge in Pennsylvania, nor did he see any reason why a man should harbor a feeling of that kind. His desire was to do exact and equal justice to all. He wished not to wrong any man, or set of men, and above all those men who have devoted their lives to the performance of their public duties. He would protect these officers in their rights, as far as he could do so consistent with what was due to the public. He, however, was determined to protect the rights of

the many, against that sacrifice which necessarily and invariably results from the imperfect administration of justice. And, if it were true that the people of Pennsylvania demanded a change of the judicial tenure, was it not to be supposed that they did so for the purpose of securing a more able and upright and prompt administration of the law of the state? Was it for any thing else that the convention was called to act upon the subject? Was it to introduce into our constitution a principle that was not to be brought into operation for twenty years hence? Or, was it that the immediate relief might be extended to that portion of the people who were now suffering for the want of such a principle? It was for that purpose. We have agreed to alter our constitution, and we have yielded to public opinion in making a change in the judicial tenure. And, now that that has been done, it was said that the principle should not go into operation for ten years to come! He had said, however unfit a judge might be, either from an act of God, or some other cause, he should be entitled to hold his office for fifteen years. But, the convention was, according to the amendment of the gentleman from Lancaster, about to say that every president judge shall remain in office ten years. Now, if that was to be the practical operation of the principle of limited tenure, he would say the sooner it was abandoned the better.

Mr. REIGART, of Lancaster, withdrew his modification.

Mr. WOODWARD. It embraces the same principle as my amendment, and I have no objection to it, though I cannot accept it as a modification.

Mr. STERIGERE, of Montgomery, would suggest to the gentleman from Lancaster, (Mr. Reigart) that the intention had been to provide that the recorders should hold by limited tenures, but he thought they were excepted, and were the only officers learned in the law that were so. He would make another suggestion, and that was, that many of the judges might be too old before their ten years commenced, to be re-appointed. He thought that the amendment should be so modified as to embrace these officers.

Mr. REIGART said that he had no objection to include the recorders.

Mr. DICKEY, of Beaver, hoped that the amendment, as modified, would not be agreed to. He trusted that the convention would adhere to the principle already adopted. He hoped his friend from the county of Philadelphia, (Mr. Brown) would not back out, and that as respected the officers, we should not make fish of one and flesh of another. He was sorry that the gentleman from Lancaster, (Mr. Reigart) should have thought proper to change his views on the subject, and withdraw his modification. What had induced gentlemen to change their minds so often? He could not tell. Had the gentleman from Lancaster acted without due consideration and reflection? He hoped not.

Mr. BROWN, of Philadelphia county, said he would not back out. He would say that if there was any sense of justice at all prevailing in this body, it would prevent gentlemen from making any such distinctions as were contemplated. For his part, he had no hesitation in declaring that he would rather see all the amendments voted down, than that we should carry out a principle of this sort, involving as it did, such flagrant injustice to a portion of our fellow-citizens. He would ask what there was as connected with the history of the supreme court, that should induce this convention to extend the terms of the several judges to fifteen years,

whilst the judges of the common pleas were limited to a much shorter period. He thought that the people, when they came to see the distinction thus made, would very naturally inquire whether personal hostility had been the cause of it? Where, they would ask, is the principle by which you have been governed? The people would understand the principle when this body should fix the term of ten years. But if it fixed the terms of service of one set of judges at a given number of years, and left others liable to be turned out in a day, the people could not help seeing the injustice that was perpetrated on a respectable body of men. Gentlemen here entirely mistook the feelings of the citizens of the commonwealth of Pennsylvania, if they supposed that they would sanction so unjust a principle as this unquestionably was. They were too pure and too immaculate to do so. No views of expediency would prevail with them to the committal of an act of injustice towards any class of men. They would understand the principle as applicable to the president judges, as well as to the supreme court. But the separation of the former from the latter, they would not believe to be either right or proper. While we fixed the term of the supreme court judges at fifteen years, as honest and fair dealing men, we were bound to extend the same term to others. There might be some lawyers in this body, who practice before the supreme court, who would suffer by the change. He conceived it not improbable that the people might suspect the lawyers of the convention with being influenced by improper motives in having voted to give the supreme court fifteen years.

They will ask whether you have not given up these judges of the supreme court? I again ask the friends of reform who have thus labored together for six months for the purpose of building up a new constitution, and who have now completed it in a manner worthy of themselves and of the people of Pennsylvania—I ask them if, notwithstanding all this, they are about to sacrifice all they have done;—I ask them if they are about now to commit an act of injustice, which, in my opinion, will be the means of losing thousands of votes to our cause. The people will not believe the foundation itself to be sound, if the capstone is to be such as this. They will not believe that any part of the building is good, when they see such a defect in the very completion of it. They will suspect that something is wrong. I hope that the members of the convention will make that which they are now doing, in accordance with what they have already done. Otherwise, the whole structure will be in jeopardy. Mr. B. here made an observation not distinctly heard by the stenographer, when

Mr. PORTER, of Northampton, rose and called him to order.

Mr. BROWN said. It is unnecessary to do so, for I have closed my remarks.

Mr. PORTER. I take this occasion to say to the gentleman from the county of Philadelphia, (Mr. Brown) that my course in the convention from the first day I entered, down to this hour, has been such as I believed to be right. I started with that principle, and, by the help of God, I will end with it. And I envy not a delegate upon this floor the feelings of his heart, who is eternally discovering improper motives in the conduct of other men. If the gentleman will turn his eye inward, he will find enough to look at without fixing them upon others.

Mr. BROWN. I made no personal allusion to the gentleman from Northampton. I said that the people might suspect that something was wrong. If the gentleman has taken what I said to himself, the fault is not with me.

Mr. PORTER. Sir, I take none of it to myself. The shoe does not fit. And, I say, that I generally find that a man who is so prone to impute improper motives to others, has enough work to do at home, if he will turn his attention to it.

I have been in favor of giving as much stability to our supreme court as we could give to it. This convention decided against the tenure of good behavior, and decided that the judges of the supreme court should hold their offices for the term of fifteen years after the adoption of the amendments to the constitution. Believing, as I do, that the present judges of the supreme court of Pennsylvania are as competent, as faithful, and as honest as any others that could be found, and as they are without charge or accusation of any kind made against them, I thought that this convention was as competent to appoint them for the period which has been fixed upon for the judicial tenure, as any governor and senate who might be elected under this constitution. I, therefore, offered my amendment this morning, which I offered yesterday in committee of the whole, and which, I am gratified to say, found favor with the majority of this body. I believe it a decision of more importance than any other which we have made since the commencement of our labors. The objection to it is this:—Delegates are apprehensive that the judges will all live for fifteen years—that their commissions will all expire at one time, and, consequently, that the governor and the senate will have to re-appoint them all in the year 1854. Now, if gentlemen will look at the table of the chances of life, they will find that, according to it, such is not likely to be the condition of things; and that the very graduation which they would fix at certain periods of time will, according to the ordinary operation of nature, take place without their aid.

But my objection to legislating out of office the judges of the supreme court, before the term for which they were appointed, is this: that I do not like to see a man legislated out of office for no offence. I have spoken of the judges of the supreme court, because the arguments on the other side, if arguments they can be called, appear all to have been directed against my amendment. The reasons which induced me to move it, I have already stated. I do not intend to recapitulate them, and I should not have spoken at present, if it had not been for the language of the gentleman from the county of Philadelphia, (Mr. Brown) for which I took occasion to call him to order. I certainly did understand him to speak of members on this floor, lawyers who were practising in the supreme court, and having the fear of that court before their eye, and acting under such influences.

Mr. BROWN, of Philadelphia. I did not say so. I merely said that the people might suspect such a thing, seeing that other judges had been otherwise treated. I imputed nothing to any delegate here.

Mr. PORTER resumed. I did not then mis-apprehend the gentleman from the county of Philadelphia. He repeats that the people might think so, and, I repeat, that if they do think so, it will be at his suggestion. He is not willing to start the thing himself, but he throws out a suggestion

for others to take hold of. I do not admire this sort of argument. But the gentleman is welcome to his mess in any way in which he can cook it up.

In regard to the president judges, I have nothing to say. As a body, I believe they are equal to any other judges, of the same class, in the United States or elsewhere. There are some among them who probably have not attained as much excellence as others, but as a body, I repeat, I think them equal to any other. I believe that what has been done in relation to the judiciary, has been directed more against the judges of the court of common pleas, than against those of the supreme court. If there have been any complaints on the part of the people, I know nothing of them. The gentleman from Luzerne, (Mr. Woodward) states, very properly I suppose, that there have been complaints in relation to certain judges, and I see that he has taken care to provide for his own immediate neighbors. It is probable they are the first in commission, but at any rate they are to have his special favor.

The question was then called for by Mr. DORAN, 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 amendment to the amendment?

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

YEAS.—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Brown, of Northampton, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cunningham, Darrah, Denny, Dickerson, Doran, Dunlop, Gilmore, Hastings, Hays, Henderson, of Dauphin, High, Hopkinson, Houpt, Hyde, Jenks, Konigmacher, Long, Mann, M'Sherry, Meredith, Merrill, Miller, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Ritter, Rogers, Russell, Saeger, Scheetz, Scott, Sill, Snively, Sterigere, Sturdevant, Weidman, White, Woodward, Young, Sergeant, *President*—58.

NAYS.—Messrs. Banks, Bell, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Cline, Coates, Cox, Crain, Crawford, Crum, Cummin, Curll, Darlington, Dickey, Dillinger, Donagan, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Grenell, Harris, Hayhurst, Henderson, of Allegheny, Hiester, Ingersoll, Keim, Kennedy, Krebs, Lyons, Maclay, Magee, Martin, M'Cahen, Merkel, Montgomery, Myers, Nevin, Overfield, Payne, Pennypacker, Read, Ritter, Royer, Sellers, Serrill, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, Thomas, Todd—61.

So the amendment to the amendment was rejected.

Mr. BELL, of Chester, moved to amend the amendment by striking therefrom all after the word "the," where it first occurs, and inserting in lieu thereof, the following, viz :—"President judges of the several judicial districts of this commonwealth, and the associate judges of the first judicial district, shall continue to hold their respective offices for the term of ten years, and the other associate judges for the term of five years, from and after the adoption of the amendments to the constitution, if they shall so long behave themselves well."

Mr. DICKEY, of Beaver, moved that the convention do now adjourn, which was disagreed to.

Mr. BANKS, of Mifflin, said he was gratified by this indication of fairness on the part of the gentleman from Chester, and that the gentleman should have his vote. He hoped, since the tenure of the judges of the supreme court had been fixed at fifteen years, that the convention would continue the president judges for ten years. The report of the minority of the committee was based on this principle. There was not any member who had any desire to treat badly the supreme judges. They are regarded as of high station, and deserving of confidence. But the committee could not see the propriety of making provision for the president judges. Now, as we are to allow the supreme judges a tenure of fifteen years, he hoped we should continue the president judges for ten years.

Mr. SHELLITO, of Crawford, said, that according to justice, this proposition should be adopted. One class of judges should be put on an equality with the other. If one was subjected to graduated terms, he could not object that the other should be the same. But, if we establish an inequality, the people will spurn our work with indignation. We must carry out the principle to the president judges, the associate judges, and the other magistrates. It was mere nonsense to say otherwise.

Mr. READ moved that the convention do now adjourn.

Mr. MEREDITH asked for the yeas and nays on this motion, and they were ordered.

The question was then taken, and decided in the affirmative, as follows, viz :

YEAS.—Messrs. Banks, Barclay, Barnitz, Bedford, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Cline, Cope, Crain, Cummin, Cunningham, Curl, Dickey, Dickerson, Donnell, Earle, Fleming Foulkrod, Fry, Gamble, Grenell, Harris, Hastings, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Konigmacher, Krebs, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, White, Woodward—64.

NAYS.—Messrs. Agnew, Baldwin, Barndollar, Bell, Bigelow, Brown, of Lancaster, Butler, Chambers, Chauncey, Clapp, Clarke, of Beaver, Cleavinger, Cox, Crawford, Crum, Darlington, Darrah, Denny, Dillinger, Donagan, Doran, Dunlop, Fuller, Gilmore, Hayhurst, Hays, Hopkinson, Houpt, Jenks, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Saeger, Scott, Snively, Sterigere, Thomas, Todd, Weidman, Young, Sergeant, *President*—49.

So the question was determined in the affirmative.

And the convention adjourned.

MONDAY, FEBRUARY 19, 1838.

Mr. CHAMBERS, of Franklin, submitted the following resolution, which was laid on the table for future consideration, viz :

Resolved, That there be paid to T. J. Becket, in addition to the daily pay allowed him by the committee of accounts, the sum of fifty dollars, for his services as door-keeper for the present session of the convention.

A motion was made by Mr. PORTER, of Northampton, and read as follows, viz :

Resolved, That the engrossed constitution, as amended by this convention, shall be signed in alphabetical order by themembers and officers thereof, on the twenty-second day of February instant, at eleven o'clock, A. M., in convention.]

Which was laid on the table for future consideration.

A motion was made by Mr. CLINE, of Bedford, and read as follows, viz :

Resolved, That in the opinion of this convention, the legislature ought to continue to provide by law, for the establishment of common schools throughout the state, and to make such further enactments on this subject as will be most likely to secure the benefits of instruction to all the children of this commonwealth.

Mr. CLINE asked leave to state to the convention his reasons for offering the said resolution.

And on the question,

Will the convention grant leave?

It was determined in the negative.

A motion was then made by Mr. CLINE,

That the convention proceed to the second reading and consideration of the said resolution.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. CLINE and Mr. DARLINGTON, and are as follow, viz :

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Bedford, Biddle, Brown, of Northampton, Carey, Chandler, of Philadelphia, Clapp, Clarke, of Indiana, Cline, Coates, Cochran, Cox, Cummin, Curll, L'enny, Doran, Earle, Farrelly, Fleming, Foulkrod, Grenell, Hastings, Helffenstein, Henderson, of Dauphin, Hiestter, Ingersoll, Jenks, Kennedy, Konigmacher, Maclay, M'Sherry, Meredith, Montgomery, Myers, Porter, of Lancaster, Porter, of Northampton, Royer, Russell, Scott, Serrill, Sill, Stevens, Taggart, Thomas, Todd, Young, Sergeant, *President*—51.

NAYS—Messrs. Barclay, Barnitz, Bigelow, Bonham, Brown, of Lancaster, Chambers, Clark, of Dauphin, Crain, Crawford, Crum, Cunningham, Darlington, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Forward, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hayhurst, High, Hopkinson, Hyde, Keim, Krebs, Magee, Mann, M'Dowell, Merrill, Merkel, Miller, Nevin, Overfield, Pennypacker, Purviance, Read, Riter, Ritter, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Weaver, White—56.

So the question was determined in the negative.

Mr. CURLL, of Armstrong, from the committee on printing, to whom

was referred the resolution on the subject of printing the constitution and amendments in pamphlet form, made report as follows, viz :

“ That although a special provision is made in the sixth section of the act of 29th March, 1836, for the publication of the said constitution and amendments, in the several newspapers of the cities and counties of the commonwealth ; yet as vast numbers of the people seldom see a paper, and as no country paper is sufficiently large to contain the said constitution and amendments, and must necessarily publish them in a detached form at different times, thus affording very imperfect information ; therefore,

Resolved, That twelve thousand copies in English, and three thousand copies in German, of the said constitution and amendments, shall be printed in pamphlet form, to be equally apportioned among the members of the convention, and delivered or forwarded to them for distribution.

Resolved, That the expense of said printing, and all other expense incident thereto, be settled and adjusted by the accounting officers of this commonwealth.

Mr. CURLL moved that the convention do now proceed to the second reading and consideration of the said report and resolutions, which was agreed to.

The first resolution of the report being under consideration, as follows, viz :

Resolved, That twelve thousand copies in English, and three thousand copies in German, of the said constitution and amendments, shall be printed in pamphlet form, to be equally apportioned among the members of the convention, and delivered or forwarded to them for distribution.

Mr. HESTER of Lancaster, rose and said :

He did not know whether the three thousand copies in German was the proper number. Of the Debates and Journals of the convention, an equal number, in English and German, was ordered to be printed. In order to test the sense of the house as to the number which would be requisite, he would make this suggestion : that the secretary should call over the names of members, and each member should then say how many German copies would be sufficient for his district. He would, therefore, move to postpone the further consideration of the resolution, for the purpose of calling over the names of the members, as he had suggested.

Mr. M'SHERRY, of Adams, said, it was probable that gentlemen would not be prepared to answer at this moment, and, therefore, it would be better to postpone the further consideration of the subject until to-morrow.

Mr. STERIGERE, said, that the proposition would probably occupy more time than the gentleman who had brought it forward imagined. It would be better to postpone the whole business until to-morrow. It was his opinion, that it would be better to make the number of German copies double that which was named in the resolution. The proportion of the number of German to that of English copies, was decidedly too small. The papers which are printed in the German language are much fewer than those which are printed in English, and, therefore, there was a greater necessity that the numbers of the German copies of this publication should be greater than that of the English. He was disposed to make a motion to substitute the words “six thousand,” for the words “three thousand.”

Mr. STERIGERE, of Montgomery, moved to postpone the further consideration of the subject for the present.

Mr. FULLER, of Fayette, hoped the amendment would not be adopted.

Mr. HIESTER, of Lancaster, also moved to postpone for the present.

After a few words from Messrs. KONIGMACHER, DARLINGTON, CHANDLER, and CURLL,

Mr. GAMBLE, of Lycoming, asked for the yeas and nays, on the motion to postpone.

And the question being taken, was decided in the negative.

YEAS—Messrs. Ayres, Banks, Barnitz, Bell, Brown, of Lancaster, Brown, of Northampton, Cline, Coates, Cope, Cox, Cumamin, Curll, Darrah, Donnell, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Hastings, Hayhurst, Hiester, Hopkinson, Hout, Ingersoll, Jenks, Keim, Kennedy, Long, Magee, Martin, M'Cahen, Miller, Myers, Overfield, Porter, of Lancaster, Porter, of Northampton, Russell, Scheetz, Sellers, Seltzer, Shilito, Sill, Smith, of Columbia, Stickel, Taggart, White—48.

NAYS—Messrs. Agnew, Barclay, Barndollar, Bedford, Bigelow, Bonham, Carey, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Crain, Crum, Cunningham, Darlington, Dickey, Dickerson, Dillinger, Donagan, Dunlop, Earle, Farrelly, Fleming, Forward, Gamble, Grenell, Harris, Hays, Helfenstein, Henderson, of Dauphin, High, Hyde, Konigmacher, Krebs, Lyons, M'Dowell, M'Sherry, Meredith, Merkel, Montgomery, Nevin, Pennypacker, Purviance, Reiger, Ritter, Saeger, Serrill, Smyth, of Centre, Snively, Sterigere, Stevens, Stardevant, Thomas, Todd, Weaver, Woodward, Young, Sergeant, *President*—60.

The question then recurred on agreeing to the motion to strike out three thousand, and insert six thousand :

Which was negatived.

Mr. DARLINGTON, of Chester, asked for a division of the question.

The CHAIR said, the question was not divisible.

Mr. DARLINGTON then moved to strike out the words "and three thousand copies in German." He wanted no German copies.

Mr. HIESTER observed, that there were others that did.

Mr. INGERSOLL, of Philadelphia county, asked for the yeas and nays.

Mr. PORTER, of Northampton, was in favor of printing three thousand copies in German.

[Here Mr. FULLER asked leave of absence for his colleague, Mr. Clearinger, of Greene county, during the remainder of the session, which was granted.]

The hour set apart by rule for the consideration of resolutions, reports, &c. having now expired,

Mr. SMYTH, of Centre, moved to dispense with the rule :

Which was agreed to.

Mr. SMYTH then expressed his hope, that the motion of the gentleman from Chester, (Mr. Darlington) would not prevail.

Mr. DICKEY, of Beaver, opposed the adoption of the resolution.

Mr. FLEMING, of Lycoming, was against the printing, and offered to modify the resolution.

The debate was continued by Messrs. HIESTER, FLEMING, and FULLER, when

Mr. READ 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.

And on the question,

Will the convention agree to the said resolution?

The yeas and nays were required by Mr. SMYTH, of Centre, and Mr. FULLER, and are as follow, viz :

YEAS—Messrs. Banks, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chauncey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cochran, Crain, Crawford, Cummin, Cunningham, Curll, Darlington, Darrah, Denny, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Farrelly, Foulkrod, Fry, Fuller, Gamble, Grenell, Hastings, Helffenstein, Henderson, of Dauphin, Hiester, Hout, Hyde, Ingersoll, Jenks, Kennedy, Konigsmacher, Krebs, Lyons, Magee, Mann, M'Cahen, Meredith, Merkel, Miller, Myers, Nevin, Overfield, Payne, Pennypacker, Porter, of Northampton, Ritter, Rogers, Saeger, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Weaver, Weidman, Woodward—78.

NAYS—Messrs. Agnew, Ayres, Barndollar, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clarke, of Beaver, Cope, Cox, Crum, Dickey, Dunlop, Fleming, Forward, Gearhart, Gilmore, Harris, Hayhurst, Hays, High, Hopkinson, Maclay, M'Sherry, Merrill, Montgomery, Porter, of Lancaster, Purviance, Reigart, Read, Royer, Russell, Seltzer, Serrill, Sill, Stevens, Todd, White, Young, Sergeant, *President*—39.

So the resolution was agreed to.

The question then recurring on the adoption of the second resolution,

The same was modified by Mr. CURLL, to read as follows, viz :

Resolved, That the expense of said printing, and all other expenses incident thereto, be settled and adjusted by the accounting officers of this commonwealth.

And the second resolution, as thus modified, was agreed to.

The convention then resumed the second reading of the report of the committee appointed to prepare and report a schedule to the amended constitution.

The question recurring on the amendment to the amendment to the seventh section of said report, in the words as follows, viz :

"The president judges of the several judicial districts of this commonwealth, and the associate judges of the first judicial district, shall continue to hold their respective offices for the term of ten years, and the other associate judges for the term of five years, from and after the adoption of the amendments to the constitution, if they shall so long behave themselves well."

A point of order was raised by Mr. BROWN, of Philadelphia, as to whether it would be in order to move to reconsider, at this time, the vote heretofore given on the antecedent section, (No. 6.)

The **PRESIDENT** decided that that motion would not be in order, until the pending question is decided; or, that a motion now made to reconsider would require a vote of two-thirds.

A long debate followed on the point of order. After which

A motion was made by Mr. EARLE, seconded by Mr. BROWN, of Northampton, both of whom had voted in the majority on the said antecedent section :

That the further consideration of the said amendment to the amendment, be postponed for the present, in order to proceed to the reconsideration of the sixth section of said report, in the words as follow, viz :

“ The judges of the supreme court who shall be in commission at the time of the adoption of the amendments to this constitution, shall hold their offices for the term of fifteen years thereafter, if so long they shall behave themselves well.”

And on the question,

Will the convention agree to the motion ?

The yeas and nays were required by Mr. BELL and Mr. STERIGERE, and are as follow, viz :

YEAS—Messrs. Ayres, Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dickerson, Dillinger, Donnell, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Purviance, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weaver, White, Woodward, Young—67.

NAYS—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Bell, Biddle, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Denny, Dickey, Donagan, Doran, Dunlop, Farrelly, Fleming, Forward, Hays, Henderson, of Dauphin, Hopkinson, Jenks, Kennedy, Konigsmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Royer, Russell, Saeger, Scott, Serrill, Sill, Snively, Sterigere, Stevens, Thomas, Todd, Weidman, Sergeant, *President*—57.

So the question was determined in the affirmative.

Mr. EARLE, of Philadelphia county, moved to reconsider the vote on the section adopted on Saturday, extending the term of the judges of the supreme court now in commission, to fifteen years from the time of the adoption of the amended constitution.

Mr. WOODWARD, of Luzerne, hoped that the motion would prevail; and if it should, he would move to amend the section, so as to make it read as follows :

“ The commissions of the judges of the supreme court, who may be in office on the first day of January next, shall expire in the following manner : The commission which bears the earliest date shall expire on the first day of January, Anno Domini, one thousand eight hundred and forty-two ; the commission next dated, shall expire on the first day of January, Anno Domini, one thousand eight hundred and forty-five ; the commission next dated shall expire on the first day of January, Anno Domini, one thousand eight hundred and forty-eight ; the commission next dated shall expire on the first day of January, Anno Domini, one thousand eight hundred and fifty-one ; and, the commission last dated shall expire on the first day of January, Anno Domini, one thousand eight hundred and fifty-four.”

Mr. PAYNE, of M'Kean county, observed that he was in favor of recon-

sidering the vote taken on Saturday last, because he was under the impression that there had not been given to the subject, that thought and consideration to which it was entitled.

He had voted for the amendment, notwithstanding it seemed somewhat to militate against the report of the minority of the committee on the schedule, which he had signed. His belief was, that he would represent the wishes of his constituents, if he did not give a vote that would disturb the judges of the supreme court, at least those of them who were qualified to the performance of their duties.

He admitted that he was not for carrying out the same principle in reference to the other judges. He had no doubt, if the supreme court judges were as popular in other parts of the state as in his own, that, should they happen to be turned out to-day, they would be reinstated to-morrow. He was well aware that we had some judges on the bench, who ought not to be there, as they were unfit, on many accounts, for the proper discharge of their duties.

It was not his intention to apply these remarks to the supreme court, but to the other courts. His desire, then, was to apply a remedy to the disease—to remove the evils existing, and not to destroy or annihilate that which was really good in itself, and worth retaining.

He had seconded the motion to reconsider, because he was desirous of having the subject more fully considered and discussed than it had been. At present, he was not prepared to say how he would vote. There still remained ample time to deliberate, and he trusted that gentlemen would embrace the opportunity of giving their views at length.

Mr. MEREDITH, of Philadelphia, expressed his astonishment that such a motion should have been made, and that, too, by a gentleman of the party who had, on Saturday last, put an end to the debate, and closed the mouths of those who desired to give their views on this important question. Gentlemen having found the decision to be contrary to their expectations now wished to procure a reconsideration of the vote. Why had they forced the question to a decision? Because, doubtless, they conceived they had a majority. They seemed to forget the ordinary courtesies that were due to gentlemen in debate. The previous question had not been called, to be sure, but the immediate question was, and that put an end to further discussion. He trusted that some good reason would be assigned why we should undo that which was done on Saturday.

Mr. BROWN, of Philadelphia county, was free to acknowledge that he had done wrong in moving the immediate question; but if the gentleman would excuse him this time, he would not do so again. In future, he would leave the moving of the immediate question to those who were more experienced than himself. That was the only occasion on which he had done it. The reason why the motion to reconsider had been made, was to give those gentlemen, whose minds were not altogether satisfied, an opportunity for further consideration, so that they might come to a more satisfactory conclusion.

Mr. MEREDITH asked what motive the gentleman had in desiring a reconsideration?

Mr. BROWN replied, that the gentleman from the county of Philadelphia, (Mr. Earle) and the gentleman from M'Kean, (Mr. Payne) having

felt themselves dissatisfied with the votes which they had given, without sufficient reflection and consideration, had induced him (Mr. B.) to move a reconsideration. Besides, too, he did not like to have it supposed that he wished to force a member to vote, before he was prepared.

Mr. PORTER, of Northampton, observed that when he offered his amendment on Saturday, he entertained no idea that it would be so soon disposed of, or that the debate on it was to be curtailed as it had been by the agency of the gentleman from the county of Philadelphia, (Mr. Brown.) He, doubtless, thought that a majority would not have been found in favor of the amendment. No doubt the gentleman does regret that he was obliged to call the immediate question, before he had got his force marshalled and every thing arranged calculated to effect the object he had in view. He (Mr. Porter) had offered the amendment from a belief that it was essential to the preservation of the courts in their purity and impartiality. He regarded the principle of the amendment as of great importance to the people of Pennsylvania. He desired, if possible, that there should be something like order and symmetry introduced into the constitution in regard to the various departments of the government therein treated of. He desired, too, that if this convention had settled any principle in reference to regulating the manner in which the new constitution should go into effect, it should be adhered to.

What, he asked, had we settled with respect to the judiciary, as set forth in the schedule? Why, that the judge of the supreme court shall hold their seats so long as they behave themselves well.

What did gentlemen mean to do with the amendment of the gentleman from Luzerne, (Mr. Woodward?) The effect of it was to turn this convention into a high court of impeachment. He would ask if gentlemen wished to organize themselves into a tribunal of that character? It was, in fact, conferring upon each of us the power, by our mere *ipse dixit* of turning these judges out of office.

What, he would repeat again, had we done? Why, we had settled that the judges shall continue in office so long as they behave themselves well. Look at the constitution of 1790, and see whether it does contain the same provision.

Shortly after this convention assembled, they declared that the judges should hold for the period of their commission. But now, we have just altered what had previously been done, and have provided that the supreme court judges shall hold for fifteen years. Many of the judges have been a great many years upon the bench. The present chief justice was elevated to the supreme bench, and after being ten or eleven years one of the associate judges, he was appointed at the age of forty-five, to his present high station. Before being raised to the bench, he was in great practice, and no doubt would have realized an ample fortune had he chosen to have remained at the bar. And now, at the age of fifty-five, after having sacrificed his chance of becoming rich, he is told that although "we may trust a new judge fifteen years, you may be turned out at nine." He (Mr. P.) would ask was it right or fair treatment towards these men, after they had taken office years ago with the understanding that they were to remain in office so long as they behaved themselves well?

He would ask, whether in the common business transactions of life between man and man, a man would not be entitled to claim the fulfil-

ment of a contract or agreement on the part of another? Surely he would. He conjured gentlemen to give him a reason why a judge should go out of office, because of the adoption of an arbitrary rule on this day, or on that day? Why should not a judge be permitted to remain in office to the end of his term? He desired to know on what principle this strange course of proceeding rests? By what rule could it be shown that a judge's commission shall expire whether he behave well or ill? He believed that two of the judges of the supreme court were commissioned in 1820, and are to go out of office in 1845. Why, he would inquire, were they to go out at that time? Was it because they understood the law too well? No; it was owing to the spirit of change which seemed to be entering into, and overturning every thing—a change in the principle of law, which would render all things insecure, and no man would be able to call, or reckon any thing his own. He wished then to learn from delegates the grounds upon which they advocated a shorter term than fifteen years. He would ask this question of every gentleman who appeared to be so anxious to adopt the rotary principle.

All these supreme judges had left an excellent and lucrative practice, and came upon the bench, and performed their duties honestly and faithfully, and now it was proposed to put it in the power of the governor for the future, to say to them—"if you do not support the measures of my administration from the present moment, you shall at the termination of your tenure, go out."

If there was any thing which he deprecated more than another—if there was any thing which he believed calculated to jeopardize the peace and good order of society, it was the introduction of politics into the supreme court.

He would ask if there had been a single petition presented to this body requesting us to provide for the judges being turned out in the manner proposed? This convention had been told, and that too, forsooth, by gentlemen on this floor who, perhaps had never been in a supreme court in their lives, that they understood the matter better than those who were in the constant habit of attending courts.

Now, for his own part, he should have thought that those who had most to do with the tribunals of justice, were most competent judges as to what was fair and proper. Were we, he asked, to sacrifice a certain good—to part with that which had been found, from long experience, to have worked well, for the purpose of trying a wild chimera?

This spirit of change, of late years, had struck at and exploded that which was good and worthy of preservation. He implored gentlemen to take care what they did in a matter so important as this was admitted to be. Above all things they should place these judges beyond the reach of political influence.

Mr. FULLER, of Fayette, hoped that the convention would agree to reconsider the vote, for he thought it had been taken without sufficient consideration and reflection. Gentlemen could not have forgotten that it was stated by a majority of this body, at the very outset of their proceedings, that the principle—the main object for which this convention was convened, was to effect a reform in our judiciary system—to provide that the officers of the several courts shall hold their respective offices for a term of years.

He regarded the life tenure as wholly incompatible with the principles of our government; and he would maintain that judicial offices should be limited to a term of years. The people, too, desired to change many of the present incumbents, and to get rid of those officers who were incompetent to the proper discharge of their duties. He was willing to admit that the conduct of the judges of the supreme court had not afforded so much cause for complaint as the president judges of the courts of common pleas and some others. Nevertheless, however, his wish was that the principle of limitation should be carried out in respect to all the courts, beginning with the judges of the supreme court.

The gentleman from Northampton, (Mr. Porter) had asked whether this convention was going to organize themselves into a court of impeachment—to put the judges of the supreme court at a less term than fifteen years? That gentleman ought to recollect that the offices were not created for these men, or any other set of men, but for the benefit of the people of the commonwealth.

Now, taking this view of the matter, and which he (Mr. F.) deemed a fair and correct one, would the delegate go so far as to say, that these men have any claims on the commonwealth? Have they any just claims on the voters of Pennsylvania, to retain them in office. He (Mr. Fuller) would boldly and unhesitatingly declare that they have not. There were three principle reasons which the people had for calling this convention, and they were—First, that no man shall, hereafter, hold an office for a life tenure, or for good behavior. Second—that a large portion of the officers are holding office against the wishes of the people. Third—they desire a change—a new selection of officers to be made from the highest to the lowest. Another reason was, that the harmony and symmetry of the decisions of the supreme court should be retained.

Now, he did not see exactly how that was to be accomplished under the proposition that the judges should hold for fifteen years, when, at the expiration of that period they might be all off the bench, and a new set of judges have come in. If so, the main object which the gentleman had in view—and which he advocated when at Harrisburg—viz: the preservation of harmony in the decisions of the supreme court, would not be attained.

Mr. PORTER, of Northampton: I offered nothing of the kind. I want to keep the present judges in for fifteen years, and in that term it is probable they will die off.

Mr. FULLER: The amendment of the gentleman provides, that the judges of the supreme court shall retain their offices for fifteen years after the adoption of the amended constitution. I ask if they are swept off, whether they will not then be swept off?

Mr. PORTER. I hope not.

Mr. FULLER: Well, let the gentleman's hope be what it may, suppose that the governor and the senate decide that it should be so. What will become of the symmetry and harmony of which the gentleman speaks?

But again, sir. When all the judges are thus thrown off the bench, by this amendment they would come before the governor and senate for re-appointment all at the same time. To my mind, this is a great difficulty, and we ought to guard against its occurrence. A combination for the

purpose of procuring a judgeship may take place from one end of the commonwealth to the other, by which means we may have such judges placed on the bench of the supreme court as a majority of this body would not wish to see there. Applications will be made from all parts of the state. I would like to know whether it is not probable that a combination of interests may take place for a seat on the bench, to say nothing of political parties, but on account of the feelings which we know pervade all society.

Every man has his friends. A combination might thus be formed in an application for the judicial office, which might result in securing a seat to men whom this convention would much grieve to see in an office so respectable and important. It seems to me that if this principle is to be established, the convention, in order to be consistent with itself, must carry out its own principle; and if they do carry it out, they must then declare that the president judges of the several courts of common pleas throughout this state, shall be commissioned for at least ten years after the adoption of the amended constitution. And a like combination may take place there also, as the appointments or re-appointments will have to take place all in one year. If political feelings are not brought to bear, other feeling may be brought to bear which may lead to an injudicious selection. If this is the fact as regards the president judges of the court of common pleas, it is also with the associate judges who, it is to be remembered, are a very numerous body of men. So it will be with the justices of the peace; because I maintain that if there is not a strict adherence to this principle, if it is not thoroughly carried out, it will argue an inconsistency in this body not very complimentary to it.

It is true that the gentleman from Northampton, (Mr. Porter) has favored us fully with his sentiments on this subject. I am always pleased to hear him speak, but I do not like it so well when he speaks the same thing two or three times over. Still it is a pleasure to me to hear him speak, although his arguments are the same as those which he urged on another occasion at Harrisburg. I thought at that time that the gentleman had said every thing that could be said in favor of retaining the judges during good behavior.

The motion which is now made to re-consider the vote on the sixth section is one which, to my mind, can not fail to meet with the approbation of a majority of this convention. It appears to me that the question is one of more importance than any that has come before us, because I regard it as being the guide in this body in relation to all the judicial offices of the state from the highest to the lowest grade; and I have no doubt that this convention will ultimately decide as to the president judges of the court of common pleas and all other judicial officers of a lower grade, in the same manner as they may decide in relation to the judges of the supreme court.

I hope, therefore, that the motion to re-consider will be agreed to; and that we will grade these officers in accordance with the proposition of the gentleman from Luzerne, (Mr. Woodward) that a portion of the judges may go out gradually, thus continuing a portion of the judicial officers in every district of the commonwealth.

Mr. BIDDLE said:

The question now before us is one of vast importance, probably as much

so as any which we have yet passed upon. It is one upon which the expression of the opinion of this convention was given on Saturday. That opinion, it is true, was given without debate, because those gentlemen who seem now to be in favor of the re-consideration were then for the most part opposed to any debate or consideration on the subject. How then can they with any consistency, ask this body to allow their time and attention to be consumed with distracting that principle which they then determined to establish?

But, says the gentleman from Fayette, (Mr. Fuller) this is a subject on which the decision has been often made—that it has been considered from the earliest period of our deliberations. I deny that this is so. Has this convention ever entered on a crusade against individuals, and that it would, right or wrong, remove them from office? I say that nothing so discreditable to the character of this body has ever occurred.

This convention has determined that it will settle great principles; and, amongst them, a majority of this body have determined that, for the time to come, the judges of this commonwealth shall hold their offices not during good behavior—as they have heretofore held under the constitution of 1790—but for a certain term of years. This is all that the convention has determined.

It never has determined that it would be guilty of acts of atrocious injustice towards individuals who have faithfully done their duty, and against whom no complaint has been made in any quarter here or elsewhere.

Upon what condition did these gentlemen, leaving the private walks of life and resigning their professional practice and emoluments, accept seats upon the bench? On the condition, that if they behaved themselves well, if they conducted themselves with integrity and fidelity and were guilty of no misdemeanor in office, they should not be removed. Is it said then that they have no claim upon that community which on the terms which I have stated, invited them to take their places? Is it said that now, when they are unable again to return to those walks of life in which they were accustomed to move and to the duties of that profession to which they once looked for support—now when they are in circumstances far from affluent and, consequently, are unable to retire with comfort to themselves and families—now, after having for years received a paltry salary, scarcely sufficient to maintain them well—and after they have upheld the laws of the commonwealth with fidelity—is it now said that, wearied and worn out with service, they are to be turned out of office to sustain themselves in the best way they can? Has this convention ever declared itself to be the advocate of such a principle as this?

What do we say to these judges by refusing now to continue them in office? We say to them you have not heretofore betrayed your trust; there is no impeachment, no address to the governor, you have faithfully discharged the duties of your respective offices; but now we will turn you out. And why? Because we have the power to do so, and we are responsible to none for the abuse of that power. This is the only thing which we can say. We had the high-handed power, and we were resolved to exercise it, be the consequences what they might.

But what reason does the gentleman from Fayette, (Mr. Fuller) assign in favor of this course? He says it may happen that the whole

symmetry of justice may, in fifteen years, be disturbed, because at the end of fifteen years, all the judges may go out of office together. This, sir, is not within the range of human probability; indeed it may be regarded as a state of things almost, if not altogether, impossible. The present judges of the supreme court are all advanced in life, and the chances are many that, at the end of fifteen years, so far from all being alive, there may not be one of those who now adorn the bench living, to be removed. And is it by arguments such as these that we are to be cajoled into acts of great injustice and cruel ingratitude?

But it is said, that there may be combinations—there may be conspiracies. Suppositions, unfortunately, are at all times haunting the minds of some men that none are to be trusted except the people in the aggregate—that neither the judges nor the legislature have any integrity or any honesty left. If this is so, deplorable indeed are the times upon which we have fallen; and instead of boasting of our courts, and of the purity and integrity with which our laws are administered, we have cause to weep over their degradation and delinquency.

But, sir, it seems to me that there is no ground to justify the indulgence of these fears. It seems to me that these gentlemen have a claim upon us—that they have a claim upon our justice—that they have a claim upon the justice of the community; and I hope that this convention, so far from completing its labors by an act reproachful to itself and disreputable to the state, will say to these judges, we violate no principle by retaining you, and as an act of justice to ourselves and to the great commonwealth whose interests are entrusted to our charge, we will continue you in office.

Mr. M'DOWELL said. At the time the different votes were given for the limitation of the judicial tenure, I should suppose that every gentleman who voted in favor of that limitation, had made up his mind so to vote hereafter as to carry out the great principle then settled, if a great principle it be. And, it seems to me that the only question now before us, the only legitimate question which we have now to decide is, whether a majority of this body will shrink from the performance of their duty. And if we are to shrink, what are the reasons here urged to induce members to do so?

At present, the object appears to be to protect the judges of the supreme court from the operation of the great principle which we have settled; and, for the purpose of effecting that object, our sympathies have been appealed to in a way well calculated, I confess, to reach the heart of every feeling man in this convention. I was myself ready when the venerable gentleman from the city of Philadelphia, (Mr. Hopkinson) was on the floor, to exclaim, "if you have tears to shed, it is proper to shed them now."

Is this a question of sympathy with this convention, or is it not? Are our sympathies to be appealed to for the purpose of influencing and controlling the free action of our minds upon a matter of principle—because gentlemen admit that is to be regarded as the settlement of a great and permanent principle in the judicial system of the commonwealth? For my own part, I cannot believe that we have any thing to do with sympathy. I believe that this is a question of justice—of stern and inexorable justice; and that the operation of this principle is to be car-

ried out precisely in the same way as any other great principle which we have established.

Are we to be told, it is true you have laid down a great principle, but you have screened men from the execution and the operation of that principle? Are we to be told that when we limit the judicial tenure, we limit it only in reference to certain subordinate magistrates—say, the president judges and the associate judges—but that when we come to touch the judges of the supreme court, our sympathies are to be appealed to in their behalf, and that they are to claim especial mercy at the hands of this convention. I deny the position; and it is a matter of some surprise how those gentlemen in this body who are in favor of the limitation of the judicial tenure, and who voted in favor of that principle, can satisfy their own minds when, upon the very next day, they vote not to carry that principle into operation.

Let us look at this matter. It is said that the judges of the supreme court have peculiar claims on the people of the commonwealth—that they are aged—that they are far advanced in life—that they have served their country faithfully in their judicial capacity, and that therefore they ought to be protected. Now, I ask those gentlemen who use such arguments (I speak of the friends of reform in this body,) whether they are willing to extend the same mercy to the magistrates, the justices of the peace, the president judges of the courts of common pleas and the associate judges? Are they willing to do so? Because if they are not, there is an inconsistency in the whole matter, as a matter of principle, which I am not able to reconcile. Are there no sympathies for those officers of Pennsylvania who, as the gentleman from Chester (Mr. Bell) has said, have a vested right in their offices.

Mr. BELL rose to explain. He had never said that the judges of Pennsylvania had a vested right in their offices.

Mr. M'DOWELL resumed.

I am perfectly satisfied now that I was mistaken in the term I made use of. The term was plighted faith—not vested rights. I do not know exactly what the difference is between the plighted faith of the commonwealth and a contract such as the gentleman spoke of, and a vested right in the contract. If faith is plighted, I suppose the right of the party is vested.

But how does this matter stand? If there is faith plighted in reference to the judges of the supreme court, there is also faith plighted to every judicial magistrate in the commonwealth. There is the faith plighted, and of course, there must be the broken vow in regard to every justice of the peace. Am I to be told that the justices of the peace are small men—that the president judges are not so great as the judges of the supreme court, that the associate judges are common men, and that, therefore, in relation to them, this plighted faith which is spoken of, amounts to nothing at all? Let us examine this question of faith, and let us see what there is in it.

In the first place, then, let me ask, did the men who accepted these offices, accept them upon the condition that they should never be changed, or did they accept them under the constitution? If they took them under the constitution, then I will ask the gentleman from Chester (Mr. Bell) to turn to that part of it which holds 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 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.”

Now, I should suppose that the venerable judges took their positions under the constitution. They were not ignorant that the people had the power to change the constitution, and they knew, therefore, that the tenure of their offices was limited by the will of the people. That very will is about to be visited upon these judges, and yet our sympathies are invoked in such a manner as to prevent its execution. There is no faith, there is no vested right about the matter. There is no injury, there is no wrong about it. If the people choose to amend their constitution as they have done here, if they choose to settle a great principle, no human being has a right to gainsay or thwart their design. If it is the will of the people, it must be submitted to. The principle is settled, and the operation of it cannot be made accountable to any man.

It seems to me that there is a great mistake here. Gentlemen on this floor who have so much regard for the judges, argue upon the assumption, that when this convention fix a period at which the duties of each judge are to terminate, that judge, as a matter of course, is to go out of office—that he cannot be re-appointed. I believe that if a man is a good judge he will be re-appointed; and those who do not deserve to be re-appointed probably will not be. But the whole argument, from first to last, is based upon the supposition, that whenever the judicial tenure expires, no man is to be re-appointed. That there is a misapprehension in this respect, I think no man can doubt.

The gentleman from Northampton, (Mr. Porter) has spoken of the chief justice of the commonwealth, and of other men, and has spoken eloquently of their services, as if he believed that there was no possibility of the re-appointment of these men after their term of service has once expired. I do not believe any thing of the kind. I believe that if their judicial tenure expired this day, or next month, they would be re-appointed.

As regards the judges of the supreme court, I will say that there is not a man in this house, however much he may worship them, who entertains a better or more exalted opinion of them than myself.

Mr. PORTER begged to correct the gentleman from Bucks, (Mr. M'Dowell.) He (Mr. P.) worshipped nothing in the shape of humanity.

Mr. M'DOWELL resumed.

Probably not; but whether it be worship or not, I know that the gentleman from Northampton serves a friend with fully as much zeal as he opposes an enemy; and I know that when he serves a friend, he does so with as warm a heart as any man in this commonwealth. When the feelings of such a man are brought out in a matter of friendship, they come very near to worship, if not quite.

I say, however, that the argument is not a proper one—that it is not right to appeal to our sympathies and to say that those judges *must* be turned out of office.

Are we to exercise the power of impeachment? Are we to be the judges and to say, that these men shall be turned out at a particular day? No, sir; we are not about to say any such thing; and it would be as absurd for us to do that as to attempt to re-appoint any judge. I deny the power of this convention to re-appoint. What have we done by the vote of Saturday? We undertook to resolve ourselves into the appointing power, and to re-appoint the judges of the supreme court for the term of fifteen years. And it has been done mainly on the ground of sympathy. Look at the course of the gentleman from Northampton. See the beautiful consistency with which he acts. His sympathies have induced him to ask us to be an appointing power in relation to the judges of the supreme court, but in relation to none other. And how is this justified? We have been told that it is necessary to place the judges of the supreme court beyond the operation of this principle, because it is necessary that their decisions should be permanent and consistent. Let us examine this argument.

In the first place, how is the consistency of the decisions of the supreme bench to be destroyed? There are at present five judges; and say that one of them, for instance, is to go out in three years. That leaves a majority of the present judges still on the bench. Well. Another is to go out in three years more. That still would leave a majority of the present judges for the purpose of initiating, if you choose, the new members into the habits and customs of the old.

At the end of three years more, another is to go out. So that no inconsistency in the decisions can possibly arise. I ask gentlemen whether, when they vote to graduate the termination of the judicial tenure, they do not vote with a view to keep the decisions of the court consistent with the present; and not with a view to introduce new decisions? But, independent of this, I am at a loss to understand these new systems of decision. My experience as a lawyer has taught me to believe, that the judges of the supreme court decide abstract questions of law, and I do not understand this idea about change in the principles of law. The laws remain in the commonwealth as they have remained. The judges construe the acts of assembly, and I do not see what change is to come about even if a sudden change were made in regard to the incumbents. These gentlemen who contend that it is right to keep the present judges on the bench of the supreme court do so upon two grounds. First, upon the ground of sympathy, with which we have nothing to do; and next, on the ground that the decisions should be permanent and without change. And yet the gentleman from Northampton introduces his amendment, which says, that this convention shall re-appoint all the judges and let all their commissions terminate at one moment. Does the gentleman care nothing about the consistency of the decisions beyond fifteen years? Give us consistency for fifteen years, says the gentleman, and give us what you please after that time. He may indeed tell us, that there is no reasonable probability that all the judges will live so as to go out of office at the same time; but he has no right to assume any such position. I call upon him to prove it. I say they won't die.

Mr. PORTER said, he would refer the gentleman for proof to the life insurance offices.

Mr. M'DOWELL resumed.

Well, if they get insured probably they may die. I say that the judges will not die in fifteen years, not one of them—and I ask him to prove it. I say they will continue there until the expiration of fifteen years, and I will prove it, because they are alive now. If they are all bad judges they will die. If they are good judges, they will never die. If any judges die within fifteen years, it will be the bad, and not the good—and therefore this is a ruinous measure throughout.

I regret the course I have been obliged to take on this question. I have as much true sympathy and as much regard for the rights of the judges as any man in or out of this convention: but I can never consent that the judges of the supreme court shall be re-appointed by this body unless, at the same time, we consent to re-appoint all the judges and magistrates of the commonwealth. I know of no principle that is to govern the one case, which ought not also to govern the other. I have exercised my mind on this subject. I have been desirous to save the judges of the supreme court, if gentlemen call it saving; but I could not do it without being guilty of what I deem to be an act of serious inconsistency; because I see neither principle nor reason in exempting the judges of the supreme court from the operation of this new provision. They are, it is true, great and learned men; but I suppose it will not be asserted that they are more so than many of the judges of the court of common pleas. There are as sound and as great jurists in the court of common pleas as on the bench of the supreme court, and I can not see the force of the only reason which has been brought forward—except that of sympathy—that there should be no revolution in the administration of justice. But I do fear that difficulty may arise, if, as the amendment of the gentleman from Northampton, purports, that the tenure of all the judges is to terminate at the same time; and I, for one, will not give power to the governor and senate to re-appoint all at the same time.

I regret the course I have felt obliged take the more, because some of my friends have voted against me. I have voted to limit the term of the judicial tenure, and I am determined, so far as my course is concerned, to carry out this principle in the most cautious and judicious manner that we can. I am free to say that, to be entirely consistent with ourselves, we ought all to have voted for the amendment of the gentleman from Beaver, (Mr. Dickey) as being the most consistent proposition which has been offered. At the same time, I did not feel myself exactly at liberty to go for it, because it throws upon one governor and one senate the whole appointing power. But so far as regards the principle, I say it is the only consistent proposition which has been offered.

As to the amendment of the gentleman from Northampton, I would rather have it carried that the judicial tenure of the present judges should not be touched at all. I object to resolving ourselves into an appointing power, and to say we re-appoint these judges and they shall continue in office for fifteen years.

For these reasons, I must vote in favor of the motion to re-consider.

On motion of Mr. PORTER,

The convention then adjourned.

MONDAY AFTERNOON, FEBRUARY 19, 1838.

There being no quorum of members in attendance, a call of the house was ordered, which was proceeded in for some time, when the further proceedings were dispensed with, a quorum having appeared.

SCHEDULE.

The question recurring on the motion of Mr. EARLE, to re-consider the vote given on Saturday, on agreeing to the amendment to the amendment to the sixth section of the report of the committee appointed to prepare and report a schedule to the amended constitution, in the following words, viz :

“The judges of the supreme court who shall be in commission at the time of the adoption of the amendments to this constitution, shall hold their offices for the term of fifteen years thereafter, if so long they shall behave themselves well.”

Mr. PORTER, of Northampton, rose and said that he would not detain the convention long with what he was about to say. By the vote which had been taken on Saturday last on his amendment, he should suppose that the convention regarded it as improper to turn out all the judicial officers in February, 1839, as was proposed by the amendment of the delegate from Beaver, (Mr. Dickey.) He considered that an important principle had been established by this decision of the body, viz : that by the new constitution, it would be unfair and unjust to deprive men of the offices they had held under the old. If this position had been established, he would ask if gentlemen had not, consequently, put an end to the judicial tenure of the commonwealth? If any thing could be said to have been settled by this convention, and by an almost unanimous vote, too, it was the principle, that by the adoption of a new constitution every man who held under the old was *ipso facto* turned out of office. He wished to know what tenure they have under the new constitution? what tenure they are entitled to? The convention had decided that they ought to be turned out. If principle was to govern in anything, this body had declared that those men who are in office shall continue under the new constitution. What, he would ask, was the tenure? Why, in regard to the judges of the supreme court, they are to hold their offices for fifteen years. He would call again—for he had already called in vain,—for the reason, if any there were, why the men at present in office should have the tenure they have now. The convention had decided that they shall hold for a limited time—that they shall not be turned out. With regard to that symmetry, of which the gentleman from Fayette (Mr. Fuller) had spoken, we knew only of that which is fixed in the constitution. But, some gentlemen had said, if we adopt this tenure in regard to the supreme court, we should do so as respects the judges of the common pleas, the associate judges, and justices of the peace. Now, he begged to remind gentlemen that the supreme court is a creature of the constitution that cannot be changed. It is provided for, and grows out of that instrument.

In regard to the court of common pleas, it is created by the constitution, but it is in the power of the legislature, at any time they think proper, to take away from that court its entire jurisdiction. That, however, could not be done in reference to the supreme court. The judges of the common pleas are the creatures of the legislature; and the language of the constitution of 1790 is that "until it shall be otherwise directed by law, there shall be appointed in each county not fewer than three, nor more than four judges." The justices of the peace are under the control of the legislature.

He had a word or two to say in relation to the associate judges and the justices of the peace. The difference between them and the law judges was important. They do not appropriate the whole of their time to the duties of their office, as was the case with the latter. He would ask gentlemen who had talked so much about principle, and of the want of adherence to it on the part of others, how their objections tallied with their avowal now that they do not object so much to the tenure of the supreme court, as to the effect of establishing a principle in respect to the court of common pleas. The avowal had been distinctly made, that, although it might be right to permit the judges of the supreme court to remain in office, as the constitution of 1790 guarantees, yet that it would not answer their views in regard to the court of common pleas. He supposed that there would be no great difficulty in bringing this as an argument to bear upon the argument of the reformers here, when gentlemen were found changing their ground between Saturday and Monday, and trying to bring about a reconsideration of the vote taken in reference to the supreme court. What, he would ask, does this avowal amount to in relation to the president judges? Why, certain gentlemen do not like the common pleas judges, and they want to get rid of them. And, in order to effect that object, they would not hesitate to sacrifice the supreme court judges. He would suppose, for instance, that the president judge of the thirteenth or fifteenth district, or of the eleventh, or that the president judge of the seventeenth or the seventh, should happen to be objectionable to certain lawyers in any of those districts.

Mr. AGNEW explained:—As his district had been referred to, he begged to say that he was not among those who complained of the president judge.

Mr. WOODWARD would also explain that the remarks of the gentleman had no application to the eleventh district.

Mr. PORTER resumed: The application he had made to these districts was merely hypothetical. He had not supposed that the gentleman from Beaver, (Mr. Agnew) had any complaint to enter against these judges. Such an idea had not entered his (Mr. P's) mind. But, he merely supposed these president judges to be objectionable to some gentlemen, as perhaps accounting for the course they had thought proper to pursue. He was sorry to see gentlemen taking these remarks to themselves. He did not believe that any gentleman here would suffer his personal feelings to operate on him. He thought they were governed by purer and loftier motives. He would certainly acquit them of being influenced by any such feelings. He would suppose that they would throw their personal prejudices on the altar of principle which should govern us all. His friend from Fayette, (Mr. Fuller) in the course of

his observations, spoke of the pleasure he always felt to hear him (Mr. P.) speak, but that it was much lessened when he heard the same thing repeated. He would tell the delegate that a wiser man than either he or him (Mr. Porter) made this remark eighteen hundred years ago, that a man was very apt to "see a mote in his brother's eye, but could not see the beam in his own."

But it could not be too often told,—could not be too often impressed upon this convention, nor could it be kept too much in view, that the proceeding contemplated by gentlemen here, would, if carried out, destroy the last link of refuge left for the constitution of Pennaylvania—that was in the supreme court. He believed as firmly as he believed any thing on earth, that if the judges of the supreme court were to be on the tenure proposed by the gentleman from Luzerne, (Mr. Woodward) as he (Mr. P.) supposed they would, and made liable to the political fluctuations of the commonwealth, a more deadly blow could not be inflicted on the administration of justice in Pennsylvania by any other amendment that could be proposed.

The gentleman from Bucks (Mr. M'Dowell) had asked whether the convention have a right to appoint the judges. He (Mr. Porter) would inquire whether we are not the representatives of the people of Pennsylvania, and have any other limit or restraint upon us in regard to the judiciary than our sense of duty. That was all by which we are bound. We have a right to say, if we thought proper, that every officer holding a commission under this commonwealth shall go out of office on the very day the people adopt the amendments, or that they shall not. We may save the commissions of those now in office, as we have a right to do, and for which we have a precedent in the constitution of 1790, which we have met to reform and amend. He would repeat what he had already said, that the members of this body are limited only by a sense of their duty.

The gentleman from Bucks had remarked that this was not a case in which our sympathies were to be invoked, but one of inexorable justice. Now, he would ask that gentleman whether it would be right, or just, or humane, to turn a man out of office in his old age to seek a living as he may, who had spent the greater part of his life in his country's service, to which he had devoted his faculties and all the energies of his mind. What a spectacle would it be to see a man who had presided over the supreme court, as its chief justice, for eighteen or twenty years, obliged to go into a court of quarter sessions, to eke out a scanty pittance for the subsistence of his family—when, perhaps, if he had not entered the service of the commonwealth he might have been comfortably off in his circumstances. In mentioning this fact, he (Mr. Porter) appealed not to the sympathies of gentlemen, he only asked even-handed justice for the servants of the commonwealth, who had done all they could for it. What, he would inquire, would be the effect of adopting the amendment of the gentleman from Luzerne? The present Chief Justice, Gibson, was appointed in May, 1827; Judge Rogers, in April, 1826; Judge Huston, in April, 1826; Judge Kennedy, in November, 1830; and Judge Sergeant, in February, 1834. By the graduation proposed, Judges Rogers and Huston would go out in 1845 or 1846—two together. And, yet we were told there was no danger of all the judges being off the

bench by that time. Supposing that death should be busy among them, and carry of three, and the other two leaving the bench at the same time, would there not be an entirely new bench appointed thereafter? Gentlemen might talk as they pleased, but he had seen too many instances of term judges being turned out.

Look at the list of judges of the city and county of Philadelphia, and compare it with those who preceded them. And it would be found that in neither case, were the old judges continued. They were all new without a single exception. He had no doubt about the fact. How was it to be accounted for? It was because their politics did not suit. Men always feel a disposition to confer office on their political friends, rather than their opponents. Under the new constitution, then, the governor, whose patronage has been much curtailed, would feel it necessary to husband it all for his political friends.

The gentleman from Fayette, (Mr. Fuller) had advocated, in order to excite sympathy for the judges, that they should go out at certain times. Did not the gentleman see what would be the effect of such an arrangement—that it might result in a change of the whole bench, and perhaps, in its judicial decisions. The gentleman from Bucks, (Mr. M'Dowell) had excited a laugh as to the probability of the judges of the supreme court dying, or not dying. He (Mr. P.) envied not the feelings of the man who could create a laugh on such a solemn question as this was. The gentleman (Mr. M'Dowell) knew that he entertained for him no other feeling than that of kindness and respect; but he was sorry that he should have gone so far as to treat so serious a subject as this with levity. There was always something solemn connected with the subject of death, and to which we should bring none but the most solemn feelings.

The gentleman has not looked much into the operations of the human mind, or he would have seen how men start and catch at the idea of some new theory—some new practice.

In physic—how many men are there in that art continually producing new theories, and each claiming his own to be the best? And how much is the pride of human nature gratified by even the professors of our holy religion, who are continually striving to strike out some new lights, which their forefathers knew not of. Was not every man desirous to display his vanity in some way or another? Vanity is stamped upon every thing in the shape of humanity. We had seen it in this convention in reference to politics—when men have brought forward their theories, and pretend to be wiser than their fathers.

Now, if the gentleman from Bucks, had not seen this, he certainly had not observed human nature as closely as he ought. It had, unfortunately, happened too often, that the services of men who had rendered the country, the greatest service in civil station, had not been properly appreciated. If however, a man should have happened to have served six or twelve months in the revolutionary war, he was allowed a pension as a matter of course. But the same justice was not to be meted out to the venerable judge, who had grown grey in the administration of the law, and who was left, with his family around him. None of that pecuniary aid was to be granted to him that was allowed the man who had carried a musket on his shoulder for a few months.

He could only regard this motion to reconsider, then, as involving the same principle that we had already seen carried out. A judge might have devoted his whole life to the service of his country, and then go down to his grave unknown and unhonored, and be no more thought of. Let a man however, display on the field of battle, on one single occasion only, the moral courage which a judge has to bring to his aid in giving a decision, and his name is handed down to posterity and recorded on the rolls of fame. He would ask gentlemen whether treatment of this sort was right in point of principle? was in accordance with the inexorable justice which the gentleman from Bucks, insisted upon? Whether it was humane or just to turn a man of three score years out of office who has passed the greater part of his life in the service of the commonwealth? If that was justice, then had he greatly mistaken it indeed. He had frequently deprecated the unceasing desire which animated men for change at the present day. Of all the attempts he had witnessed to effect a change, this one he regarded as the most fraught with dangerous consequences.

He felt deeply the importance of the subject, and if he had expressed himself warmly, he asked the indulgence of the convention. He knew not how long he should remain at the bar, but he was sure that he would never go upon the bench. Mr. P. concluded, by declaring that although he was disposed to go for the shortest terms, consistent with the welfare of the commonwealth, yet he could not support the proposition of the gentleman from Luzerne, (Mr. Woodward.) He desired to subserve the best interests of the country, which he loved in common with others, who doubtless entertained the same wish, although gentlemen differed as to the mode of accomplishing it. He asked gentlemen to pause and reflect before they acted, as consequences of the most serious character might result from hasty and rash changes in reference to the supreme court.

Mr. AGNEW, of Beaver, said that as reference had been made to him, or rather his district, he felt it was necessary that he should say a few words. He had gone hand in hand with the gentleman from Northampton, (Mr. Porter) on the subject of the judicial tenure. He did not suppose that the gentleman, in naming his (Mr. A's.) district, meant to insinuate that he was dissatisfied with the present judges and wished to get rid of them. If he knew himself, he thought he could say, without hesitation, that in the discharge of his duty here, he was not influenced by any feeling of that kind. He had voted to retain the supreme court judges for fifteen years, and he was disposed to vote to make the term of office of the other judges, seven years. He had no desire to make any distinctions.

He made these remarks merely for the purpose of clearing himself from the supposition, which might be entertained, that he was referred to in connexion with his district. Some gentlemen here seemed determined to sacrifice the existing judicial officers—to get rid of men, too, of their own party. If the Van Buren men—if the democrats, would cut the throats of their own judges, why be it so. If they persisted in turning them out, all that he could say was, that he hoped they would put in men of the same party to which he belongs. It was a fact, and probably was known to most of the members of the convention, that the Chief

Justice of the supreme court headed the Jackson electoral ticket: and if his party here, were, from any cause, now anxious to cut him off, he certainly should not object. Was it not notorious that the greater portion of the judges at present on the bench, were of the Van Buren party? Although, however, he was opposed to it, still he would let the judges retain their seats. He hoped that the judges would be allowed to remain in office for the time assigned them hereafter by the new constitution.

He wondered whether gentlemen who had manifested so much anxiety and who were so ready to dispense with the services of the present incumbents, would exhibit a like disposition to withdraw their own sons from the bench, if there were any on it—whether they would be willing to say that they should all be ousted at once as soon as the constitution shall go into effect, or at the shortest terms for which they may be appointed. That proposition had been put down by a large vote, and it had been decided that the judges should not be put out. Yet, a motion had been made to reconsider. Gentlemen had pretended to say that the proposition contained a principle, but yet no one seemed to understand it. He would like to know on what principle it was that gentlemen here would put out one judge, and put in another, whilst they allowed a third to retain his seat.

What principle would give A a preference over B. Was there any principle in that? He wished that the convention would exercise a little of the appointing power, if he might call it so, with regard to the judges of the court of common pleas, and discriminate between them. The convention, it is true, was not sitting as a court of impeachment; but, he might remark that it was well known that charges had been made that judges had interfered with politics—had stepped directly from the bench, and addressed political meetings. This he had witnessed himself. He repeated that he was willing to make some discrimination between the judges of the common pleas, and to say who should go out and who stay in.

He thought that the convention should act with great care, and after much consideration and deliberation, in reference to the judges of the supreme court, who ought not in his opinion to be turned off in their old age, except on the ground of misconduct. He conceived that there was no principle in the system of graduation proposed to be adopted, although many delegates seemed to think there was. He could see no reason why the debate should have been stopped in reference to the court of common pleas, in order to reconsider what had already been done as to the supreme court. He was entirely at a loss to perceive why the vote on the amendment should be reconsidered. If we acted on any principle, it should be to turn all out.

Mr. WOODWARD, of Luzerne, said, he had remarked in the morning that if the motion to reconsider should prevail, he would offer a modification to the amendment submitted by him. Since he had made that statement, the senior delegate from Beaver, (Mr. Dickey) and other respectable gentlemen had had an opportunity of expressing their sentiments, and of offering amendments, if they had chosen to do so.

In pursuance, then, of the notice which he had given, he would move to modify his proposition so as to make the commission of the earliest

supreme judge expire on the 27th of February, 1842; the next in 1845, and the commissions of the others at intervals of three years. He begged leave, in opposition to all that had been said about the hardship of turning out old judges to starve—in answer to all the eloquence that had been poured out in reference to the long and faithful services of these judges, the small salaries they received, &c. to say a few words. What he asked, had the convention done? Why, it had ascertained that the tenure of the judges should be fifteen years. And that tenure was considered long enough. This was the conclusion at which the convention arrived, after having given to the subject, full and ample consideration and bestowed on it the most anxious investigation.

He begged to refer gentleman to the dates of the commissions of the judges, in order that they might see how long they had been in office.

His honor the chief justice of Pennsylvania, was appointed in 1827. His (Mr. W's.) amendment left it in the power of the people to continue that judge in office till 1848, when he would have been upon the bench thirty-two years.

The convention having decided, by a large majority, that fifteen years would be a proper term, he really could not see why the gentleman from Northampton, (Mr. Porter) should have exhibited so much sympathy, and shed such a profusion of tears, when, after all, a man might retain his seat on the supreme bench for thirty-two years.

Judge Rogers would not be turned out, according to the scheme he (Mr. W.) offered, but he would be brought to the notice of the people either to receive a new commission, or be rejected. He would then have been upon the bench sixteen years—one year more than the proposed tenure of fifteen years.

Judge Huston would be re-appointable in 1845, having then been nineteen years upon the bench. Judge Kennedy would be re-appointable in 1851. He would then have been upon the bench twenty-one years. And, Judge Sergeant would be re-appointable in 1854, having been twenty years upon the bench.

All this could be done after the convention had decided that the tenure should be fifteen years. One would suppose that the world was about to resolve itself into its original elements, or that the day of judgment was at hand, gentlemen seemed so much alarmed about the commissions of these judges, lest they should not be extended long enough—when, in fact, they would be even longer than could fairly be required.

Why where was the necessity for this alarm? There was nothing in any proposition which had been made here, which looked to the rejection of meritorious judges, and turning them out on the cold charities of the world.

But when the question of life tenure was under discussion, the argument was pressed with effect that it was an objectionable tenure, because it was irresponsible, and the necessity for introducing a principle of responsibility was urged. The people are unwilling that there should be any longer in Pennsylvania, a body irresponsible to all popular influence. And what was now proposed? Nothing more than this same principle of popular influence shall be applied to these men, and that they shall be within reach of the popular arm, to be re-appointed to office at the end

of their respective terms, or return to private life, as the people may see fit; that when their present commissions shall expire, new ones may either be given or withheld, as may be deemed just when the period shall arrive.

He would say, then, on the authority of the record, that this is not a case to call forth these strong sympathies on the part of gentlemen on the other side, and all the valorous eloquence which we had heard. All this might be admitted to be good in argument against the limited tenure, but that question has been decided; and it is now too late to attempt to make this body weep, and feel querulous and repent, for having adopted the limited tenure. It is done, and shall we, after adopting the principle, with a cowardly weakness, sneak from its application. I, for one, will shoulder it, and restore in my day and generation, this republican principle, and try if it will work well or ill, and if it will not succeed, we can change it again.

But it had been said by the gentleman from Northampton, (Mr. Porter) and he was surprised that the remark should have fallen from one so well informed, that the stability of the decisions of the supreme court, would be affected by this change.

Let us see how this is. These judges are dying off frequently—paying the debt of nature, and new judges are made. So that the principle of appointing judges of the supreme court successively, has existed, and does exist. It never was a Pennsylvania principle to turn out and appoint all her judges at once. They have come on the bench successively, and I agree (said Mr. W.) it would be wrong to turn out all at once, and cause an entire remodelling of the court. He would propose that they should not be turned out at one time, to lose all their commissions, and be succeeded by five new men, as they may be capriciously selected by the governor. Yet that is the proposition of the gentleman from Northampton, (Mr. Porter.) His object is to turn out all the judges at once, and thus to violate that Pennsylvania principle, under which the supreme court has grown up, and obtained the respectability it has now reached. One principle is to secure the appointments in succession—of one in three years—one in six years—one in nine years—one in twelve years, and one in fifteen years. Therein consists the grand difference between the propositions.

The gentleman from Northampton proposes, if in the Providence of God, all the judges live for fifteen years, that then they shall all be turned out at once. I, on the other hand, propose that they shall be removed gradually. We propose successively to terminate their commissions, and either to re-commission them, or to put new men in their stead. These then, are the two plans. The one which looks to the preservation of Pennsylvania principles, has been denounced in all the variety of phrase which the imagination of the gentleman could suggest. Our fears have been alarmed, and every argument has been arrayed against it. Is this just? Is this principle to be presented in so odious a form? Is it to be held out to the people, that if they take this limited tenure, they must take it coupled with all the danger which will result from overturning the old system in an hour, or not at all? Do gentlemen desire that the new system shall go into operation encumbered with all this danger? If gentlemen who are opposed to the change wish this, it is not an argument which ought to have any weight with the reformers.

The gentleman from Beaver who had last addressed the convention, (Mr. Agnew) had said he could not conceive after the proposition to turn out the judges was adopted, why they should not be kept in their offices during their proper term. I (said Mr. W.) will tell the gentleman. I am opposed to the proposition to turn out all the judges at once, because this would be to go against the Pennsylvania principle, and would have the effect of introducing the new tenure in an unwise and forbidding manner, and cause the system itself to work ill and not well. That is one reason I assign. Another reason is this. These judges have been for a long time in office, and the convention have deemed it right to give to others, belonging to our generation, the opportunity to see how this new tenure is likely to answer the purpose. The gentleman from Northampton thinks it will not be allowed to many of us to see the working of the new system—that if beneficial, its benefits will not accrue to many of us. This is another of my reasons.

I desire to lessen the influence of the executive patronage on the institutions of our age. Yet the gentleman from Northampton puts forth here a proposition that, once in every fifteen years, would bring the whole of the judges of the supreme court within the power of a single man. Would that be restricting the patronage and power of the executive? Would it not be better to say that we will compare our experience at intervals of three years, so that only one judge shall be re-appointable by one governor? Who can tell us—who knows, after fifteen years, who will be the governor of Pennsylvania? Who can know what strange changes may have taken place before the expiration of that period? Who knows what will be the political creed of the governor at the time when these commissions would expire? I am not disposed so implicitly to trust the times. They may be full of blessings—the patriotism of that distant period may give us the wisest and best of judges. But such may not be the condition of Pennsylvania fifteen years hence. I would not be willing to leave in any one hand the power to reward judges, for scattering over the commonwealth principles which may be hostile to the spirit of our institutions. It is a risk which the people have no disposition to encounter.

Your governors are to be elected every three years. No one, according to the provision of the schedule, can, during a double executive term have the appointment of more than two of the judges. Thus all the danger which would result from the operation of executive influence to facilitate personal or political objects will be done away. This view ought to induce the reformers in this body, who have taken ground against the accumulation of executive patronage, to support the principle of appointing the judges successively. There is a majority in this body which voted against executive patronage. If that majority be still here—if the sympathies of those who composed it, have not been taken captive by the strains of eloquence which we have heard on all sides—if they wished to see the system of reform as regards tenure, overturned by the power of appointing all the judges, being thrown into the hands of a single individual, let them adopt the proposition of the gentleman from Northampton, and all that we have done towards reducing the patronage of the executive, and to establish a limited tenure for the judiciary, will amount to

nothing. We shall then have introduced a principle to the prejudice of the best interests of the people.

This, sir, (continued Mr. W.) is the way in which I look at the matter. In any light in which my judgment is able to place it, I cannot bring myself to a perception of the advantages of the amendment proposed by the gentleman from Northampton, and, therefore, I cannot give my vote for it. But I am willing to make such modification in my proposition as I have suggested.

The gentleman from Northampton talked a great deal about persons, and he (Mr. W.) could not help believing that the great deal of feeling which the gentleman expressed on this subject must be traced to the great interest he felt on behalf of the judges whom he was much associated with in the private walks of life. This, however, was not a proper feeling to be admitted by individuals sitting here as representatives of the people. If he were the advocate of the propriety of continuing the whole bench for the full tenure of fifteen years, he might urge their claims as the gentleman had done, speak of their leaving their services, and their age, and of the cruelty of casting them out on the cold charities of the world, and go over all these matters which are calculated to provoke public sympathy in their favor. But he did not come here as the advocate of the court, but as a representative of the people of Pennsylvania. He could not ask himself if his course would be grateful to the feelings of the judges or not. He would not stop to inquire if he should receive their smiles or their frowns. He would ask what did the people require at his hands, and this was all he desired to know.

Mr. PORTER. Does the gentleman from Luzerne intend to say that I am here as the representative of the judiciary, and not of the people of Pennsylvania?

Mr. WOODWARD. No. I was saying nothing of the manner in which the gentleman from Northampton was elected. I was only speaking of my own position.

Mr. PORTER. The gentleman from Luzerne turned very significantly to me.

Mr. WOODWARD. I turned to the gentleman from Northampton, because I wished to convince him. I could acquit him of improper motives as freely as that gentleman acquitted me when I was so anxious about the judicial districts. I had only reference to my own position. In relation to the whole subject, I am acting here with the same solemnity as if we were all acting under the obligation of an oath. Why are we to suffer the weaker feelings of our nature to lead us into error? In what capacity do we sit here but as a grand inquest, and what report are we bound to make to the people who have sent us hither, but such as we think will promote their interests? Will there be any injustice done? Gentlemen seem to take that for granted—that injustice will be done. After all this display of feeling, after all this expenditure of sympathy, where will be the injustice of saying, that the five judges of the supreme court shall be re-appointable at particular periods? Will it be said that they have not been on the bench long enough? Look at the record. It will be seen they have been on the bench about as long as judges usually remain there. Because a judge happens to be poor, is that a sufficient

reason why he should be continued in the exercise of his judicial functions? If he is dying of the gout, or some other disease, owing to the indulgence which his salary has enabled him to practice, are we who represent the people, to be required to saddle the people with this dying and inefficient judge beyond the term of fifteen years? Until I am made to forget that I am the representative of the people, and to believe that I have become the representative of the judges, I will not consent to go for any such proposition. I sympathize as deeply as any one with a judge who is compelled to leave the bench in poverty, and with all who may have to suffer with him.

I knew an old soldier who had served his country above twenty years who was placed in congress, and devoted all the energies of his life to the public good, and who is now poor and friendless, who was a little while ago reduced to the necessity of selling his little farm, and leaving his home to go and join his son who is now seeking his fortune in the west.

No one had bowels of compassion for him. It was said that if he had served his country, he had received his pay. Who had said that this old gentleman who had served his country for twenty years, ought to be allowed to serve for fifteen years more? His services and situation might be the subject for an able argument, or furnish the theme for a funeral oration, but that is not the view which justice is required to take of the matter. We say that course of conduct is just in us which singly regards the best interests of the people. If these interests require that a judge should lay down his commission, every thing, in Heaven above or in the earth beneath, requires that he should lay down his commission. Every thing requires that he should lay down his commission, and then he would be turned out on the cold charities of the world. That would not be a question for the representatives of the people. It would be a question for the cognizance of the poor laws, but not for us. Stern, rigid justice requires that we should obtain the best administration of the affairs of the people. The softer feelings of our nature may plead for the dying man, but the duty we owe to our constituents, requires that we should discard those feelings, and sternly fulfilling our obligations, and discharging our responsibilities, endeavor to secure upright and able men, a living and an efficient judiciary.

When we go home to our constituents, and tell them, that let whatever may befall, although a judge may be deaf, or blind, or half an idiot, although he may not know how to put on his clothes right, he must still continue to be a judge; how shall we satisfy them that we have faithfully regarded their interests? When the people shall ask of us—"why is this?" What would the gentleman from Northampton say? "It was an act of humanity, because the judge was poor, and too old to support himself and his family." But the people will reply—"who sent you to be our almoner? Who gave you the authority to determine who had a right to be supported by our charity, and to spin out existence in indolence and luxurious ease at our expense? Is this the regard for our interests, this the kind of justice, which you boast so much about in your speeches to us?"

If the gentleman from Northampton had my constituents to deal with, he would find it a somewhat more difficult task than he seems to imagine, unless he could make a more satisfactory explanation to them.

Before taking his seat, Mr. W. said, he would beg leave to refer to a part of the argument of the gentleman from Northampton which he did not entirely comprehend.

The gentleman had said that the regulation of the local districts might be influenced by personal considerations. He did not know when the gentleman alluded to this subject, whether he had any reference to his (Mr. W's.) district, or to indicate a deduction that he (Mr. W.) was under the influence of improper prejudices. If so, (said Mr. W.) I desire to place myself *rectus in curia*. If, so, I will say that the judge in my district, is one of my earliest and best friends, of the same political creed, that we are now on terms of frank and free intercourse, and that there is no man who is a more honest and stern friend of the limited tenure. I will say yet more—this judge is not fit for the place he holds, and he has himself admitted this fact, owing to infirmities for which he is not to be held responsible.

Does the gentleman from Northampton, then, who has constantly iterated and reiterated expressions implying that the wish to change the tenure, originated with disappointed young lawyers, mean to include me in this charge? I have no undue prejudices against any person. The learned gentleman from Northampton, had this morning intimated that there were gentlemen here who had never stood in the presence of any but their own county court. I do not know if this was intended for me. I have argued before the supreme court, and they condescended to give me a favorable audience, and what I valued far more, a favorable judgment. I believe each judge, and all of the judges of the supreme court, to be well qualified both in head and in heart for their high stations. There is not a man of them, so long as they can perform the duties of the bench, that I wish to see removed. But, because of this, must I say that this principle which we have now introduced into our system shall go out to the people, in a form so odious as to induce the rejection of the limited tenure? This argument does not weigh with me. Having obtained the limited tenure, it is my desire to see it subjected to a free and fair trial. If, after such free and fair trial, it shall be found to work ill—if the result of the experiment should be a failure—then will I pledge myself, from that time thereafter, to be the advocate of the good behavior tenure.

Mr. FORWARD, of Allegheny, said, that he had been so fortunate as his friend from Luzerne, in hearing this subject discussed in the committee. But he desired to make a few remarks. Every vote must be given on some principle. As honest men—and it is fair to presume that we are all honest men—how are we to ascertain a rule by which we can go, so as to be responsible to our own consciences and our constituents for the course we may pursue here? I will look into this matter, and step by step, I will take it up.

What will be the effect on the judges now holding their offices for the term of good behavior of the adoption of these amendments? What will be the effect? This is a material inquiry for all those who are seeking light by which they may be guided. Will it not abrogate the commissions of the present judges? This will be the case. It seems to be the

conclusion unquestioned. I believe it will abrogate the commissions of all these judicial functionaries.

Then what follows? Shall we exercise jurisdiction over their fortunes, as it seems we are clothed with the power to do? Shall we, or shall we not, allow them to fall from the bench? That is the question. We have power over the commissions which they hold. Shall we exercise it, or shall we withhold its exercise? Shall we continue them in office, for it will be our act if they are to remain? It is not the fundamental law which is now in question, but it is a rule to apply to the judges at present sitting in our courts of justice. I repeat the inquiry—shall we exercise our power, or shall we refrain? Here, then, is our position: If we use the power which we possess, we shall be inexorable, unless we adopt one of two courses—either to make the tenure of office equally applicable to the whole of the judges, or to give one set a term of fifteen years, and to the other a term of ten. I maintain that no such course can be justified here. What, then, are we to do? It is said that the people want a change of the tenure. Well, will gentlemen go any further than this? Will they tell us the people require that the commissions of the judges shall be graduated, as the gentleman from Luzerne, (Mr. Woodward) has proposed, or according to any other scheme? Will he tell us that the people had this in view, and that we are now only carrying out their wishes by the adoption of this rule? There can be no conjecture about the matter. I do suppose the people wish a change—some alteration of the existing tenure—but nothing more. If any inference is to be drawn against this fact, it is that they desire the bench to be cleared, and new commissions issued at different periods, fixing the tenure of the judges, perhaps, at five, ten, or fifteen years. My belief, however, is that this is not what the people wish. As I have already said, the judges are in our power, and we may continue, or refuse to continue their commissions. We may extend them to five, ten, or fifteen years, or not, as we may think proper. I am in favor of granting commissions to the judges of the supreme court for fifteen years. We have provided that the judges of that tribunal shall hold their offices for that term. And, also, that the judges of the court of common pleas shall be commissioned for ten years, and those of the other courts for five.

What do gentlemen tell us? What are the persuasions they are continually making use of, in order to bring us into their views? Why, it is that the appointing power will be properly exercised—that if the judges are worthy men they will be re-appointed, and that there will be no danger of their being turned out of office, if they conduct themselves properly. If, then, it is admitted that these are worthy men, why not allow them to hold their commissions for fifteen years? If you continue their commissions, it is in substance, a re-appointment, for, without the action of the convention, their commissions would be at an end. It is said that the power would be in the governor, and he would appoint them. But, why should we not exercise the power as well as to hand it over to the governor? It may be as well and as judiciously exercised by us as by him. Gentlemen have assumed it as no objection to the re-appointment of a judge, that he shall have already held office for a shorter or longer period, provided he be a worthy and efficient man. They say

these men may and ought to be re-appointed. This is the position taken by those who are pressing upon us to support the graduated scale. Why not, then, re-appoint these judges at once. I am entirely at a loss to see how gentlemen can reconcile their consistency. I know not why they should say that these judges shall hold for fifteen years, and then, in the next breath, say three or four. Here is an organic rule laid down establishing the tenure of your supreme court judges, and now you are about to insert a provision in the constitution, in direct violation with your own principles. What reason can you give for this to the people? Ought not these men to be re-appointed? Oh! yes, say gentlemen, if worthy.

Why, you have cut down the tenure of office to fifteen, ten, and five years. What good and sound reason can be given for this? Who could answer? I am in favor of continuing one and all the judges for the term for which they may be appointed, or of letting them all go by the board at once. I contend that there is no other course to be pursued—no other way in which this can be settled consistent with the principles of common justice. What objection can be urged against it? The gentleman, (Mr. Woodward) speaks of the Pennsylvania principle. But, what is that principle? Why, it is the tenure of fifteen years—not the principle of the good behavior tenure. He argued that it was wrong to appoint judges for the term of good behavior. The gentleman said it was a wrong term. It was now ascertained by the date of their commissions that they ought to have received an appointment for fifteen years, that the commonwealth hitherto has been acting on an erroneous principle. And, what is the consequence? Why, the judges are to suffer for it.

If you were to meet one of these judges, and he were to ask you what reason you had for contemplating the insertion of the graduating principle in the constitution, in regard to the tenure of office, and you were to tell him. He might very properly ask—"Will you hold me responsible for what you deem to have been an error, committed by your predecessors, who formed the constitution of 1790? How were we to know, when we took office, that a convention would some years after meet and modify that tenure to fifteen years?" Gentlemen are holding forth an idea that a judge of the supreme court ought to have known that his commission would be abrogated by a new constitution. I maintain, on the contrary, that he ought not to have known, and could not know that his commission would be abrogated. Under these circumstances, then, why should he be made a sufferer? The commission of a judge appointed twenty years ago is now as sacred to him as when he received it; and, in his behalf the faith of the commonwealth has been as strongly pledged as in any other case whatsoever. With respect to the other judges, it has been proposed that they shall hold office for five or ten years less than those who preside on the bench of the supreme court. Now, this is a loss equally great to one set of judges, as to the other. No merit or demerit is to be taken into consideration. The dates of their commissions only are to be regarded. I think the scale which gentlemen propose to adopt in reference to the graduation of the commissions, is wholly devoid of principle, and pregnant with injustice. The Pennsylvania principle, to which reference has been made, is this: that the tenure

of the supreme judges shall be fifteen years, whether the judge held his commission before, or received it after the new constitution went into operation. There is no merit, on the contrary, in the dates of those commissions. All the judges are put on the same ground. The gentleman from Luzerne, (Mr. Woodward) in his proposition, has made the balance of time, which a judge's commission has to run, depend upon the fact of how long he had held it prior to the adoption of the new constitution—whether he was appointed ten years later or earlier. I confess that this scale of graduation is founded on no principle of justice, and is fraught with injustice and wrong, and it cannot be justified or regarded in any other light than as an exercise of arbitrary power. We assign a reason, which is not a reason. We imagine that which is not a fact. We charge them with a foreknowledge of what has now occurred, and of which they never could have dreamed. Do you think that the world will acquit us? Do you think that any man in his senses will acquit us?

Suppose the gentleman from Luzerne, (Mr. Woodward) had reversed his scale of graduation—made one which looked to the result of the repeal of the commissions of the judges at present on the bench, and he had seen that the consequence of it would be that the judges would have to return to social life, in very poor circumstances—be cast upon the world helpless and poverty-stricken, he would then have had some idea as to what would be the situation of the incumbents of the courts at the present period. But, I will reiterate what I have already said, that there is no justice in this graduated scale. Treat all your judges alike, or turn them out, or extend their commissions to the end of the term we have provided. Gentlemen talk of putting all those commissions into the hands of the governor. What do they mean? We hear, in one breath, that if the judges are meritorious and worthy, they will be re-appointed; that there is no danger to be apprehended that the governor will abuse the power given to him; and that, doubtless, if a judge behaves himself, he will be re-appointed at once. This is the argument, and yet gentlemen are afraid of trusting the governor with the appointment of three or four judges. Is he not to be trusted as well with the appointment of that number, as with but one? Why, is not the senate to participate in the power of appointment? Is this the language of gentlemen? Will they thus stigmatize the appointing power? I did not advocate that the senate should exercise the power of concurrence in the nominations of the executive, nor that it should sit with open doors. I believe that it will be found to be a school for scandal. The senate, however, it has been decided, shall become a part of the appointing power. I believe that if the nominations of the existing judges were brought before the senate tomorrow, or a year hence, they would be re-appointed. I will not vote for any scale of graduation—to give a preference to one over another—to extend favor to one as if he possessed more merit than the other. The power we are about to exercise is regulated by no rule—cannot be justified by any principle, and depends upon the exercise of mere will and discretion. Nothing else. These are my reasons why I shall vote for extending the whole term to all the judges alike, or for cutting them all off at once, rather than vote for a scale of graduation, which is based upon no principles, and which would be laughed at by all the world.

Mr. MERRILL, of Union, said it might be found no easy matter to get able and competent judges to go upon the bench for fifteen years only. Of a hundred who might be qualified in every respect to fill the office of judge, and assuming one-half as having other occupations, there would not, in all probability, be found more than fifty who would be willing to accept an appointment. With regard to the fifty who would be applicants, he had nothing to do with them. Their interests were a trifle as compared with those of the people of the commonwealth. It became the duty of the members of this convention to look to the general good, and to regard only the wants and wishes of the citizens of Pennsylvania. They could not disregard the voice of one million four hundred thousand people for the sake of a few individuals.

As to the question of who fills the office of judge, it sunk into nothing when the interests and welfare of hundreds of thousands were considered. He would admit that if we were overseers of the poor, and only desired to see that the poor laws were put in a fair, right, and judicious course of operation, our duty would be of a very different character. What, he would ask, was the interest of the people in this matter? Do the people require a change in the supreme court—a change because the judges were incompetent?—because they had held office too long?—because their decisions had not given satisfaction? Were these the grounds on which a change was to be advocated here? Had any one said that the popular voice demanded a change, because the administration of justice required that men should be turned out? No delegate had ventured to address such an argument to this body. On the contrary, had we not heard a most beautiful eulogium on the judges of the supreme court?

He would then ask again—what is the interest of the community? If these men were not above all exception, as they are said to be by some gentlemen, then we should have nothing to say in reference to the supreme court. Was it, he inquired, the interest of the people that the present judges should go out of office? What had they done by which the interests of the community had suffered? Nothing. What were they likely to do? No man had ventured to say: nor had any one pointed to any of their decisions as not being sound, legal, and proper. Well, then, if their conduct had been unexceptionable, and such, in every respect as it ought to have been, why should they be turned out? He would be glad to know which of the fifty would do their duty better? Had we any assurance that they would acquit themselves even as well as the present judges have done? He had always supposed it indispensable that a man who should fill the office of judge on the supreme court bench should be an experienced, able, and well-read lawyer—for it required long training to enable a man's mind to see accurately and come to correct conclusions. They who were now on the bench had had experience and administered the law to the satisfaction of the people. He would ask if there was any probability that, by having a new set of judges the law would be better administered than it was at present? If the answer was in the affirmative, then we had nothing to fear in regard to the people. But, on the other hand, if the community were satisfied with their judges, danger was to be apprehended of injuring them by making a change. Had gentlemen come to this convention to try projects—to make experiments?—to run risks? In his opinion, we had no

probability of getting a better bench than we now had, and yet we had been told by a delegate here that the people imperatively require a change of men as well as tenure. Now, if the gentleman would show that the people had suffered injustice—that the judges were corrupt—that they had given wrong decisions, or that the law was not properly administered, then he (Mr. Merrill) would be able to see how the interests of the people were to be protected by the proposed change of judges. But when, on the contrary, we heard quite a different statement from every part of the hall,—how, he desired to know, were the interests of the people to be promoted by such a change?

With respect to the proposed classification, he would say that if there was to be any, the better course to adopt would be to let those who had been longest in office remain. Indeed, he thought the whole argument in favor of a classification untenable, and the plan proposed had neither reason nor justice to recommend it. Gentlemen had argued that there would be too many judges to be re-appointed at the end of fifteen years, if all these were to come before the governor. Did gentlemen really suppose that all these men would be applicants at that period? Surely gentlemen had not considered the subject with sufficient attention, or they would not have entertained the views which they seemed to do. He had been no advocate for giving the senate a participation in the power of appointment. It was true that the governor and senate might make some very good appointments in one instance, whilst they would make some very bad ones in another. He must say that he was greatly astonished to hear a gentleman remark that a new governor might be influenced, on just taking office, by those of his own party who would flock to the seat of government for the purpose of obtaining appointments. This and other arguments of that character, had been met and fully rebutted when the tenure of office of the governor was the subject of discussion. He did not doubt that the governor would be a high-minded and honorable man, and above the reach of influence of this sort. Then why not let him make the appointments himself. He wholly disapproved of the proposed introduction of the graduation principle in reference to the tenure of the present judges of the supreme court. He thought it would create much bickering and unpleasant feeling among them, and that no necessity existed for the distinction. Some time ago he had taken occasion to refer to what had been done by the convention, and to say that there were members of a great party of Pennsylvania called "destructives," who, by their action in this convention, seemed to have lost sight of the interests of the people, and that it would have the effect of destroying all that had been done which was worthy of preservation. He had said, also, that he could not believe it was their intention to commit suicide. He, however, now regretted to say that owing to the sincerity displayed by gentlemen, and the manner in which they had pressed their amendments, he felt himself compelled to relinquish that doubt. He thought it strange that they should bring forward so many amendments, unless their object was to defeat all amendments of the constitution, as there were thousands in favor of making certain amendments who would not go to the extent of supporting so great a number as had been introduced.

He maintained that no amendment should be adopted affecting the

present incumbents in office, and that gentlemen of the reform party would find themselves mistaken, if they imagined that all the amendments would be voted for, and approved by the people. Great difference of opinion would be found to exist amongst the people in reference to many important questions that had been decided by this convention, as to bank charters, the militia, the insertion of the word "white," and other amendments. The impression on his mind was, that owing to the great number of amendments which had been made, they would all be voted down. Gentlemen here seemed to think there was something so excellent in their amendments, that the people will adopt them without reference to those which are considered exceptionable. I might suit the gentleman from Bucks, (Mr. M'Dowell) to have his party disorganized; but how would it suit the party themselves? They could best answer that question. After considerable doubt, he confessed that he had come to the conclusion to vote for the longest terms, as being the only course left him to adopt. The objections he entertained did not rest altogether on constitutional grounds, for he knew that the constitution provides that the people may alter or abolish it when they please. Under this knowledge the judges accepted their offices. The framers of the constitution knew the people of Pennsylvania to be steady, sober, and sagacious, and they did not entertain an idea that the fundamental law of the commonwealth would be changed in their day. It had been intimated in the course of this debate that the judges had easy duties to perform. This was not the fact, as every lawyer could testify. They had very laborious duties to discharge; and he could speak particularly in reference to the judge in his own county, as an instance. It was well known that the judges do not make so much money as counsel. And, many a man has accepted office, and afterwards been extremely sorry for having done so. Gentlemen might think that the judges were amply provided for, but they were much mistaken. These officers dreaded quarter day, as it not unfrequently found them unprepared to meet the demand made upon their pockets. He knew that for some time past, a great outcry had been raised about high salaries; but he put no faith in the sincerity of those who raised this cry. It was entirely without foundation. He would ask gentlemen to make a calculation of the necessary expenses of a judge, and see if he could have any thing to spare.

Mr. M. concluded with adverting to the difficulty which an unpright, high-minded and conscientious man would always find in the way of his nomination for the office, in consequence of the number of persons of a different character who would be his rivals, and the means which would be used to defeat him. The inquiry will be constantly made as to every judge in office, whether he has been a good party man, and his re-nomination will be influenced by mere political considerations, more than any question concerning his talents or fitness for his judicial station. He believed that there would be great difficulty in filling the bench with competent individuals, and the fewer appointments that may be required the better.

Mr. DENLOR, of Franklin, moved that the convention do now adjourn, but the question was decided in the negative;—ayes 48, noes 53.

Mr. DENLOR then addressed the Chair. Those who were about to be passed upon, he said, should at the least have the privilege to be heard.

If a man were arraigned at the bar for a crime, he would be entitled to a hearing. An impatience seemed to be springing up in this body to prevent a fair hearing. He was against the motion to re-consider, and also against the amendment. He had a modification which he would wish to offer. He did not know whether it had ever struck gentlemen that the judges might resign, and get re-commissioned. If they are disposed to resign before the expiration of their term, for the purpose of being re-appointed, this amendment will give such persons the opportunity to do so. That any judge of the supreme court would do so, he did not mean to say, but we are holding out here the idea that a judge may resign in order to receive a new commission. One single judge may do so, and this would give the governor power over the bench.

Mr. WOODWARD interrupted. He did not contemplate a course which would be so highly discreditable, and the amendment did not provide against such a contingency.

Mr. DUNLOP resumed. He presumed the objection had struck the gentleman from Luzerne. But he would ask the gentleman if such a thing may not be. He would ask if there was any intention to give the governor this influence over the bench. It is an evil against which we ought to guard by every possible means. To confer this power would be to hold out a premium for the destruction of the bench. This objection, he was aware, would not weigh much with those who had made up their minds, right or wrong, to vote for the amendment. But with others who yet remain in doubt, it might have some weight. Look at the list of judges, and it will be manifest that you are about to commit the grossest injustice. Judges Rogers and Histon were both appointed in 1826. On what ground can a different measure of treatment to one of these judges, from that dealt to the other, be justified? Where will be the justice of giving to one of them a tenure of three years, and to the other a tenure of six years? The injustice of such a distinction must be manifest. How can we answer when we are asked why we give to one a three years tenure, and to the other six? In every respect this feature of injustice in the amendment ought to weigh as an objection. The gentleman from Luzerne undertakes to say that the people desire the irresponsibility of the judges to be taken away. I am a friend of the judiciary—the friend of an independent judiciary, who can act without any improper control, but I deny that there should be irresponsibility on the part of that body. I know no gentleman who looks with a searching eye into the construction of governments, who desires the irresponsibility of the judiciary. Are they not responsible now? Is not the judge in Luzerne, alluded to by the gentleman from that county, responsible; and, if incapable, cannot an application be made to the legislature, and the judge will then be discharged from office, without any imputation of fault or crime? On the address of two-thirds of the legislature the governor may remove the judge without censure. Is he not then responsible? But the gentleman from Luzerne says this is not responsibility. Is he not responsible to the governor? Is not the governor always the representative of the popular voice. The gentleman considers the governor responsible to the people. I would wish to know from the gentleman whether responsibility to Mr. Ritner, is not responsibility to the people? The gentlemen may tell me that Mr. Ritner is a mi-

nority governor, yet you may make the judge responsible to the people by making him responsible to the governor. Does the gentleman from Luzerne believe that the governor always makes those appointments which are the most agreeable to the people? I know the gentleman does not believe so. No governor does this. We know that judges have been appointed, who could not have been appointed to office by a vote of the people.

Here Mr. DUNLOP yielded the floor, and

Mr. DORAN moved that the convention now adjourn.

The question being taken, there appeared—ayes 42, noes 45.

So the motion was decided in the affirmative; and,

The convention adjourned.

TUESDAY, FEBRUARY 20, 1838.

A motion was made by Mr. FRY, and read as follows, viz:

Resolved. That so much of the Debates only as have been delivered in committee of the whole, be prepared by the stenographer for publication, and that the preparing and printing of those delivered subsequently be dispensed with.

A motion was made by Mr. FRY,

That the convention proceed to the second reading and consideration of the said resolution.

And on the question

Will the convention agree to the motion?

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

YEAS.—Messrs. Ayres, Banks, Barradour, Brown, of Northampton, Clark, of Dauphin, Cox, Crain, Dickerson, Dillinger, Donagan, Dunlop Fry, Garhart, Grenell, Harris, Hays, Henderson, of Dauphin, Ingersoll, Jenks, Kennedy, Krets, M'Cahen, M'Cherry, Meikel, Montgomery, Nevin, Overfield, Read, Sellers, Seltzer, Serrill, Smyth, of Centre, Weaver, Young, Sergeant—35.

NAYS.—Messrs. Agnew, Barclay, Barnitz, Bedford, Bell, Biddle, Bigelow, Bonham, Chambers, Candler, of Chester, Clauncey, Clapp, Clarke, of Indiana, Cline, Coates, Cochran, Cope, Crawford, Cummin, Cunningham, Curl, Darlington, Darrah, Denny, Dickey, Donnell, Earle, Ferrelly, Fleming, Forward, Faulkner, Fuller, Gamble, Gilmore, Hasings, Hayhurst, High, Hopkinson, Houpt, Hyde, Keim, Knigmacher, Long, Maclay, Magie, Martin, M'Dowell, Meredith, Merrill, Miller, Myers, Lennyacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Ritter, Russell, Saeger, Scott, Shellito, Smith, of Columbia, Snively, Sterigere, Stevens, Stückel, Taggart, Thomas, Todd, White, Woodward—71.

So the question was determined in the negative.

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 Samuel Shoch, for the sum of two thousand five hundred dollars, to be by him accounted for in the settlement of his accounts.

And on motion,

The said resolution was read the second time, considered and adopted.

Mr. COPE, from the committee on accounts, made the following report, viz:

The committee on accounts have settled the salaries of the secretary, assistant secretaries and sergeant-at-arms of this convention, as follows, viz:

Samuel Shoch, secretary, 90 days, at \$3 per day,	\$720 00
Mileage, 106 miles, at fifteen cents per mile,	15 90
	<hr/> \$735 90
George L. Fauss, assistant secretary, 90 days at \$7 per day,	630 00
Mileage, 106 miles, at fifteen cents per mile,	16 20
	<hr/> 646 20
Joseph Williams, assistant secretary, 90 days, at \$7 per day,	630 00
Mileage, 15 miles, at fifteen cents per mile,	2 25
	<hr/> 632 25
James E. Mitchel, sergeant-at arms, 90 days, at \$3 per day,	270 00
Mileage, 306 miles, at fifteen cents per mile,	45 90
	<hr/> \$315 90

Resolved, That the President draw his warrant on the State Treasurer, in favor of the above named persons, for the sums set opposite to their respective names.

And on motion,

The said resolution was read the second time,

And being under consideration,

A motion was made by Mr. MEREDITH,

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

“To Daniel Eckles, late doorkeeper, and T. J. Beckett, doorkeeper, the sum of fifty dollars each as extra compensation.”

A motion was made by Mr. FORWARD,

To amend the amendment by adding thereto the words “and to James E. Mitchell, sergeant-at-arms, the sum of fifty dollars.”

The said amendment to the amendment being under consideration, Mr. SERRIGERE, of Montgomery, demanded 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. MEREDITH and Mr. HIRSTER, and are as follow, viz:

YEAS—Messrs. Barclay, Barn-dollar, Bigelow, Bonham, Brown, of Northampton, Chandler, of Chester, Clarke, of Beaver, Cline, Coates, Crain, Crawford, Crum, Curl, Darlington, Darrab, Dickerson, Dillinger, Dunlop, Earle, Foulkrod, Fry, Fuller, Gearhart,

Gilmore, Grenell, Harris, Hastings, Hayhurst, Hiester, High, Hyde, Kennedy, Kress, Magee, M'Chen, M'Sherry, Merkel, Miller, Montgomery, Myers, Nevin, Reigart, Rea, Ritter, Russell, Seager, Scheetz, Sellers, Feltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sniely, Sterigere, Stickel, Thomas, Weaver, Woodward—58.

YAYS—Messrs. Agnew, Ayres Baldwin, Banks, Barnitz, Bedford, Bell, Biddle, Brown, of Lancaster, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cochran, Cope, Cox, Cummin, Cunningham, Denny, Dickey, Donagan, Donnell, Doran, Fleming, Foward, Hays, Henderson of Dauphin, Hopkinson, Houpt, Ingalls, Jenks, Konigsmacher, Long, Lyons, Maclay, Martin, M'Dowell, Meredith, Merrill, Overfield, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Royer, Scott, Serrill, Stevens, Taggart, Todd, White, Young, Sergeant, *President*—58.

So the question was determined in the negative.

Mr. HIESTER, of Lancaster, moved to recommit the report with the amendments, to the committee of accounts, and asked for the yeas and nays.

After a few words from **MESSRS. MEREDITH, STERIGERE, HAYHURST, HIESTER, STEVENS, and BROWN**, of Philadelphia county,

Mr. HIESTER withdrew his motion.

The **PRESIDENT** then announced that the hour for the consideration of motions and resolutions had expired.

The convention then resumed the consideration of the motion to reconsider the vote of the 17th instant, on agreeing to the sixth section of the report of the committee appointed to prepare and report a schedule to the amended constitution.

Mr. DUNLOP, of Franklin, said that he had but very few remarks to offer, and to which he begged to ask the attention of the convention. He thought when gentlemen here disapproved of what was about to be done by the body, they owed it to themselves and their constituents to express their sentiments of disappointment at the course which was taken, before they allowed the vote on the question to be recorded. He did not believe that anything he or others might say would have the effect of changing a single vote, nor did he conceive that the principle involved could be altered, and to which gentlemen seem to attach so much importance. He hoped that delegates would examine the details of the question, and desist from the call for "change."

When concluding his remarks, last evening, he spoke of the injustice of the amendment of the gentleman from Luzerne, (Mr. Woodward) and referred to the case of Judge Rogers and Huston of the supreme court, who were appointed under the same law.

He was in the senate at the time the bill to authorize the appointment of two additional judges to the circuit court was passed, and he voted for it. The secretary of the commonwealth happened to date Judge Rogers' commission the fifteenth of April and Judge Huston's the seventeenth, and, although in fact they were both appointed at the same time, there was but two days difference in the date of their appointments, yet now it was gravely proposed to make a difference of years as to the period for which they shall henceforth serve. He trusted that they would be put on the same footing, and not as contemplated the one to hold office for four years only, and the other for seven. And, who are they? The one who was to have the longest term was the oldest man, and was afflicted with chronic gout. Yes, that gentleman who was the eldest, and the most

inefficient of the two was to be commissioned for the longest term! Judge Rogers, who was a learned and able man, and made a most excellent *nisi prius* judge was actually to be driven from the bench three years before his associate because his commission happened to be dated two days earlier!

What, he asked, would gentlemen have said, supposing that these judges had been commissioned on the same day, as was intended, they being both created judges at the same time? Judge Rogers, however, it seemed was to go out first? The only reason which that gentleman could assign hereafter if he should be asked the reason why he had been discharged from the bench, would be that his commission was dated two days prior to Judge Huston's. Thus, was the difference of eight and forty hours, the cause of losing the services of one of the most efficient judges on the bench. But we were told that some principle must be adopted. Then why not adopt the principle of putting all the judges on the same footing. When it was conceded that they were both appointed at the same time, and took their seats on the same day, why should the convention make the distinction that was proposed to be made between them? It certainly was great injustice to treat Judge Rogers in this manner. Having committed no fault, why should he be ousted? Neither reason nor justice had been, nor could not be, alleged why he ought to quit the bench before Judge Huston.

But we had been told that a principle was established by the convention, by which the judges are to hold their offices for fifteen years. And thus, we were apprised by the gentleman from Luzerne, (Mr. Woodward) was a Pennsylvania principle—that it deserved that name because it had been established by this body, and had not the approbation of a large majority of it.

Now, he (Mr. Dunlop) must beg leave to join issue with the gentleman on this point: before it could be called a "Pennsylvania principle," it must have met the sanction and approval of the people of the commonwealth. No man, he conceived, was prepared to assert that it would meet their approbation. He might give his opinion that it would, but further no one could go. He believed this principle did not meet the approbation of a single delegate who voted for it. Yes, he would undertake to say, that such was the fact. But some gentlemen would probably adhere to it now. Those who voted for it did so because they could get nothing better, and from an apprehension lest the judges might be turned out at once. Many who wanted a shorter term also voted for it, as the best they could attain. He entertained not the slightest doubt that if each member were asked his sincere opinion on the subject, there would be found to be a majority of the convention against the principle. Every gentleman, he believed, would admit this to be true.

The delegate from Luzerne had thrown out some remarks in reference to old and infirm judges, which bore a remarkable resemblance to a speech that was made on the trial of Burr. The gentleman might have forgotten the incident. However, he (Mr. Dunlop) would freely and candidly declare that the gentleman's argument did not strike him as at all tenable. The convention had been told that inasmuch as they decided that the judges should go out of office at the end of fifteen years, it was but right and proper they should adopt some scale of graduation, as they would otherwise

all go out at the same time. Now, that was a mere assumption. He would venture to express his belief—for it was highly probable—that at the end of fifteen years, one half of the members of this convention would be in their graves. And was it not, he asked, as likely that death might be as busy amongst the judges, some of whom were fifty-five or sixty years of age? It was not to be supposed that all the judges of the supreme court would live out the term of fifteen years. This would appear reasonable enough when we come to reflect on what were the habits of those gentlemen, and the labors they have to endure. They had to sit ten months in the year, and were absent from their families five or six months, and consequently deprived of that domestic happiness which men in most other stations of life were enjoying.

Now, those men, who had served the commonwealth faithfully—against whom there was not one breath of suspicion—not one single charge whispered against them as judges, yet they were to be turned out—for what? Why, because they might all live for the next fifteen years. That was the argument—that was the doctrine.

When we looked at the casualties that had already attended the judges of the supreme court, it was hardly to be expected that all the present incumbents would be on the bench so long. Judges Smith, Todd and Ross had all died within the last fifteen years. If two or three should resign, or be removed, what difference would it make? Or, even if two or three judges should be appointed by the next governor—what then? Because, forsooth, it was possible that the existing judges might live for fifteen years, and none of them resign, therefore we were to inflict manifest injustice on them!

He could not conceive how it was that gentlemen had come to the conclusion they had done; nor, could he see how those who had come from counties that had given large majorities in favor of reform, could follow the course marked out by the delegate from Luzerne. But, there were men not very steadfast or firm in their purposes. For instance there was the gentleman from Juniata. (Mr. Cummin) who represented three counties, which gave a majority against any change whatever. The gentleman stated at Harrisburg that not a hair of the heads of the judges should be touched—that it was necessary to preserve the judiciary, and certainly the gentleman knew not a man in Juniata, Union and Mifflin counties, who desired such a thing, or wished for a change. He (Mr. D.) was sure that it had never entered into the mind of any man in either of those counties that a graduation principle should be adopted.

Now, if the gentleman would follow the dictates of his constituents, as expressed through the ballot boxes, and of his own feelings as expressed at Harrisburg, he would give his vote to sustain the supreme court. He would undertake to say that neither of the respectable delegates from the county of Cumberland, any more than he (Mr. D.) had in respect to his own county, ever heard of a man in their county who wished Judge Rogers to remain in office but four years, while Judge Huston was to be in for seven; or, that Rogers ought to be discharged at the expiration of seven years; Huston at ten; Kennedy at fifteen; and Sergeant at seventeen. He felt quite sure there was not a man in Cumberland county who dreamed of such a thing. The people of that county were decidedly in favor of not disturbing the judges.

The president judge of the ninth district was very popular. Indeed, he possessed the favorable opinion of almost every man where he resided; and the counties composing that district would regard it as a most deplorable event that their delegate should have given a vote which was contrary to their wishes and interests.

What influence could it be that influenced men to act so strangely and inconsistently? It, perhaps, did not become him to pry into the feelings of any man's heart, or the motives by which he might be actuated; but it was not a little remarkable that a gentleman should lend himself to do that which he knew to be in direct opposition to the will of his constituents.

Gentlemen here would bear him out in his statement when he asserted that Judge Reed was popular in the county of Cumberland; and if he depended upon the popular voice for his office, there could be no doubt that he would receive nearly the whole vote of the county! And yet, in the teeth of this favorable evidence of the light in which he was regarded, gentlemen were willing to vote that he should be turned out. He (Mr. Dunlop) was really quite at a loss to discover what had brought about this extraordinary state of things. Who, he desired to know, were these judges? What sort of men were they? Why, so far as respected their private characters they were unexceptionable. And, so far, also, as related to their official duties, not a single imputation had been alleged against them.

The gentleman from Bucks, (Mr. M'Dowell) desired to know what fault the judges had been guilty of. Here was the chief justice of the commonwealth, an able and talented man, who was once the leader of a certain party, the fruits of whose operations we were now enjoying. That gentleman came on the bench when he figured as a leader of the democratic party. Then was the time when men were governed by principle. If a man were asked, in those days, what he was contending for? he would answer that he was struggling for certain principles. The present chief justice was a member of that legislature which first raised their voices against the Bank of the United States—that darling measure of the people—a measure so dear to a great portion of the people of this commonwealth.

The advocate of the bank was then the same gentleman who now fills so conspicuous a position in this country and in Europe—who, placid and unmoved, sits in a certain large building, with eye as calm and bright as a summer's morning. He it was who opened the debate on this subject, when Chief Justice Gibson was in the legislature. The man who opened the democratic doctrine was Chief Justice Gibson. He permitted his name to be placed at the head of the Jackson electoral ticket, and this is now his reward. Without a single imputation on his character, always true to his party, now that this party has dwindled down to local focism, this is the reward he is to receive for all his servility. I am not surprised (said Mr. D.) that this should come from the new set—the loco focus—but that gentlemen who have grown gray in the party—the gentleman from Juniata and the gentleman over the way—I am astonished that they should permit themselves to be thus led by the nose by young members of the new democracy, and after squeezing out the juice from these old friends, as Frederick the great did with his officers, threw away the

skin, as no longer of any value. This is gross ingratitude, but it is nothing to me. When, by and by, it shall be cast up to them that they have been guilty of this abandonment, they will have nothing to say in excuse but that they were led away by the aspiring young democrat from Luzerne.

[E.] We are to have Judge Huston turned out. He was once a federalist, but he saw a time when he could change his principles, and he came out with a certificate in favor of William Findley, for honesty, to support him when he was opposed by the party which favored Hiester. If such men as ought to be in that station, were the leaders in this convention, these things would not be permitted. Judge Sergeant too is to be cut off irreproachable as he is. He was once the leader of the democratic party, when there were democrats. He was secretary of the commonwealth to William Findley and aided in the arduous struggle of that period. He continued to assert and advocate the same principles still, and there are democrats here who hold his opinions, and think him one of the best of men. Yet they are ready to abandon him, because the gentleman from Luzerne wishes to carry out his principle. I mean, sir, over democracy. It has fallen to become a jest and a by-word among nations. So completely have the democrats abandoned all their original principles, that most of those who were true democrats have joined those who formerly warred against the party. What an eloquent commentary have we to-day on the fidelity of the party? Does it not carry out the principle long ago asserted that republics are ungrateful? Men who are inflicting this evil on the state will do well to look to themselves. I remember a gentleman, now a judge, at the head of the sixth judicial district, with a face of brass, laying down the principle that the judges should be elected for a single year, knocking about like a new laid egg. I have said I hoped he would suffer himself, now that he is in the sixth judicial district. I hope he will now reap his reward. I hope all such political judges will be swept from the bench by the besom of destruction, as the pests of society. It is rapidly coming to this when town meetings will regulate the cause of justice. Perhaps it may not be in this generation, but the day will come when our institutions will be overturned by this spirit of ultra-democracy. There is great danger from too much laxity of government. Where is to be the stopping place? We all know that there must be governments.

I would not be the author of the report made by the gentleman from Luzerne: I would not be the author of the cold blooded doctrines avowed in that report for all that fortune or honor could bestow upon me. I could not be the author of a report which goes to drive valuable, old and faithful servants from the bench for all the honors of the world.

But, the gentleman says, these judges have been a long time on the bench. What if they have? Is not a long life of ability a voucher which ought to have weight in their favor? They have proved that they possess ample qualifications for the bench. Where would you go to find judges? Is it better, is it wiser, to take untried men? They have grown gray at their posts, and have distinguished themselves by their learning and talents. There is little chance of obtaining their equals after turning out such men. Where will you seek for competent judges if not among those who have thus faithfully and satisfactorily discharged their duties.

The gentleman from Luzerne says he would wish to see the judges re-appointed, and gives this as a proof that he wishes them to remain on the bench. But the gentleman knows Governor Ritner would not re-appoint them, and that he feels confident that Ritner will be re-elected, may be gathered from the fact that he has placed the first vacancy beyond the next three years. He was glad to see a leader of such talent pursuing this course. He will not trust Ritner—and when he talks of Pennsylvania principles he knew it is Ritner principle which prevents all these judges being driven from the bench. Should a difference of circumstances have rendered it expedient, we should have heard a different shout, a cry that the sanctuary of justice must not be violated.

The gentleman from Luzerne expects to trust the next four or five governors with the filling up of these judicial offices, and he believes they will all be honest. But he will not trust Ritner, and he puts the first vacancy beyond the next gubernatorial term, because he believes the present governor will be re-elected. He would not trust Wolf. I know the gentleman would not trust Wolf further than he could see him. Once, he would have trusted him. Would he trust Hiester or Shuliz. He would have trusted Shuliz till he became an Adams man. He would, therefore, have only trusted two of these governors for half their term, yet he is willing to give all the appointments of the supreme court to the next five governors. Does he try to blind us by supposing the judges will all live out their fifteen years. The gentleman does not think so. I have too much faith in his sagacity to think he believes the judges will all live fifteen years. He entertains no such idea. He knows the history of human life too well.

There is one argument, and but one, from the gentleman from Bucks, (Mr. M'Dowell) which I will now examine. That gentleman mistakes the argument of the gentleman from Northampton, (Mr. Porter) as to the stability of the court. It was not the design of that gentleman to assert that new judges should not come on the bench, because new judges would be like to follow old decisions, but his meaning was that he would not have judges who would be always looking to the governor for their appointment, because the tenure being limited, this graduation of the tenure throws the patronage into the hands of every governor.

Suppose the governor to be plaintiff or defendant in a pending suit—or that some one of those great officers on the hill—not great in bulk but in importance:—some one of the governors brothers, nephews, nieces, friends or partisans, to be plaintiff in a case and that the question hangs on the decision of a judge who is about to be removed or re-appointed. What man would desire to place a judge in that situation? You may talk about judges being honest, and above the reach of corruption, but what man is there who may not be swayed by considerations of personal interest? Look at the course of political bodies. Look at the discussion of the Missouri question, when the votes were split by the Potomac river. The strongest, the ablest, the most honest men are led and biassed by the slightest circumstances, and who is there that would wish to be in the hands of the governor, rather than in those of the judiciary. I will not repeat cases, but I will say that I feel for the man whose destiny hangs on the fiat of a judge who is looking to the governor for his re-appointment. If a judge knows that he and his family are dependent on the will of the

governor, what chance is there that his decisions will be independent? If he feels that in case of a decision against one party he and his family are likely to be turned out on the cold charities of the world, will not his course be influenced by this knowledge? I hope I may never be concerned in any suit under such circumstances. I hope, further, that every man who gives his vote in favor of placing a judge in such a situation of dependence, exposed to such dangerous temptations, will be doomed to feel the effects of his vote.

Mr. MEREDITH, of Philadelphia, said, he could but admire the inflexible spirit exhibited by the gentlemen from Luzerne, when he made his appeal to the convention.

If this movement was intended for the purpose of getting rid of any particular judge, he asked why the object could not be effected by simply turning out the judge, dismissing him from office, without as much noise being made about it, as if the existence of the world depended upon it? He would remind gentlemen when this matter began to be agitated. It originated in the amendment of the gentleman from Northampton, (Mr. Porter) the other day, by which it was provided, that all the present judges of the supreme court should hold their offices to the end of fifteen years, from the adoption of the amendments.

Was there any thing in that provision to justify the excitement which had been exhibited? Yet, after that vote was taken, it was thrown out that, if that provision was to stand, the system of limited tenure could not stand. After the adoption of this proposition, we accordingly find, that the first business on Monday was to move the reconsideration of that vote.

If this inflexible principle, which is now advocated by the gentleman from Luzerne, is to be engrafted into our constitution, why, when it was under consideration, was it not applied to the court of common pleas? Then, it seems, gentlemen did not choose to permit the action of the convention to be known, as to the courts of common pleas, because, the occasion for this display of inflexibility would have been lost.

It had been asked, on one side, why we should wish to discard faithful servants, who were still fit to serve the people? On the other side, the inquiry has been put, why there should be any feeling of sympathy entertained for these faithful servants? why we, who sit here, as representatives of the people, and to promote their interests, are to yield to the weakest feelings of our nature?

I throw out of view all personal considerations of every kind. I will ask no man to vote on his sympathies, and I hope no one will vote from feelings of another kind. I hope there will be no action from sympathy on one side; I remonstrate against any from prejudice on the other. In reference to the courts of common pleas—however gentlemen may believe themselves to be free from prejudices—it is a fact that, in reference to these courts, there are many considerations of a personal character which come into operation, because some of the judges are not agreeable to gentlemen.

What was the reason for this new plan of rotation? You have adopted the new tenure for the judiciary. How is it to be carried out? You appoint a new set, whose term is for fifteen years. It is admitted that in so doing you are violating a principle, by adopting a course which was so

unacceptable to the convention, when moved by the gentleman from Beaver (Mr. Dickey) that it could only command seven votes. As to the supreme judges, it is not pretended that there should be a change of individuals. Yet, how otherwise can the principle of the new tenure be introduced? If you turn out all the judges at once, you at once have the new tenure in full operation.

But the gentleman who advocates the minority report, is not content with this, and has introduced a graduation. He will neither turn out the judges at once, nor take them for the term prescribed by the new tenure. He proposes to start with a new principle, by giving graduated terms from three years up to fifteen years.

The reasons for this course appear to be extraordinary. The pretext assigned for the adoption of this course, which is not the principle of the fifteen years tenure, is extraordinary. The conclusion seems to have been reached by some extraordinary calculation, that fifteen years is the precise term to which the present terms should be extended. He could not see the force of the arguments on which this idea was advocated. He recollected but few of the reasons which had been suggested, why the fifteen year principle should be abandoned, the moment you cease to put it in operation, and the graduation introduced as a substitute for it.

The Pennsylvania principle has been, that vacancies by resignation, by death, or from other causes, shall be filled as they occur. This has been the practice in this state, whenever a vacancy has happened. It is therefore called the Pennsylvania principle; and now we are called on to carry out this new tenure in a way which would violate that principle, by arranging the vacancies in advance, so that there shall be a certainty of one vacancy on the supreme bench, in every governor's term.

He admitted, that if we could abolish for the future all vacancies from unexpected deaths, and thus rectify the course of Providence, we might avoid much of the inconvenience to which we have heretofore been subjected. But, when we know that many of these casualties are produced by God, and not by us, who among us will undertake to rectify the course of events, and in the pride and arrogance of the moment to say, we abolish in future all deaths on the bench, the hand of Death shall be stayed when it approaches the bench, and we, a convention of the people, having unlimited powers, undertake to say we will have a single vacancy in every three years? If we can do this, there are doubtless some who would think it a very good amendment to the course of Providence—to that higher code under which we live, and have to live.

But, it is urged, that there are now judges who have been on the supreme bench more than ten years, and they may all live to the end of the term of fifteen years; that, in fact, the course of Providence might be stayed for these incumbents, and that those who are now from fifty to sixty years of age, may remain fifteen years longer. When gentlemen introduced arguments so opposed to all the moral and physical condition and character of the world, they could have no weight on his mind, and it presented itself as something extraordinary to him, that gentlemen were about to vote to make deaths on the bench, because, otherwise, the judges would all be found living and in their seats on the bench, at the end of fifteen years.

If Pennsylvania had hitherto trusted these matters in the hands of Providence, what had now led her to mistrust that Providence? Why is it desired that we should take the regulation of human life into our own hands? When Pennsylvania had formerly tried the limited tenure of seven years, there was no introduction of it by a graduation of the terms of those who were in office. Yet this would have been done, if it had been regarded as a Pennsylvania principle. And we are called on here to take this unheard of course, for no better reason than simply to avoid the occurrence of a case which cannot happen without the special interference of Providence.

Another reason assigned for this graduation was, that it would be dangerous to the law of the land, to make the change at the time proposed all at once, therefore we must begin to make it now. This argument came from a quarter which, in the same breath, held out the doctrine, that no present judge would be turned out, if worthy, because he would be re-appointed at the expiration of his term. With what grace, then, could we be told of the danger which would result from changing all at once? If the present judges held on fifteen years, or are re-appointed, where is the harm? He called on gentlemen to carry out, or abandon, their principle.

This body had been asked, and in fact had, adopted it on the ground of making the judges more immediately responsible to the people. If they had performed their duties to the people justly and impartially, they would in all probability be re-appointed.

He would ask those who considered it to be mere responsibility, how they could reconcile that plea with the principle here set up, that the proposition should be made to affect all the judges? It was not his intention to recur to what had been done, and find fault with it, but he wished to see it carried into operation.

He would maintain, that it was not for those gentlemen who had contended for, and held up the idea that the judiciary ought to be independent, and had discarded the assumption that good judges would be turned out of office, if they gave satisfaction to the people, to tell this convention, in the very next breath, that it would never do to submit the whole judicial tribunal, at once, to the action of the people! This, certainly, was not a very consistent argument.

There was something extremely abhorrent to the minds of gentlemen, at the bare idea that all the judges might be got rid of at the same time; at the mere possibility of this happening fifteen years hence, they would either abolish the whole tenure, or say that they shall hold for different short periods—four, five, seven, or ten years.

He considered it as entirely useless and inapplicable, to bring forward arguments based upon what had happened, to guide us in our future action. It was scarcely probable that there would be found on the bench, at the end of fifteen years, more than one or two of the present incumbents. So much for the second ground of argument which had been taken here, and now he would proceed to say a few words in regard to the third.

It certainly was a most extraordinary ground. We are now called upon to make a graduation, in order to carry out the trimming and cut-

ting down of the executive patronage. If these five judges of the supreme court were to fall down dead on the same day, then the executive would have to exercise his power, which gentlemen argued would be too much ! He (Mr. M.) thought that no judge should be removed from office, provided he was competent and attentive to his duties.

It had been said that no governor would dare to remove a judge, who was capable of discharging his official functions to the satisfaction of the community. Let us see what had been done here, in respect to conferring power upon the executive. The convention had already decided that the associate judges, who had heretofore held during good behavior, should in future be appointed by the executive, for the term of five years. These officers, then, it appeared, were to be thrown within the grasp of the executive ; besides, also, the vacancies which he may have to fill up, owing to death or casualty.

There were nineteen president judges, whose term of office was to be ten years, and every governor would have from five to ten to appoint, in addition to the vacancies which might happen from various causes. So that, in fact, the executive would have more patronage than he had hitherto enjoyed.

He (Mr. M.) regarded it as necessary and essential to every system, that it should work fairly and impartially, as concerned all coming within the operation of it. This system of a limited tenure was defective and unequal towards those who were to be effected by it. There was no mode by which it could be brought to operate fairly and successfully. He would not propose any. As the commissions of the judges expired, so would the parties be left at the mercy of the executive.

He would ask gentlemen, what they were now called upon to do, in addition to what they had already done ? Why, they were required to take away the appointment of the justices of the peace, which ought never to have soiled the hands of the executive. And yet, gentlemen would go the length of giving the governor, in addition to the sixty-six associate judges, the appointment of five or six president judges ; and the appointments to fill all vacancies, in either, arising from resignation or casualties, the appointment of one judge of the supreme court, besides any casualties that might happen, were to be considered as God-sends, and would form subjects of executive patronage—to be sought for after an election, rather than stipulated for before. And, thus it might happen, through the action of Providence, that a governor would, every three or four years, have the appointment of a judge of the supreme court.

This was an additional proposition to all that had heretofore been brought forward ; and it was gravely urged on the ground of diminishing executive patronage !

If he could suppose that all the judges now on the supreme court bench would be found there at the end of fifteen years, as had been assumed in the argument advanced by some gentlemen, and we were to have a flood of executive patronage, he would rather meet it at once, and when the attention of the public was awakened to it. But he could not presume that such would be the condition of things, so many years hence. He was as much opposed to the undue exercise of executive power as any other member of the convention, but he was willing to run the risk

of its being practised in this instance. It was extremely improbable that it would be.

Whatever other ground the minds of gentlemen might lead them to put this matter on, he trusted they would not urge it on the ground of *diminishing* executive patronage, for there was the same difference between subtraction and addition, as between what gentlemen professed to be doing, and what they had really done. So far as their action had gone, the effect of it went rather to increase than to diminish the patronage of the governor.

He (Mr. M.) protested against the reconsideration of the subject. He hoped that the convention would abide by the decision they had already made. He could see no reason why the vote should be reconsidered. He would ask whether, if the judges were to be changed, it would be because the people were not satisfied with them? He could believe no such thing. If fifteen years was a proper tenure, let it be carried out. But, according to the scale of graduation which had been proposed, those judges who had been the longest on the bench, were to have the shortest tenure. Gentlemen seemed to imagine, that they ought to look back to the dates of the judges' commissions. He must beg to dissent from them on that point. He denied that they had any such right. What right had we, he would inquire, sitting in convention as the representatives of the people, to frame fundamental laws for their government, to look to what was the date of the commissions, and to say that we would incorporate a principle of that sort?

He repelled the introduction of these new fangled notions. He regarded the subject in one light only, and that was, in reference to the good of the people. As to what might be to the interests of the judges, that was a consideration which had not entered into his mind. At the same time, he must admit that he did feel all that the gentleman from Luzerne (Mr. Woodward) had charged upon himself and others. He did think that there was some cruelty, and want of proper feeling, in wantonly and unnecessarily interfering with those who held offices.

What we had to look to, however, was the good of the whole—the interests of all the citizens of the commonwealth. And, what we undertook to do, we must carry through, unmindful of every thing but our duty. We all knew what the sentiments of the people were in relation to the judges of the supreme court, and that was, that they should not be ejected from office on account of the tenure for which they might be appointed. The convention had decided that question by a vote of one hundred eight to seven. What next had we been asked to do in respect to these judges? That we would leave them in office, and establish their tenure hereafter? No such thing. But, we were asked to "classify" these judges. How classify them? Classify them according to the dates of their commissions. What right should we have to do that? Who sent us here to tell the people of the commonwealth, that all they had done was wrong, and that we would set them right? What right, he would ask, should we have to tell them that all they had done for the last forty odd years was entirely wrong, and that we would put them in the right way for the future?

The schedule, as it now stood, was a proscriptive fiat. It said to the people, in so many words: "Although we will not turn all your judges

out at once, still we believe that what you have done is wrong, and therefore you must go back. These judges will take a new start, when appointed under the convention." The proposition appeared to have been urged, notwithstanding the repeated disavows that had been made to the contrary, from considerations against which numerous warnings had been proclaimed.

It had been said that the youngest judge was so good, that he would be re-appointed; but that the oldest would not require to be. Who sent us here to make these distinctions. We were to carry out our own principles: that was, the principles of the majority of the convention. We had but one of two courses to pursue—either to let the commissions of the present judges continue, or to say that they should now expire. We had not the slightest ground for providing that the judges should hold their offices till the end of fifteen years.

But, how did the amendment of the gentleman from Luzerne (Mr. Woodward) operate? Here was one judge appointed two days after the other; and yet we say that A shall hold three years longer than B, and for this reason only, that there were two days difference between them. Now what sort of a principle was that? and what justice was there in it?

It had been said, that as the present chief justice had been fifteen years on the bench, and would have been thirty-two at the expiration of the proposed tenure, that, therefore he ought not to be re-appointed. There was another gentleman who had been nineteen years on the bench, and yet he was to be allowed a longer tenure than the first. How did gentlemen reconcile this inconsistency? Why, they justified this arrangement by basing it upon the date of the respective commissions of the judges. Now, he would repeat his protest, that they had no right to do this. If it was admitted that the convention had a right to fix the dates of the appointments of the judges, then gentlemen must concede that the people had been in error for keeping them upon the bench so long. If they did not, all their arguments must fail to convince every candid mind, that they had a right to set up the principle which they would carry into practice.

He was totally at a loss to see how any other conclusion was to be arrived at; and, he thought that every one who looked at the matter free from the excitement which had prevailed here in reference to many questions which had been discussed, would come to a fair and just decision. He desired any man to shew him, if he could, how he (Mr. M.) was able to take any other course than the one which he had pointed out. There was no other way of proving the consistency of the convention, than, either to let the commissions of the judges drop, or to let them remain for the new term this body has established. He believed these to be the only two courses left, by which to meet the wishes and expectations of the people.

Mr. CHAUNCEY, of Philadelphia, said that he was desirous of saying a few words on this subject. This was a motion to reconsider a vote which was taken on Saturday last, and which the convention had been hastened into with very considerable speed. Whether it arose from an impression on the part of those who had the direction of the matter that the result would be different from what it was, he did not know; but

there certainly was, at that time, an indisposition to hear discussed one of the most interesting subjects which in his apprehension, had ever come before that body. The vote was perhaps, an unexpected one. It established a principle of disposition, in relation to the judges of the supreme court; and, after the intermission of the Sabbath, we were called upon to reconsider the vote. And it appeared that one of the gentlemen who seconded the motion for reconsideration, assigned as his reason for it, a desire to hear what could be said against it. Another reason also assigned by the gentleman, was, that other delegates were in favor of reconsidering the subject. He (Mr. C.) had, from the moment he saw it was the determination of the convention to make a change in the judicial tenure, declared this to be one of the most interesting, and perhaps difficult questions which they would be called upon to settle. And, he thought that whenever the subject should come up for discussion no gentleman would be desirous of having it disposed of even at the very eve of the dissolution of the body, without a thorough and faithful discussion.

It was a great—a highly important question—a question which involved the future reputation of the convention for consistency and for justice. It ought not to be slightly passed over. Although he was not wholly satisfied with the vote on Saturday evening—for he did not consider the disposition of the subject as being the best and most just that could be effected by the convention, yet, he regarded the question as settled. He could not, however, greatly regret the motion for reconsideration, inasmuch as it had developed some views—presented some arguments upon which the mind might rest awhile, and then review what had been done, and see whether there was any thing in the suggestions which had been thrown out, of sufficient importance to change the decision to which the body had come.

In anticipation of this question as a question of difficulty, he had been naturally led, in the first place, to see how (and he hoped that he would be pardoned for doing so) those great and good men who formed the constitution of 1790, had treated this subject. They had work very different from that which was in the hands of the present convention to perform. They did change the form of government and that too, in substantial particulars. They made important changes with respect to the executive and legislative departments. But, they were governed by a principle, and they left the judiciary where it was. In making these changes in the frame of government, they endeavored to preserve as many of the land marks as they could. Indeed, they acted in that spirit of justice which, he trusted, would preside over the deliberations of this convention. They looked at the subject clearly and deliberately, and they provided in reference to the commissions of the judges—for the continuance of that fabric of government so far as was compatible with the alterations then attempted to be made; and they pointed out a great course for our example.

What, he would ask, was the object of this convention? Was it to change the form of government? Was it contemplated by the people of Pennsylvania, when they called this convention into existence, that we should make alterations in every department of the government? He had not supposed that such a thought had entered a single bosom. He

had understood that the legislature was to remain untouched—that a change in the judicial tenure was contemplated—that executive patronage was to be curtailed, but that the great fabric was to remain unchanged in form and principle. He knew, as he had just intimated, that changes were to be made in relation to government offices of some description, in regard to the tenure of the judicial offices. What disposition, he inquired, was to be made of the judges? He could not persuade himself that there was a man in that body so unworthy and so condemnable as to meet this question in any other than a spirit of entire justice and reciprocity. He knew there was great interest felt in this question. He knew it had been thought that a vital change was to be made in the principles of the constitution.

This he knew to have been the judgment of many in relation to the movements of that body. But, he could not believe there was any man here so worthless and base as to desire to effect that object. Let us see what is required—what is desired at our hands. Let us see the principle of justice which should be our guide. He would not speak of expediency, for he could not put an important matter like this upon a miserable scale of expediency; but he meant to look at it in point of moral justice—in that aspect which would commend itself to a man on his death bed, when he came to review his actions. Let us see what was our duty, and how we ought to dispose of it. In considering what should be done with the judges of the supreme court, the test question which had presented itself to his mind was—“will there be a disposition to vacate, or to consider as vacated, all the offices held under the existing constitution?” And, the next question which had also presented itself to his consideration was—“does the change in the constitution require it? Is there such a change required in the organization of your government as that the judges must necessarily yield their offices?” Such changes were made in 1790, as were deemed requisite in regard to the executive and legislative departments of the government. But he found no such change in regard to the judiciary, as was now proposed. What he asked, was the change of tenure? Did the change of tenure require that the judges should vacate their seats on that account? It was the introduction of a new principle, and that, too, prospectively. He could not concur in the argument of the gentleman from Luzerne, (Mr. Woodward) that the people of the commonwealth of Pennsylvania desired a change in the judicial tenure. He did not believe it to be their wish. When he (Mr. C.) heard from the mouth of that gentleman so high and well merited an encomium on the supreme tribunal—that it was one inferior to none of its grade in the United States, he regretted to see him taking a course which would impair its present high character. He would unequivocally and solemnly express his belief that the people of Pennsylvania did not wish the introduction of a principle to turn out a certain set of judges.

He thought the people would rather have them—if the gentleman would suffer him to say so. They knew too well the value of an upright and honest and faithful tribunal. He repeated, they did not desire a change of this kind; they wanted to try no new experiment. Perhaps the reason that induced the gentleman from Luzerne, to bring forward his proposition was, to see whether the convention were prepared to go the

length of sweeping overboard all the officers—of making them vacate their seats. He rejoiced to say it—it did his heart good to declare—that the convention had by a vast majority, said that this was not an alteration which the people required.

He did not mean to enter upon the consideration of the question, whether, if nothing were done by the convention, the consequence would necessarily be that the offices were to become vacant. There was a manifest disposition on the part of the delegates to provide for the judges. If that were so, then one of two things would be indispensable—either this body should take to itself the appointing power, according to the principles of the amendment adopted on Saturday last; or, we should leave it to the executive. If it were the prevailing sentiment that the effect of this amendment, if adopted, would vacate all the offices, it would be necessary that this body should make the appointments. The amendment did not wholly meet his views, for he confessed that the affections of his heart assented to the principle of the report of the majority of the committee.

He maintained that it was a principle of justice. What, he would inquire, was the principle contained in the amendment of the gentleman from Northampton, (Mr. Porter?) The basis of that amendment as it was adopted, was—that the judges of the supreme court should remain in office for fifteen years. He would contend, then, that there was a principle for this amendment. It was the very principle which they adopted themselves. Why did it not meet with the approval of the body? Because it was said there was another and a better principle, and that was a graduation: to let the offices of the present incumbents expire at regular and different periods of time. The experiment of fifteen years was to be done away with, and the graduation principle to be substituted for it, if this motion to reconsider should be adopted.

He confessed that in all his anticipations as to what might be the disposition proposed to be made of the judges, this proposition was to his mind the feeblest and most objectionable that could be conceived. By what power or authority, he would inquire, did this convention undertake to make amendments of this description? What was all this mischief? To amend the constitution—to submit amendments to the people? Where was the power here to undertake to parcel out—to deal out the offices of this commonwealth according to our views? He asked gentlemen this question for the purpose of having his own mind satisfied. No gentleman had touched the question. This convention was not the executive. They had not the appointing power. The people had not given to us the disposition of this subject. He asked, where did we get the power to say that A's term should end in five years and B's in seven? He was utterly at a loss to discover it, nor had any gentleman attempted to show whence it was obtained. He denied that we had the power.

There seemed to be a sentiment prevailing here, founded upon vague notions of right—that he and his colleague, for instance, might say what was the interest of the people. Why according to such a principle as that, they might do almost any thing. He wished to learn from gentlemen how they sustained their argument on the ground of expediency? What, he asked, was the first objection urged in favor of the graduation principle? It was that if all the judges were appointed at

the same time, they must fall into the hands of the executive; and that it was too much power to give one man the appointment of the whole supreme court.

It was said they may be corrupted—that they were corrupted. He wished gentlemen to think better of their own work. It was time for this body to think better of the appointing power—if not, our work has been in vain from the beginning. If the governor may be trusted to make one, and only one appointment in his whole term, and not be trusted to appoint the whole court, we sit here in vain, the whole edifice is rotten, and our labor is nothing. But he did not believe in any such danger. He believed that there existed no danger. In reference to this argument, he would ask the gentleman from Luzerne, if he believed, in sincerity, in point of fact, that if the judges were now continued for fifteen years, the governor would have to appoint them altogether? Every man of sense knows that it is scarcely within the scope of possibility, although it may be possible, that the whole of these appointments will ever be made by one governor. If the whole court should, however, continue to exist for fifteen years, the people will be true to themselves, and when they know the extent of the responsibility involved, it may be safely presumed that they will take care of their own interests. What next? It was said by the gentleman from Luzerne, that we should endeavor to preserve a great Pennsylvania principle. He did not know why it was so called. There was nothing of Pennsylvania in the principle. It was just the same in other states. But he was of the opinion that the gentleman from Luzerne mistook the effect of the principle for the principle itself, and if so, this was bad logic. The principle of Pennsylvania, as he (Mr. C.) read it, was this: The tenure of good behavior is the principle. The effect is, as all men do not all die at once, or misbehave at once, the offices will be vacated gradually. It is therefore the effect of the principle to which the gentleman adverts, and therefore the gentleman when he says this is a Pennsylvania principle, is guilty of a misnomer. But what if it be? Some Pennsylvania principles, under which we have enjoyed great happiness and security, have been disregarded. Yet this is advocated on the ground that it is a Pennsylvania principle, and we are called on to adopt a decree on the ground that it is a Pennsylvania principle. He thought it was not so. But what have we offered to us? A graduation of the tenure, and another argument in support of this is, that it will prevent the law from being unsettled. This argument pre-supposes, that at the end of fifteen years, the whole bench will be swept. The argument from first to last, is incorrect.

The gentleman from Luzerne had told us over and over again, that when a judge is found to be able, learned, and faithful, in the discharge of his duties, he is sure to be re-appointed. Yet, he has also told us, that if all the five judges were to be re-appointed all at once, the effect would be to unsettle the law. This was at variance with the gentleman's first argument. If all are to be re-appointed, what is the danger? But did the gentleman believe that all the judges would be alive at the end of fifteen years? If they live, will they be removed? Unless the judges are to be changed, the law will not be unsettled, and the argument of the gentleman can weigh not a feather. Was there any other ground why we should adopt the principle of graduation, than that we should avoid the

danger of all the commissions expiring at the same time, of unsettling the law, and of log-rolling and combination. Were gentlemen satisfied with what had been said in defence of all these points? He had gone over all of them, and they seemed to him to be a weak argument in favor of the arrogant assumption of the appointing power by this body. Gentlemen had failed to shew as yet even a seeming of justice in this new plan. What was the plan? Are the minds of members united so as to act decidedly on this question? Gentlemen say the people wish this change, and that it is to carry out the principle of the limited tenure. Was this carrying it out? Or, what was the principle? It was a carrying out as to one judge in three years—as to another, in six years—as to another, in nine years, and so on. He would like to see the principle that looked at the bottom of this arrogant assumption of the appointing power, and he supposed it might be resolved into a plan to produce these removals at different periods, not in reference to the fitness of the incumbents, their age, or length of service on the bench—with all these it had nothing to do—but as a mere arbitrary rule of three, six, nine, twelve, and fifteen years; and it shewed its arbitrary character in the case of the two judges who were commissioned nearly at the same time. There was a justice, different from political justice, and which would permit faithful incumbents to retain their offices. It was not a principle which could turn the world upside down. The principle substituted was the graduation of the terms of the judges who held offices under the commonwealth, a duty not assigned to us under any provision for the amendment or alteration of the constitution. He did not mean to say that because there was no provision for an amendment of this kind, it was not in the power of the convention to adopt it. But the omission of such a provision was wise. We had lived happily under the old constitution. He believed the people of the commonwealth to be honest, and that it was their wish that the changes which were made should be all made in reference to strict faith and justice, and that they should be made not only without precipitancy, but with all deliberation. It was our duty to do what they require, and when we made a prospective change, to do it according to the wishes of our constituents. He thought this would be in an especial manner, justice to those who are said to be the first law tribunal in the United States; and the graduation principle would not be justice. That was not justice which, travelling over the wide field before it, satisfies itself by gleaning a little here, and catching a little there. This was not the proper kind of justice. We know nothing of the justice in heaven, but we know that is not political justice. If we regard the contract entered into with these judges, when they give their services to the state, that will be justice. It is justice, if we regard what is due to the faith and honor of the republic. But this is a justice we could not hope to reach, if we were to shift our course in obedience to the breath of every popular breeze.

He conceived that by the adoption of this amendment, great injustice would be done to the judges. Before any definite conclusion was come to, he wished the subject to be yet more closely and seriously deliberated. He believed it due to this great subject. He asked nothing more than that justice might be done, and that we should act in such a manner as would not hereafter expose us to reproach, and thus inflict a wound in our pride and ambition.

Mr. CUMMIN, of Juniata, said he did not rise to make a speech. It would be vanity in him to do so, after the subject had been largely discussed by gentlemen of the first talents in the country. Indeed, he could assure the convention that he would not have troubled it at all, were it not that his consistency had been called in question by a distinguished delegate on that floor, (Mr. Dunlop.) He trusted that, under these circumstances, he would be allowed an opportunity of vindicating his character and conduct from the charge of the gentleman from Franklin.

It was true, as stated by that gentleman, that at the time to which he alluded, the county of Juniata had not been in favor of calling a convention; and the reason was, that the friends of reform there conceived they were in a minority, and that a majority of the state was opposed to it. Believing that the time had not then arrived for bringing about a change in the politics and policy of the commonwealth, they consequently were opposed to the call of a convention. The fact was, they saw no hope of reform. With respect to the question at present under consideration—it was as to limiting the time for which the judges shall hold their offices. He had been charged with inconsistency in reference to the removal of the associate judges—of entertaining on one day a particular opinion, and being on another, of a different opinion. This charge was wholly without foundation. The delegate was entirely mistaken. He believed that at the commencement of the proceedings of the convention, at Harrisburg he had expressed himself in favor of the judges. He denied that he had ever made use of the sentiments attributed to him by the gentleman from Franklin.

On the adjournment of the body in July last, he returned home and informed his constituents that his wish was to continue in office those judges who had conducted themselves properly, and were possessed of ability and talent. His constituents, however, did not take exactly the same view of the matter; they were for limiting the tenure, and thought that no reform would have been effected in the judiciary, unless the term of service of these officers was shortened. Having learnt what were the views and opinions of those whom he had the honor to represent in this convention, he had returned to it with the firm determination of carrying out their wishes to the best of his ability.

The delegate from Franklin, (Mr. Dunlop) had insinuated that he (Mr. C.) had acted inconsistently. This, he (Mr. C.) wholly denied. He would again repeat that he had never first voted for, and then against, the same proposition. He hoped that the gentleman, before he again undertook to reflect on the course of others, would examine his own, and see whether it was, and had been, as consistent as it might be. The gentleman seemed to be very ready to shoot his barbed arrows at others, forgetting that they might be levelled at himself, with at least as much propriety and justice. He certainly could not set himself up as a pattern of consistency. Had he not, on one particular occasion, after a debate which lasted six days, given a vote which he deeply regretted and bitterly lamented, as much so, as if he had lost a dear and valued friend? The delegate from Franklin should be the last man in that house to talk of consistency, and to lecture his brother members on that score. He would tell the gentleman, that he (Mr. Cummin) was not to be governed, or instructed, by him, for he was decidedly the last man on that floor.

whose advice he would follow. He was consistent, but the gentleman was inconsistent. He (Mr. C.) had obeyed the will of his constituents—had followed their instructions, which was more than could be said in regard to many of the senators in congress—some of whom had been called upon to resign their seats. With respect to the question immediately under the consideration of the convention—the tenure of the judges of the supreme court, he had nothing to say. It had been already elaborately and ably discussed, and it was not in his power to throw any additional light on the subject. Gentlemen had shown much unnecessary alarm as to what would be the fate of those judges who might be turned out of office. He thought their removal would make little, or no difference to them, as their conduct and talents would always procure them all that they could reasonably desire. Besides, there could be no doubt that such of the judges as had behaved themselves well, and proved themselves competent, would be re-appointed. But, while they held office under the life tenure, as experience had shown, it had been found almost impossible to impeach them. It was right, therefore, that these men should be placed within the reach of the people. Very few judges, indeed, had been successfully impeached, such was the difficulty in bringing them to accountability. He (Mr. C.) had been willing to vote to fix the tenure of the judges at fifteen years, but he should follow the wishes of those who sent him here. In conclusion, he would merely add that he repelled any charges of inconsistency, whether made in or out of the convention, and he would not be diverted from what he conceived to be his duty.

Mr. INGERSOLL, of Philadelphia county, said that on this question he would not have taken the floor, had he not thought that he could explain and simplify the matter. It certainly was perplexing enough. He confessed that in the course of the whole debate, he had not heard one word that seemed to be at all pertinent, or applicable, except what had fallen from the gentleman from Allegheny, (Mr. Forward) yesterday. He (Mr. I.) regarded this as a question of propriety. The gentleman from Philadelphia, (Mr. Meredith) who had addressed the convention yesterday, had spoken of decorum. It was a question of decorum. The motion which had been made by a colleague of his, was to re-consider a vote taken on Saturday last, on a proposition involving a very important principle—a principle of constitutional law—a principle of personal interest, and which, he thought, every one, since we left Harrisburg, must have foreseen, would have to be settled. Let the gentleman and his friends recollect that one and all, except the gentleman, (Mr. Hopkinson) near him (Mr. I.) voted for this particular tenure of the judicial offices. That was the source and cause of all the difficulty.

When the gentleman from Luzerne (Mr. Woodward) moved an amendment to the proposition of the delegate from Philadelphia, the gentleman from Northampton, (Mr. Porter) if he was not mistaken, moved a substitute—he forgot whether he addressed the convention—no matter, however, as soon as he had taken his seat, a colleague of his, (Mr. Brown) with that hasty judgment, against which he (Mr. I.) had always silently protested, and as he himself, now acknowledged, led to consequences he did not anticipate, moved the question. He said afterwards that he had voted under an impression which was not realized. Two of the mem-

bers who had voted in the affirmative, moved to re-consider, and that, too, on the very eve of the dissolution of the convention; and thus had we thrown away a day and a half in discussing not what we shall, or shall not do, but whether we shall re-consider what we have already done—upon the mere ground of propriety—of decorum—of deliberation?

He conceived that, as the motion had been made and seconded, and the delegate (Mr. Brown) having declared that he took shame to himself for having been so hasty, and as the minority and majority had both increased, no objection would be urged to it. He imagined that there was a decided majority favorable to a re-consideration. And, why should that privilege be denied to any member who desired it? Allusion had frequently been made in the course of the present debate to the amendment of the delegate from Beaver, (Mr. Dickey) against which, he (Mr. I.) voted with great reluctance. There would not have been so large a majority against it, had it not been for the apparent difficulty there was in carrying it out. How could we do justice in a question of propriety and decorum? He would call on his friend from the city, (Mr. Meredith) who had read us such a lecture on principle and justice—he would read him one before he closed what he had to say.) He would ask the gentleman what propriety and decorum and justice there was in treating the supreme court judges differently from all the other officers?

I ask (said Mr. I.) if it can be considered proper that business is to be done in this way, or whether this vote ought not to be re-considered. I look upon it, that without reference to the various topics for consideration, which present themselves, in relation to propriety, fitness—looking to the character of our own body—to our mere proceedings, that we should not suffer these five judges, because they are called the supreme court, to rest on one foundation, while so many others are left to rest on another. The whole of the gentlemen from the city of Philadelphia voted against the amendment of the gentleman from the county of Lancaster.

Here Mr. INGERSOLL yielded the floor; and,

On motion of Mr. FLEMING,

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

TUESDAY AFTERNOON, FEBRUARY 20, 1838.

There being no quorum present,

Mr. M'CAHEN moved that there be a call of the convention.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. CLARKE, of Indiana, and Mr. REIGART, and are as follow, viz :

YEAS—Messrs. Bigelow, Brown, of Northampton, Brown, of Philadelphia, Clark, of Dauphin, Clarke, of Indiana, Crain, Cummin, Curil, Darrah, Denny, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Henderson, of Dauphin, High, Houpt, Hyde, Ingersoll, Kennedy, Krebs, Lyons, M'CAHEN, M'Dowell, Miller, Myers, Nevin, Payne, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, White, Woodward—43.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Bedford, Biddle, Brown, of Lancaster, Chandler, of Chester, Chandler, of Philadelphia, Chuncey, Clarke, of Beaver, Cline, Coates, Cochran, Cope, Crum, Darlington, Dick'ny, Dillinger, Doran, Gearhart, Harris, Hastings, Hayhurst, Hays, Hiesler, Maclay, M'Sherry, Merrill, Merkel, Montgomery, Overfield, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Scott, Seltzer, Serrill, Sterigere, Taggart, Thomas, Weaver—45.

So the question was determined in the negative.

The question recurring on the motion,

That the convention re-consider the vote of the 17th instant, on agreeing to the sixth section of the report of the committee appointed to prepare and report a schedule to the amended constitution.

The said motion being under consideration,

Mr. INGERSOLL resumed his observations.

He stated that he had no other motive but to place the residue of the judges, who also held their offices by the limited tenure, on the same ground with the five judges of the supreme court. It was due to these judges that they should have a hearing. He desired a reconsideration, because he wished to have the question discussed, as a matter of decorum, of deliberation, in order that to all—to the judges, the commonwealth and to this convention, all justice should be done. He begged to say that justice had not been done, and that, in a similar case, the judges would themselves grant a re-hearing.

I will now (said Mr. I.) proceed to say a few words on the point of principle. There may be some apparent harshness in the application. The principle is plain and simple. There is a clause in the constitution, which, if not indefeasible, came down with English liberty. It is this :

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

Here we are in this convention, assembled to conclude as to certain results. There are three parties in this house—I speak without reproach—I call no gentleman's opinions in question. All the members of one party, hold all change in the present constitution to be deprecated, that if we desire hereafter to live in that security and comfort in which we have lived heretofore, we should leave the constitution untouched. The second of the parties are those who desire certain reforms. The third party consists of men who pursue a moderate course, differing, in some points, from those who are opposed to all reforms, and going against those who are in favor of all. Most valuable and beneficial reforms have been made, which cannot be undone except by the people—not by the convention, except by a unanimous vote. Nothing but the suffrage of the people can undo what has been done by the people. One of these parties has changed the tenure of the judicial office, contrary to my vote, and that of many others round me, establishing a new principle. Such a thing was never done in the world before. I believe that in no state has the tenure been reduced. We, I believe, are the first example of a body, that has, by force of its organic character, reduced the tenure of the judiciary to a term of years. It has so happened in the course of our proceedings, that this change of tenure has been put into the constitution, by those who are the greatest sticklers for judicial independence. This is a fact on which we stand here.

With these simple premises, we are left with our duty to perform, and I protest, in the first place, against the argument of Judge Hopkinson. Benignity is the genius of our country. He who is not actuated by a spirit of kindness, is almost always visited by retributive justice. We ought to treat the three thousand justices of the peace with the greatest tenderness. We should do a disagreeable office with the utmost kindness.

For his own part, (Mr. I. went on to say) he did not know who was chief justice, who were president judges, or who were judges of districts; he looked only to the principle as laid down in the schedule, and did not stop to inquire how it would operate. With that he had nothing to do. But such was the false sympathy of the gentleman who would throw a shield round the five judges of the supreme court. They are not to be touched. According to the eternal principles of moral justice, let all the judges be treated alike. What difference was there between the president judges and the others? If there was any thing like plighted faith in reference to the supreme court, so there was also as to the associate judges, who had been spoken roughly of by the gentleman from Northampton, as wooden men. Had the gentleman forgotten that three of the judges of the supreme court at this moment, were, in their day, presidents of courts? Was there any—could there be any distinction between these and the justices of the peace, three thousand of whom, had been swept at once, and not a single voice raised in their favor. He did not understand this kind of justice. He disclaimed it altogether. And further, and lastly, he would say in reference to a remark made by the gentleman from Union, (Mr. Merrill) that we should ask ourselves how this was about to act upon our party politics.

Mr. MERRILL. I hope the gentleman did not so understand me.

Mr. INGERSOLL said, he understood the gentleman to say they had been

stripping themselves of power after power, and were now depriving themselves of the last power.

Mr. MERRILL. I said I had long been doubtful of the sincerity of gentlemen, but I now believe them to be sincere, and that they are now raising up more and more enemies to the amendments.

Mr. INGERSOLL said, then he was right in his understanding of the gentleman. The point was dwelt on by the gentleman from Franklin *in extenso*.

Here was a duty. What was it? A very disagreeable duty; but, nevertheless, it must be done, unless we were to undo what we had already done. He wished to be informed, before he proceeded any further, what was the principle? Every man who was sworn into the office of justice of the peace, or any other office, took the oath to maintain and support the constitution; and if the people were not satisfied with him, they had a right to turn him out, whenever they thought proper. The doctrine of vested rights did not apply to these officers. They held their places only by the kindness and forbearance of the people—nothing more. We had put an end to the offices of all the magistracy of Pennsylvania, if our acts should be ratified by the people, as he took it for granted they would be in October next, after which the fact would be made known to the legislature, and then proclaimed by the governor to the people, in accordance with the act of assembly.

Why, what would be the consequence? As stated by the gentleman from Allegheny, there would then not be a judge in the state. And he (Mr. Ingersoll) was not sure but that every justice was *ipso facto*, no longer a magistrate. That was the position in which we should be placed. Let gentlemen contemplate it. What, he asked, was to be done? They must do something, he presumed, or chaos would come again. Something must be done to prevent a stoppage of the machinery of the government. We were not without an example on the subject.

The gentleman from the city, (Mr. Meredith) who had contrasted our proceedings with those of the wise men who framed our constitution, ought to have read more attentively the clause which he (Mr. I.) would now beg leave to read. It was the third clause of the schedule.

“That all officers in the appointment of the executive department, shall continue in the exercise of the duties of their respective offices, until the first day of September, 1791, unless their commissions shall sooner expire by their own limitations, or the said offices become vacant by death or resignation, and no longer, unless re-appointed and commissioned by the governor. Except that the judges of the supreme court shall hold their offices for the terms in their commissions respectively expressed.”

What, he would inquire, were the commissions of the supreme judges under the constitution of 1776? Why, they held for seven years, but might be re-appointed at the end of that term. Now, it was to be presumed that when the constitution of '90 went into effect, a considerable portion of their terms must have expired, and which they afterwards served out, thus completing the period for which they were commissioned. Here, then, was a precedent of our own.

He would beg also to refer to the constitution of New York, Article 9, Section 1.

"The commissions of all persons holding civil offices on the last day of December, one thousand eight hundred and twenty-two, shall expire on that day; but the officers then in commission may respectively continue to hold their said offices, until new appointments or elections shall take place under this constitution."

This is the revised constitution of New York of 1821, and in the amending of which constitution, the late Chancellor Kent, the present executive of the Union, and other distinguished men bore a conspicuous part.

I will now ask the attention of the convention to the language of the constitution of Virginia, as amended in 1830, and in which laborious duty Mr. Madison, Mr. Barbour, Mr. Monroe, and other eminent men participated.

The third section of the fifth article says:

"The present judges of the supreme court of appeals, of the general court, and of the supreme courts of chancery, shall remain in office until the termination of the session of the first legislature elected under this constitution, and no longer."

Thus, in the constitution of Pennsylvania of 1790, there was a provision that the judges of the supreme court shall continue to "hold their offices for the terms in their commissions respectively expressed." But, in the state of Virginia, by the constitution of 1829-30, they were to hold their commissions till the end of the next succeeding session of the legislature. And, according to the constitution of the state of New York, they, together with the other officers, without distinction, were to be removed from office.

In regard to the condition in which we now found ourselves, he would say that we could not go back—could not retreat. The work was done, but not by those who were called the reformers of the convention.

The gentleman from Philadelphia, (Mr. Meredith) who spoke in the morning, and called on us to do justice, seemed to have forgotten the somewhat unbecoming remarks which he made while at Harrisburg, in regard to the poor boy who stole a horse, and for which he was tried before Judge Cooper. Neither did the gentleman appear to regard the awkward and unpleasant situation in which he (Mr. Ingersoll) for one, and the gentleman from Luzerne (Mr. Woodward) for another, found themselves. Here they were left with this tenure upon them, in spite of the fifty or sixty votes of those called "reformers," and compelled to see the amendment ordered to a third reading. And, what was the difficulty? Why, the argument assumed, was, that there would be no government at all! Could any gentleman give him any sound reason why a principle should be adopted in reference to one set of judges only, and not to another? Why a different principle should be inserted in regard to the supreme court judges than to the nineteen judges of the common pleas? His ideas were precisely adverse to those of the delegate who had talked so much about justice. He (M. I.) could not see how a different principle of justice could apply to the associate judges. The judges of the supreme court had been highly extolled, and eulogium upon eulogium passed upon them. He did not desire to detract from their merits and abilities; but he considered it his duty, in candor, to state his opinion.

that there were many of our aldermen and justices of the peace who performed their duties with as much regularity, faithfulness and propriety, in every respect, as the chief justice or any of the other judges on the supreme bench. Here, then, were about five thousand officers, who would suffer as much as the supreme judges, on account of the loss of their offices, yet they were to go out! If equal and exact justice were due to every man, why, in this instance, should there be such a departure from it?

What, he would ask, was to be done? Either the motion of the gentleman from Beaver, (Mr. Dickey) must be reconsidered; that was, all the judges must either be compelled to vacate their offices, or be allowed to hold them—not the judges of the supreme court alone, according to the amendment of the gentleman from Northampton, (Mr. Porter) but all the associate judges. All the judges should be put on the same footing. That was the only course that could be adopted, if they were governed by strict justice.

He had no hing further to say in regard to the proposition of the gentleman from Luzerne, (Mr. Woodward) except only to remark that as far as he did understand it, he did not like it. But, the fact was, there had been no time to make a modification. We had acted only in behalf of five judges, because they happened to constitute the supreme court—excluding three thousand justices of the peace, and many hundreds of other officers of the law, if he mistook not, holding under the same tenure, and upon no other principle. It appeared to him flagrantly unjust. He thought the vote should be reconsidered for that very reason, and he would give no other. The reason why he had voted for the sixth article was, because he could not vote for a different tenure, or for any thing else which went to make a distinction between the judges of the supreme court and other judges. He was for putting hardship and sympathy aside, and acting with forbearance and dignity. But as was said by the gentleman from Luzerne, (Mr. Woodward) he would pursue an independent and statesmanlike course.

The question which presented itself for consideration was—should we dispose of all the judges at once? The objection to that was, it would raise up a host of formidable enemies to the new constitution. Were they, he inquired, to be all left in office? What would gentlemen recommend? Would they adopt some scale—some means by which the judges' tenures should be graduated fairly and satisfactorily? For himself, he confessed that his mind was not exactly made up on the subject.

He could not assent to the doctrine laid down by the gentleman from Allegheny, (Mr. Forward)—but he regarded what had fallen from the gentleman from the city, (Mr. Meredith) as perfectly sound. He (Mr. I.) conceived that this convention had no right to arrogate to themselves the power of appointment, but they could, if they thought proper, put an end to the services of the existing officers. What we had to do, was, to take care that the administration of the laws and of justice, should not be impeded or come to a stand still; but that they should go forward—be carried out by the new constitution. All that he desired, was the adoption of some rational principle, which would operate equally and fairly in regard to all the judges. But, with respect to the principle proposed to be adopted, he would only repeat what he had already said, that it was

unjust and partial in its operation, and therefore, ought not to be entertained.

The previous question was demanded by Mr. BEDFORD and others, and sustained.

And it being decided that the main question should be now put—which was, on agreeing to the motion to re-consider,

Mr. DARLINGTON, of Chester, asked for the yeas and nays, and being taken, the question was decided in the affirmative;—yeas 64, nays 57, as follow :

YEAS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Clarke, of Indiana, CRAIN, Crawford, Cummin, Curl, Darrah, Dillinger, Donnell, Earl, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenel, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Hout, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Read, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stückel, Sturdevant, Taggart, Weaver, White, Woodward, Young—64.

NAYS—Messrs. Agnew, Baldwin, Barnard, Barnitz, Bell, Biddle, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Doran, Dunlop, Farrelly, Forward, Hays, Henderson, of Dauphin, Hopkinson, Jenks, Kennedy, Konigsmacher, Long, Macley, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Potter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russel, Seager, Scott, Serrill, Sill, Snively, Sterigera, Stevens, Thomas, Todd, Weidman, Sergeant, *President*—57.

Mr. INGERSOLL, of Philadelphia county, moved to re-consider the vote on the amendment to the amendment to the sixth section, which is as follows :

“ The judges of the supreme court who shall be in commission at the time of the adoption of the amendments to this constitution, shall hold their offices for the term of fifteen years thereafter, if so long they shall behave themselves well.”

Mr. STEVENS, of Adams, moved to postpone the question on the re-consideration of the amendment to the amendment, with the amendment, together with the section, for the present.

Mr. S. said that he would state in a few words the reasons which had induced him to make the motion he had done. He believed from what he had seen in the convention to-day, and from what he had heard of the proceedings of Saturday, that the motion to re-consider which had just prevailed, grew out of an apprehension entertained by many gentlemen on that floor that they could not otherwise succeed in effecting a change in the schedule in relation to the judges of the courts of common pleas. He could safely say from the information he had obtained, together with what he had himself witnessed, that no motion to re-consider would have been made had the decision on Saturday been the reverse of what it was. He had made the motion to postpone in order that the question as to the judges of the common pleas might be first settled, as he trusted it would be to the satisfaction of gentlemen. He did not consider this a question of personal sympathy, or of personal right in respect to the judges of the supreme court, or of the courts of common pleas, or the inferior magistracy. He might have some personal feelings with regard to the gentleman who occupied those stations, but he had no

connexion with any of them, either by Mood or otherwise. He, therefore, looked at the question free and unbiassed, and with no other feeling than that of an anxious solicitude as it affected the institutions of the commonwealth. He sincerely believed that they would be affected for good or for ill, according as the votes of this body happened to be given.

He presumed it would be admitted by every gentleman present that every thing dear and valuable to the citizens of this commonwealth—their freedom, their rights, and their property, depended mainly, if not entirely upon the uniformity and stability of the decisions of the courts of last resort in Pennsylvania. And, hence it was that he saw no injustice—but, on the contrary, perfect propriety, in making the proposed discrimination between the supreme court and all the other tribunals. Every judge of the court of common pleas might be turned out, and that, too, without changing a single legal principle. If there were errors in the decisions of the inferior tribunals, they could be rectified or set aside by the supervisory power which was vested in the supreme court. Should the convention, however, come to the determination of either turning out all the supreme judges at once, or even gradually, most assuredly within a short time a serious and vital change would have been wrought in the character of the supreme court, or courts of the last resort. What guarantee had gentlemen here, that in a very few years there would not be a total reversal of previous decisions, and a complete overthrow of everything which was dear to a freeman.

As he had before observed, he entertained no personal sympathies in favor of the judges of the supreme court. If he were to be governed in the course of his duty, on this occasion, by his political feelings, he would say that they should vacate their commissions to-morrow. Many of those judges had their peculiar preferences, and belonged to that peculiar class of people against which all his political efforts, for several years past, had been directed. But, as gentlemen standing in the position these judges did in reference to the great interests of the commonwealth, and in whom there was reposed such perfect security and confidence both as men of integrity, talent and intelligence, as for the soundness and correctness of their decisions between man and man. He confessed that he did not know any set of men into whose hands he would rather trust his life, liberty and property, than those gentlemen who now sat on the supreme bench of the commonwealth of Pennsylvania. He would candidly avow his opinion that we could not vacate their commissions without endangering at least, if not destroying the permanency of our institutions. He would not indulge in any feeling of regret at what had been done by the convention, but he could not help expressing his conviction that they had done more towards destroying the independence of the judiciary, and to undermine, sap, and overthrow the free institutions of this happy land, than would ever have been effected by the united fleets and armies of foreign foes.

But, admitting this to be true, let us, (said Mr. S.) as long as we possibly can, put off the evil day. Let us, as far as was now in our power, avert what he could not but regard as an impending danger. There was not, in his estimation, the same sad consequences to be apprehended, if, in putting out the present judges of the courts of common pleas, their successors should happen to be inexperienced and unlearned men, as

there would be in respect to the supreme court, by whom their decisions would be rectified. He was aware that a good deal of feeling existed among the people against the judiciary, and it was owing, perhaps, to there being incompetent judges in different districts. Let us save the supreme court, and offer up, as sacrifices, all the inferior courts. He was for preserving the supreme tribunal, knowing as he did, its effect upon the institutions of the state of Pennsylvania. If gentlemen here had any obnoxious judges in their districts, he would go as far as was necessary to displace them. Let gentlemen bring their victim to the altar, and let him be got rid of if the sacrifice was necessary; but let us save some remnant of the judiciary that was worth preserving. If his motion should prevail, he would move, when the convention came to act in reference to the courts of common pleas, some such proposition as the following:

“The commissions of the president and other judges learned in the law, now in commission, who shall then have been ten years or more in office, shall expire on the 27th day of February, one thousand eight hundred and forty, and of those who shall not then have been so long in commission, on the 27th day of February, after the expiration of ten years from their respective appointments.”

Mr. S. then asked for the yeas and nays on the motion to postpone.

And the question being taken, it was decided in the negative,—yeas 53, nays 66, as follow:

YEAS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Bidd'e, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Doran, Dunlop, Farrelly, Hays, Henderson, of Dauphin, Hopkinson, Jenks, Konigsmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Saeger, Scott, Serrill, Sill, Snively, Stevens, Sturdevant, Thomas, Todd, Weidman, Young, Sergeant, *President*—53.

NAYS—Messrs. Banks, Barclay, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clapp, Clarke, of Indiana, Cox, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, Weaver, White, Woodward—66.

The question then recurred on agreeing to re-consider the amendment to the amendment.

Mr. BELL, of Chester, asked for the yeas and nays, and the question being taken, it was decided in the affirmative,—yeas 63, nays 57, as follow:

YEAS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Sturdevant, Taggart, Weaver, White, Woodward—63.

NAYS—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Bell, Biddle, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clark, of Dauphin,

Cline, Coates, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Denny, Dickerson, Donagan, Doran, Dunlop, Farrelly, Forward, Hays, Henderson, of Dauphin, Hopkinson, Jenks, Kennedy, Knigmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Saeger, Scott, Serrill, Sill, Snively, Sterigere, Stevens, Thomas, Todd, Weidman, Sergeant, *President*—57.

Mr. WOODWARD, of Luzerne, modified his amendment so as to read as follows :

“The commissions of the judges of the supreme court who may be in office on the first day of January next, shall expire in the following manner:—The commission which bears the earliest date shall expire on the first day of January, anno domini one thousand eight hundred and forty-two; the commission next dated shall expire on the first day of January, anno domini one thousand eight hundred and forty-five; the commission next dated shall expire on the first day of January, anno domini one thousand eight hundred and forty-eight; the commission next dated shall expire on the first day of January, anno domini one thousand eight hundred and fifty-one; and the commission last dated shall expire on the first day of January, anno domini one thousand eight hundred and fifty-four.”

Mr. PORTER, of Northampton, said he would not occupy much of the time of the convention. But, in some of the last observations which had fallen from gentlemen, the true state of facts had not been presented, or had been presented not in a way to produce their legitimate effect. He was one of those when at Harrisburg, who desired the change of tenure to a term of years. A minority of the judiciary committee, with the gentleman from Luzerne at their head, had proposed that the supreme judges should hold their offices for a term of ten years, and the inferior judges for a term of seven years. When this question was brought up by the gentleman from Luzerne, who was never suspected of being any thing but a reformer, the gentleman from Beaver, (Mr. Dickey) proposed to make the term of the supreme judges fifteen years, and that of the judges of common pleas ten years. These three gentlemen who were in favor of the tenure for good behavior, voted for the terms of fifteen and ten years, in preference to those of ten and seven years, which the gentleman from Luzerne, tried to force upon them. Thus stood the question of the tenure of fifteen years, which if it had stood alone, and on its own merits, could not have obtained a dozen votes in the convention. Thus much on that part of the subject.

But he had been attacked for appealing to what we called the sympathies of this body, and the gentleman from Philadelphia county, had likened his course to an attempt to interest a court of justice for the poor against the rich. The simile was a failure. It was proper that the provisions of the law should go into effect faithfully. He was also, on the other day, called to account for worshipping judges. It was the first time, he had ever been called to account for worshipping any thing like humanity; and he appealed to those who knew him, to say whether he was the man to yield up right or wrong, to the mandates of party or to the dictates of those in power. He was no worshipper, but he desired to do justice to those in power. He had not recommended above one judge in the commonwealth. He had therefore as little to do with party in these matters as any one who had a seat on this floor. But God forbid that he should

be one of those who would drive a judge from the bench to the poor house. He remembered a man who, when the widow of a distinguished senator of the United States, applied for some pittance, asked if there were no poor house in New York. He was sorry to have heard the gentleman from Luzerne, (Mr. Woodward) say if they had no other resource for support, the judges might find charity in the poor-house.

Mr. WOODWARD, explained. He did not say exactly what was stated. He believed he was speaking of the difficulty which delegates on this floor met with, in taking care of persons here or elsewhere—judges or others, and had said we had excellent laws, poor laws, and poor-houses. He did not refer to the judges of the supreme court. The range given to the remarks was rather wider than he intended.

Mr. PORTER, was perfectly satisfied. The gentleman said the poor house was open to judges as well as to other paupers. The gentleman was welcome to all the fame which such language could win for him. I (said Mr. P.) am charged with being the representative of the judges, and not of the people on this floor. I represent the judges faithfully and honestly; and I am doing no injustice to the people when I thus represent them, when I express myself in the language I have used. I have said that the people of Pennsylvania are incapable of being deliberately unjust and that he would not faithfully represent the people of Pennsylvania, who would turn able and faithful judges out of office; and the gentleman may call me not the representative of the people but the representative of the judges; if he will:—I feel that such language does not apply to me. I never will permit the base pandering to the prejudices of the moment to interfere with me, and thus I may be a far less proper subject of remark or attack than those who in their course have decided against me. But I will never permit considerations of that kind to influence my conduct. I do not believe that we are about to do justice in this matter, over which gentlemen seem to have reflected so deliberately on the Sabbath.

If you adopt the amendment of the gentleman from Luzerne, what do you do? You send out of office a judge who was commissioned in April, 1826, at a certain specified time, and a judge who was commissioned two days afterwards, you continue in office for three years longer making the term of one judge, sixteen and of the other nineteen years. By what rule of principle is this declaration sanctioned. One gentleman says the judges wont be turned out. Another says, if I thought so I would not have them out. We must adopt one of two principles. We must either turn out all the judges as soon as the amendments to the constitution go into effect, or give them all the time prescribed by the amendment. We must do the one or the other.

Mr. HOPKINSON, of Philadelphia, rose to make a single explanation in one point respecting which he would not wish to be wilfully misunderstood. He had voted in favor of the tenure of fifteen years; and afterwards for the graduated scale proposed by the gentleman from Lancaster, as to the court of common pleas—and why had he so acted? Was it because he had any wish to put the judges on a different footing? No: he desired to put the one on the same footing as the other. Why then did he thus vote? Because he did not wish to relinquish a certain good. He would ask the gentleman from the county of Philadelphia,

(Mr. Ingersoll) if he wished to have the judges of the supreme court to serve fifteen years from the first of January next? There was a similar proposition as to the court of common pleas. The gentleman might have voted for that, and he (Mr. H.) would have voted with him with all his heart.

But (said Mr. H.) I was levelling up and the gentleman from the county, was for levelling down. This was what he rose to explain. Had we not heard time after time, from one part of the house, that some of the judges are become physically incompetent and that some are political judges? It was true this argument had been levelled against the supreme court, and not the common pleas, and he had therefore, under all considerations, in vain to attempt to carry the graduated scale of the gentleman from Lancaster.

Mr. EARLE, of Philadelphia county, would say a few words in explanation in some measure, of his change of vote. He felt at this moment the embarrassment which he always felt in attempting to put a good piece of work on a bad one. The principle seems to be insufficient both for the conservatives and the radicals. There is a difficulty when they come to fixing the terms of the judges in arriving at a practical result. The difficulty is, if the term of a judge is short, and he lives to the end of it, he may not be re-appointed. If there had been a provision introduced that judges should not hold their offices after they had reached the age of seventy years, there would have been no difficulty. But, as the provision now stands, it must create apprehension. Or if the term had been fixed at five years, there would have been no alarm, because the judges who behave well would have been sure to be re-appointed. It was dangerous to appoint for fifteen years. He had desired to fix a longer term of years, or that the age of a judge should be limited to seventy years. Reformers when they come to fix the practical details of their measures, frequently find themselves in difficulty, and seldom obtain any of their objects. He would be willing to concede the re-appointment of a judge, if the term was reasonably short. Whenever a judge misbehaved, he was willing to remove him, whether his offence was impeachable or not. The clause as it stands, was originally introduced with his vote. He had wished to extend the terms of the judges to seventy years of age, which would have been the most friendly provision to them. When such formidable difficulties presented themselves, the effect is to prevent reformers from trying to remove judges. He had always been friendly to the supreme court, and when that tribunal received censure from other quarters, he had not joined in the cry. He was willing to give them his approbation. Believing the choice to be between the amendment of the gentleman from Northampton, and the gentleman from Luzerne, and that no evil would result to the people from its adoption, he had voted for the former, but finding that he had been assailed, not for what he had done, but for what he had not done, he should vote for a reconsideration of the matter.

The arguments from the reform members had great influence on his mind. If the convention made any distinction between the judges, it would cause great discontent among the people. Dissatisfaction already prevails to a considerable extent. We must shape our amendments to gratify those on whom we rely for success, and not to gratify those who

against us. He had now ascertained that his constituents were in favor of the principle of graduation as contained in the amendment of the gentleman from Luzerne; and he felt bound to yield to their wishes, where they did not interfere with his conscience or with the public good.

As he was satisfied the provision would not interfere with the principle of equality, he would go for it. He would not advocate the principle that because a man was low in the world, you must press him down, and he was glad to hear his colleague argue against putting down the poor man. There was a certain degree of consideration due to judges who behave well, and he thought they need not be under any apprehension of the poor-house. As to the judge whose term would be the first to expire, he was regarded as comfortable in regard to worldly matters, and he might in the next few years, save a sum which by many tax-payers would be considered a handsome fortune. That judge could have no fear of the poor-house on account of his great legal experience, which would especially recommend him to re-appointment. If his term was to expire to-morrow, he would be re-appointed. But he believed that judge would not retain office any longer if it was offered to him. He believed that he would be able to live in independence during the residue of his life. And as to the two judges whose term would expire the last, he did not perceive that there could be any difficulty. Appeals to our sympathy, in relation to these judges, seemed to be all out of place. If he had tears to shed, he would sooner shed them for those individuals who are denied the right of the trial by jury, and those poor and persecuted men who are bound to wear the chain of oppression, and drag it with them wherever they may wander without the hope of relief, debarred from the privileges which the law secures to all the rest of the human species. The salaries of the judges as they are now fixed, he looked upon as amply sufficient: and, if they live with a proper regard to economy, out of their future salaries, they can save before the expiration of their respective terms, sufficient to keep them in comfort afterwards. After mature deliberation he had come to the conclusion to vote against the amendment of the gentleman from Northampton. (Mr. Porter) and in favor of the proposition of the gentleman from Luzerne, (Mr. Woodward) and this vote he should give without being actuated by the least feeling of ill-will against the judges.

Mr. MEREDITH, of Philadelphia, asked that the question on the motion, be taken by yeas and nays, and they were accordingly ordered.

The question was then taken on the amendment to the amendment, and decided in the negative, by the following vote, viz :

YEAS—Messrs. Agnew, Baldwin, Barclay, Barndollar, Barnitz, Bell, Biddle, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Doran, Dunlop, Farrelly, Forward, Harris, Hays, Henderson, of Dauphin, Hopkinson, Jenks, Konigsmacher, Long, Maclay, M'Sherry, Meredith, Merrill, Merkel, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Seager, Scott, Serrill, Sill, Snively, Sterigere, Stevens, Thomas, Todd, Sergeant, *President*—56.

NAYS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clapp, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Crum, Gummin, Curll, Darrab, Dillinger, Donnell, Earle, Fleming, Foulk-

rod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Heffenstein, Hiester, High, Hout, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stickel, Taggart, Weaver, Weidman, White, Woodward, Young—64.

A motion was made by Mr. DICKEY, of Beaver,

To amend the amendment as modified, by striking therefrom all after the word "commissions," in the first line, and inserting in lieu thereof the following, viz :

"Of the judges of the supreme court now in commission, shall expire on the twenty-seventh day of February, 1839, and the commissions of the president judges of the several judicial districts and of the legal associate judges of the first judicial district now in commission, shall expire on the twenty-seventh day of February, 1840."

Mr. DICKEY, of Beaver, moved further to amend the amendment as modified, by providing that the commissions of all the judges of the supreme court, now in office, shall expire on the first day of January, 1839.

Mr. D. said that he had only a word or two to say. The amendment which he had just introduced had formed a part of one that he had offered before the second reading was gone into, and which related to the other judges also. He, however had confined the present amendment to the disposition of the supreme court judges. The principle for which he contended, had been ably argued by the gentleman from the county of Philadelphia, (Mr. Ingersoll.) He maintained that the scale of graduation proposed by the delegate from Luzerne, (Mr. Woodward) contained no principle of justice, and intimated that it might effect the particular purpose which he and some other gentlemen might have in view. It might be very convenient for the gentleman from Luzerne, to get rid of a deaf judge in his district; and the gentleman from Bucks, (Mr. M'Dowell) to get rid of a fox; but he desired that principle might guide them in their proceedings.

Mr. M'DOWELL, of Bucks, declared that he had never since he became a member of this convention, doubted but that the gentleman from Beaver, (Mr. Dickey) was the most knowing observant, and acute man in or out of it. He was possessed of an admirable foresight. He could even see things before they existed, and knew of things that never had and never would exist, equally as well as he did of things actually in existence. He was one of your motive-mongers, too—was aware of every man's motive, and what was operating on every delegate's mind in reference to the judiciary question.

It was true that he (Mr. M'D.) had said to the gentleman the other day, in private, that he believed the amendment which had been offered by him, was the only consistent one. He had also said so on this floor; but, that he was fearful the people would not be satisfied with it, as he thought it would be doing too much to say that the commissions of all the judges should expire on the same day.

The gentlemen knew the reasons why he (Mr. M'D.) did not vote for the amendment of the delegate from Lancaster, (Mr. Reigart) it was because it was an amendment of his (Mr. M'D's.) own, put into that gentleman's hands. He had told the gentleman from Beaver, as well as

others that he wished the commissions of all the judges of the court of common pleas to expire at the same time. But the amendment of the delegate from Montgomery, (Mr. Sterigere) had taken him and others by surprise, and he had hesitated, as he stated yesterday, as to what he would do; but he afterwards made up his mind that if the supreme judges were to be kept in office for fifteen years, he would have voted to continue the judges of the common pleas, in office, for ten years.

Mr. DICKEY, replied that he was happy to hear that the gentleman from Bucks, (Mr. M'Dowell) confessed himself to be the author of the amendment offered by the gentleman from Lancaster, (Mr. Reigart.) He had examined it, and found it to contain the discrimination to which he was totally opposed. The classification of the judges, which was proposed by that amendment was, indeed any thing but an honest and fair one.

It seemed as though it had been brought forward, and also supported, by many gentlemen, from an anxious desire to get rid of the present judges of the court of common pleas. He would repeat what he had already said, that the graduation scale was destitute of principle. We were not sent here to make distinctions or discriminations between the judges—not to appoint one for fifteen, another for ten, another for five, and so on. He insisted that all the judges should be treated alike. If the amendment of the gentleman from Luzerne, (Mr. Woodward) should prevail, he (Mr. D.) would submit one which would leave it to the people of the commonwealth to say whether the judges should be removed in the manner proposed. He asked for the yeas and nays.

Mr. STEVENS, of Adams, said he trusted that the gentleman from Beaver, would modify his amendment so as to include the judges of the court of common pleas as well as the judges of the supreme court. He (Mr. S.) would then vote for it with great pleasure. He must say that he disliked the amendment of the gentleman from Luzerne, (Mr. Woodward) in many other particulars than those which he was about to point out as requiring to be modified by the gentleman from Beaver. If he recollected the language of the schedule, it provided that the governor should remain in office until the third Tuesday in January next. Now, the proposed provision in relation to the re-appointment of the judicial officers, would give the present governor an opportunity of exercising his preference and re-appointing those whom he thought fit, instead of the next governor, whomsoever he might be.

He desired that a fair opportunity should be given for the people to vote for the next executive on these appointments. He hoped that the gentleman would so modify his amendment as to make it read that the commissions of the judges of the court of common pleas shall expire about the middle of January, and those of the supreme court about the middle of February, so that every executive should appoint the first year after his own appointment. He would now proceed to give a reason or two why he preferred the amendment of the gentleman from Beaver, to the proposition to re-appoint the supreme judges for fifteen years, and the common pleas for ten. He thought that all who had reflected on the subject must have perceived the danger there was in appointing the judges for very limited terms. They would be apt to swerve from the discharge of their duties, and so shape their conduct and decisions as to please popular

demagogues and a popular party, who would use their influence to obtain for them some popular appointment. Gentlemen who went for graduating the time when the commissions should expire, were leading the judges into temptation, according to their own doctrine. He could not see how any delegate who was an advocate for short terms, could go for this arrangement. It was rank inconsistency, in his humble judgment. Now, if all the judges were placed on a similar footing, the temptation of which he had spoken, would be taken away, for the supreme judges were not likely to be dropped.

If the supreme judges were to be continued in office for fifteen years, old age would have overtaken them, and probably there would not be more than one who would be capable of efficiently discharging the duties of his station. If, on the other hand, you cut them off in one or two years hence, you took away temptation from the path of duty. He trusted that one of the two principles would be adopted, and that the proposition now before the convention would be so amended as to present the whole question fairly before it, so that we should see how gentlemen would vote. Before resuming his seat, he would refer to the motion that had been made by the gentleman from Beaver, to strike out. For what reason, he asked, had it been proposed that the first commission shall expire on the first of January, 1840? Why not during the session of the legislature in 1839? The reason was plain enough to his mind. The governor whoever he might be—would come into office on the third Tuesday of January, 1842,—so that the commissions would expire between two and three weeks before the close of one gubernatorial term, and the commencement of another. Therefore, the new governor would not have an opportunity allowed him of re-appointing any of the judges.

Supposing that Governor Ritner should be re-elected next October, or even the term after, how easy would it be for the senate to postpone acting on his nominations till their next session, as had been done by the senate of the United States, and thus would his power be rendered wholly nugatory. Appointments made immediately after an election are not always founded upon the highest recommendations for worth and capability, but are generally given as rewards for past services. He believed that there were many gentlemen in this body sustaining the proposition of the delegate from Luzerne, (Mr. Woodward) who, when its practical operation came to be explained to their constituents, would find some difficulty in reconciling their course. And, among them was the gentleman from Lancaster, (Mr. Hiester.) Their constituents would understand the matter, if they did not. He (Mr. S.) knew that any attempt to change any vote would be in vain, therefore, he spoke with reluctance.

Mr. DICKEY, having modified his amendment, as originally offered, moved to amend the amendment as modified, by striking therefrom all after the word "commissions," in the first line, and inserting in lieu thereof the following, viz :

"Of the judges of the supreme court now in commission, shall expire on the twenty-seventh day of February 1839, and the commissions of the president judges of the several judicial districts and of the legal associate judges of the first judicial district now in commission, shall expire on the twenty-seventh day of February, 1840."

Mr. WOODWARD, of Luzerne, rose to say a word or two by way of explanation.

[This explanation, in which Mr. STEVENS and Mr. HIESTER, as well as Mr. WOODWARD, took part, embracing, principally, references to personal motives and views, and having no connexion with the merits of the question itself, it is considered unnecessary to insert.]

The question was then taken on the amendment offered by Mr. DICKEY to the amendment, and was decided in the negative by the following vote, viz :

YEAS.—Messrs. Agnew, Baldwin, Barnollar, Barnitz, Biddle, Bigelow, Carey, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Coates, Cochran, Cox, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Dunlop, Farrelly, Forward, Harris, Hays, Henderson, of Dauphin, Ingersoll, Konigsmacher, M'Dowell, M'Sherry, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Read, Royer, Saeger, Scott, Serill, Snively, Stevens, Sturdevant, Thomas, Todd, Weidman, White—49.

NAYS.—Messrs. Banks, Barclay, Bedford, Bell, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Clarke, of Beaver, Clark, of Indiana, Cline, Crain, Crawford, Crum, Cummin, Curl, Darrah, Dillinger, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Hiester, High, Hopkinson, Hout, Hyde, Keim, Kennedy, Krebs, Long, Lyons, MacLay, Magee, Martin, M'Cahen, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Raigart, Ritter, Rogers, Russell, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigera, Stuckel, Taggart, Weaver, Woodward, Young, Sergeant, *President*—72.

A motion was made by Mr. STERIGERE,

To amend the amendment as modified, by striking therefrom the words "the commission which bears the earliest date shall expire on the first day of January, Anno Domini one thousand eight hundred and forty-two," the commission next dated," and inserting in lieu thereof, the words, "the two commissions which bear the earliest date."

The said amendment to the amendment being under consideration,

The question was called for by Mr. HAYHURST, 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 so to amend the amendment?

It was determined in the negative.

A motion was made by Mr. STERIGERE,

To amend the amendment by adding to the end thereof the following, viz : "The president judges of the sixth, eleventh, thirteenth, and seventeenth judicial districts in this state, shall hold their offices till the first day of April, one thousand eight hundred and thirty-nine, and no longer. The president judges of the first, fourth, seventh, ninth, twelfth, fifteenth and sixteenth judicial districts, shall hold their offices till the first day of April, one thousand eight hundred and forty-three, and no longer. And the president judges of the other judicial districts and associate judges of the court of common pleas for the city and county of Philadelphia, shall respectively hold their offices until the expiration of ten years from the

date of their respective commissions, and no longer, if the said judges so long behave themselves well."

Mr. STERIGERE briefly explained the object of his amendment, and then asked for the yeas and nays.

Mr. WOODWARD hoped the amendment would not be adopted, and that the president judges of the eleventh and thirteenth districts would be set forth in the constitution as going out in 1840, instead of 1839.

Mr. BELL, of Chester, knew not whether the vote which had been taken to-day on the proposition fixing the periods at which the different judges shall leave the bench was decided rightly or wrongly. But, he called in question the principle adopted. It was a new, and as he conceived, not a fair and equitable one. He thought that if the convention were to make any rule at all in reference to what judges should go out of, and what should remain in office, they ought to adopt one which, at least, had something like justice to recommend it. He was for having a more clear, distinct, and explicit rule laid down, than that embraced in the amendment of the delegate from Luzerne, (Mr. Woodward.) Why, should we not say, at once, who shall go out, and who shall stay in? He would say, then, that so far as his own wishes were concerned, he would prefer that a select committee should be appointed to consult together, and to report the names of those officers who ought to go out, and those who should be kept in. He thought this would be as fair as any other plan that could be devised.

Mr. DORAN, of Philadelphia county, asked for the immediate question; which was sustained.

The question was then ordered to be put, and the vote being taken, the amendment was negatived—yeas 15, nays 96.

YEAS.—Messrs. Crum, Dillinger, Doran, Gearhart, Hastings, Houtt, Ingersoll, M'Cahen, Montgomery, Porter, of Northampton, Reigart, Sellers, Sterigere, Thomas, White—15.

NAYS.—Messrs. Agnew, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bidle, Bunham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Cope, Cox, Crain, Crawford, Cummin, Cunningham, Curll, Darlington, Darrah, Dickey, Donagan, Donnell, Dunlop, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Harris, Hayhurst, Hays, Helfenstein, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Jenks, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Macley, Magee, Martin, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Myers, Nevin, Overfield, Payne, Pennypacker, Porter, of Lancaster, Purviance, Read, Ritter, Rogers, Royer, Russell, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Stevens, Stickel, Sturdevant, Taggart, Todd, Weaver, Weidman, Woodward, Young—96.

Mr. DICKEY, of Beaver, moved to amend the amendment, by adding the following:

"At the same time at which the vote shall be taken on the amendments proposed by this convention, the question shall be submitted to the people, whether the offices of the judges of the supreme court of this commonwealth, shall expire in the manner above provided for, or whether the said judges shall hold their offices from the time of the adoption of the amendments for the term provided for in the said amendments. And tickets shall be received containing the words "graduation," or "no

graduation," which tickets shall be labelled on the outside "judges;" and the said votes shall be received, counted, and returns thereof made in like manner, as is provided for the votes on the amendments. And if, upon the counting of the votes upon the said question, it shall appear that a greater number have been given for the "graduation," the foregoing graduation shall go into effect as therein provided. If a greater number of votes shall be given against a "graduation," then the judges of the supreme court of this commonwealth shall hold their offices for the term provided in the amended constitution, to commence and take effect from the time of the ratification of the amendments by the people."

Mr. D. expressed his disapprobation of the terms and general character of the amendment of the gentleman from Luzerne, (Mr. Woodward;) and asked whether the members of this convention were willing that the judges should go out of office at the will of the people, or the arbitrary dictation of the gentleman from Luzerne? He (Mr. Dickey) desired to see whether the democracy of this convention would permit the proposed graduation to be adopted. He wished to ascertain whether or not they were disposed to give the people an opportunity of expressing their wishes whether they would continue the present judges, or get rid of them in the manner proposed. If the graduated scale of the delegate from Luzerne was to be a part of the schedule, it was evident the people were not to have any choice in the matter.

Mr. HESTER, of Lancaster, said that he had not looked into the subject very minutely, but he had been under the impression that it would be submitted to the people as a part of the amended constitution. It appeared, however, from the view taken, and the opinion expressed by the gentleman from Beaver, (Mr. Dickey) that such was not to be the case. For himself, he was not prepared to say whether the gentleman was right or not. He intended to vote for his amendment. His desire was, that the people should have an opportunity of voting on the schedule as well as the constitution itself.

Mr. MEREDITH, of Philadelphia, expressed his opinion in favor of the amendment of the delegate from Beaver, (Mr. Dickey,) and said he would vote for it.

Mr. FULLER, of Fayette, hoped the proposition of the gentleman from Beaver would not be agreed to. If he would insert a clause in it providing for the repeal of the charter of the bank of the United States, the amendment would probably meet with a more favorable reception.

Mr. DENNY, of Allegheny, moved that the convention do now adjourn; but afterwards withdrew the motion.

Mr. D. then said, that gentlemen had averred themselves, over and over again, willing to leave every thing to the people, and now it remained to be seen whether they would do so. We professed to believe that the people have a right to alter and amend the constitution as they think proper, then why should we receive the proposition of the gentleman from Luzerne, (Mr. Woodward,) and not give the people an opportunity of expressing their opinion on it. We had actually gone so far as to declare, in the course of our proceedings here, that the people should have no voice in designating the term that the present judges should remain in office. We decided according to the power and authority we

possessed, and the people confiding and trusting in us, felt themselves bound to conform to our wishes, instead of our acting and carrying out theirs, according to the best of our knowledge and belief.

He trusted that, notwithstanding, the importance and magnitude of the amendment of the gentleman from Luzerne, that the members of this convention would not arrogate to themselves a power greater than the people possess. In conclusion, then, he would ask those who bowed to the power and supremacy of the people, to come forward and submit to the will of the people.

Mr. WOODWARD explained, that the schedule could not be adopted, unless the amendments were also. It was not to be the schedule of the old constitution, but that of the new. Its fate was that of the amendments—either to be approved or rejected. Therefore, there was no necessity for the motion of the delegate from Beaver.

Mr. FORWARD, of Allegheny, remarked, that if any body was satisfied of the justice and propriety of their course in favoring the graduating principle, he would not disturb their serenity of mind. He would at once declare, firmly and explicitly, that he would not vote for it, whether it was necessary as regarded the schedule or not. It was fraught with flagrant injustice, and could not be supported on honest and defensible grounds. He would vote for the amendment of the gentleman from Beaver, because he conceived that the principle of graduation was wholly indefensible. No one here pretended to represent the people in regard to the principle of graduation. No direct opinion on the part of the body had yet been given whether or not the amendments to the constitution were to be submitted in whole, or in part. Being desirous that the schedule should be considered separately and apart from the amendments, formed a reason with him why he would vote for it. Another reason was, that he did not wish the amendments to be put in jeopardy by the schedule. He felt fully impressed with the conviction, that if the amendments should be submitted separately, many strong objections which might be urged in regard to them, if submitted as a whole, would be got rid of. If, then, there was danger to be apprehended, as he really conceived there was, should the amendments not be submitted separately, why ought we to adopt the opposite course? Why should we unnecessarily run the risk of losing all the amendments? What sound or reasonable objection could gentlemen give for not pursuing that course which was safest? Were they afraid to appeal to the people?—to allow them to pass upon each, and all of the amendments, separately and distinctly? He would maintain that the voice of the people should be taken on them in that manner, and then an opportunity would be afforded them of saying whether the graduation principle proposed should be adopted, and which was (and he spoke with great respect for those who favored it) grossly unjust, and wholly indefensible.

Mr. FLEMING, of Lycoming, said that he was entirely opposed to the amendment of the gentleman from Beaver, (Mr. Dickey.) He (Mr. F.) had always been of the impression that the delegates composing this convention, had been sent here for the purpose of proposing amendments to the constitution of 1790. It seemed, however, that the gentleman proposed to send that instrument back to the people, in order that they might go into committee of the whole, he (Mr. F.) supposed, *en masse*,

and amend it. He was totally opposed to the adoption of any such course. He preferred that this convention should dispose of all the questions and amendments which might be brought before it, and then submit the constitution, as amended, to the people for their ratification or rejection. This, he believed to be the duty of this body; and, so far as concerned himself, he would do his. As to the idea of submitting separate and distinct questions to the people of Pennsylvania, whether they desired the insertion of this or that particular proposition in the constitution, it could not be entertained. Even if it were proper to do so, it was altogether too late.

Mr. BIDDLE, of Philadelphia, observed that he hoped, as the convention was on the eve of separating, gentlemen would act calmly, deliberately, dispassionately, and justly, on the few remaining great questions which they had yet to determine. He knew not whence this convention had derived the power to remove individuals from office. We had been told by gentlemen, heretofore, that we do not possess that power of appointment. If then, we do not possess the power of appointment, much less do we possess the power to remove, and that, too, without even submitting our proceedings to the people, or saying that they may express their opinion on the subject. The doctrine was detestable, especially so when coming from those who professed to be pre-eminently democratic—those who professed to speak the real sentiments of the people. The people had not delegated to this convention the power to remove a single individual. And, gentlemen might be assured that, in exercising this power, they transcended their duty. We, in our sovereign will and pleasure, had declared that we would not make amendments to the constitution, unless they were permitted to remove every officer who now held under the existing constitution! Never had there been proclaimed a more anti-democratic doctrine than this. For his own part, he would bow to the sovereign will of the people, and leave them to determine the question as they might think proper.

Mr. DICKEY asked for the yeas and nays on the adoption of the amendment, and the question being taken, it was decided in the negative—yeas 35, nays 78.

YEAS—Messrs. Agnew, Baldwin, Biddle, Carey, Chandler, of Chester, Chandler, of Philadelphia, Clark, of Dauphin, Cline, Coates, Cox, Crum, Darlington, Denny, Dickey, Donagan, Dunlop, Forward, Harris, Hays, Henderson, of Dauphin, Jenks, Konigsmacher, Long, M'Sherry, Meredith, Merrill, Porter, of Lancaster, Royer, Scott, Serrill, Snively, Stevens, Todd, Weidman, Sergeant, *President*—35.

NAYS—Messrs. Banks, Barclay, Barn-dollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Hiester, High, Hopkinson, Hout, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Maclay, Magee, Martin, M'Cahen, M'Dowell, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Northampton, Purviance, Reigart, Read, Ritter, Rogers, Russell, Scheetz, Sellers, Seltzer, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Weaver, White, Woodward, Young—78.

Mr. BELL moved to amend the amendment as modified, by striking out all after the word "the," where it first occurs, and inserting in lieu thereof the following, viz :

"Judges of the supreme court of this commonwealth shall be divided

by lot into five classes. The commission of the first class shall be vacated on the expiration of the term of three years after the adoption of the amendments to the constitution ; of the second class, on the expiration of six years after said adoption ; of the third class, on the expiration of nine years after such adoption ; of the fourth class, on the expiration of twelve years after such adoption ; and of the fifth class, on the expiration of fifteen years after such adoption. 'The number of the classes shall be ascertained in the following manner:—'The names of the said judges shall be written upon small slips or pieces of paper, which shall be folded or rolled up, so that the names shall not appear without unfolding thereof, and such slips or pieces of paper shall thereupon be deposited in a box by the president of the convention, and the said slips or pieces of paper shall be drawn from the said box in the presence of the convention, by a committee to be appointed for that purpose ; the name first drawn, shall be of the first class ; the name secondly drawn, shall be of the second class ; the name thirdly drawn, shall be of the third class ; the name fourthly drawn, shall be of the fourth class ; and the name fifthly drawn, shall be of the fifth class. After the classes shall have been thus ascertained, it shall be the duty of the president and secretary of the convention to certify the result, which certificate shall be deposited in the office of the secretary of the commonwealth, and shall be received as conclusive evidence of the subject matter to which it relates.

"SECT. 8. 'The president judges of the several judicial districts of this commonwealth, and the associate judges of the first district, shall be divided by lot into five classes. 'The commissions of the first class shall be vacated on the expiration of two years after the adoption of the amendments to the constitution ; of the second class, on the expiration of four years after such adoption ; of the third class, on the expiration of six years after such adoption ; of the fourth class, eight years after such adoption ; and of the fifth class, in ten years after such adoption. 'The number of each class shall be determined in the following manner:—'The name of each judge shall be written upon a slip or piece of paper, which shall be folded or rolled up, so that the name shall not appear without unfolding thereof, and the said slips or pieces of paper shall thereupon be deposited in a box by the president of the convention, and drawn from such box, in the presence of the convention, by a committee to be appointed for that purpose ; the four names first drawn, shall be the first class ; the four names secondly drawn, shall be the second class ; the four names thirdly drawn, shall be the third class ; the four names fourthly drawn, shall be the fourth class ; and the five names fifthly drawn, shall be the fifth class. After the classes have been thus ascertained, it shall be the duty of the president and secretary of the convention to certify the result, which certificates shall be deposited in the office of the secretary of the commonwealth, and shall be received as conclusive evidence of the subject matter to which it relates."

Mr. CURLL, of Armstrong, moved that the convention do now adjourn.

Mr. INGERSOLL, of Philadelphia, asked for the yeas and nays ; which were not ordered.

So the convention refused to adjourn.

Mr. BEDFORD, of Luzerne, demanded the immediate question ; which was sustained.

'The main question was then ordered to be put.

And Mr. BELL asked for the yeas and nays, which being taken, the amendment was negatived—yeas 5, nays 95.

YEAS—Messrs. Bell, Ingersoll, Meredith, Stevens, Weidman—5.

NAYS—Messrs. Agnew, Banks, Barclay, Barndollar, Barnitz, Bedford, Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Coates, Crain, Crawford, Crum, Cummin, Curll, Darlington, Darrah, Denny, Dickey, Dillinger, Donagan, Donnell, Earle, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Jenks, Keim, Kennedy, Konigsmacher, Krebs, Long, Lyons, Magee, Martin, M'Cahen, M'Dowell, M'Sherry, Merkel, Miller, Montgomery, Myers, Nevin, Payne, Porter, of Lancaster, Purviance, Reigart, Read, Ritter, Rogers, Royer, Russell, Scheetz, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Weaver, White, Woodward, Young—95.

Mr. STERIGERE moved to amend the amendment as modified, by adding thereto the following, viz: "The president judges of the several courts of common pleas, and associate judges of the court of common pleas of the city and county of Philadelphia, whose commissions bear date before the first day of April, one thousand eight hundred and twenty-five, shall hold their offices till the first day of April, one thousand eight hundred and forty; those whose commissions bear date after the said first day of April, one thousand eight hundred and twenty-five, and before the first day of April, one thousand eight hundred and thirty-four, shall hold their offices till the first day of April, one thousand eight hundred and forty-three; and those whose commissions bear date after the said first day of April, one thousand eight hundred and thirty-four, shall hold their offices till the expiration of ten years from the date of their respective commissions, if they shall so long behave themselves well."

Which was disagreed to.

Mr. S. then asked for the yeas and nays.

Mr. DONNELL, of York, demanded the immediate question; which was sustained.

Mr. STERIGERE then withdrew his call for the yeas and nays.

And, it was decided that the main question should be now put.

Mr. M'CAHEN, of Philadelphia county, asked for the yeas and nays, which being taken, the amendment was agreed to—yeas 65, nays 42.

YEAS—Messrs. Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Hiester, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Martin, M'Cahen, M'Dowell, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Woodward, Young—65.

NAYS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Biddle, Chambers, Chandler, of Chester, Clark, of Dauphin, Cline, Coates, Crum, Darlington, Denny, Dickey, Donagan, Doran, Dunlop, Harris, Hays, Henderson, of Dauphin, Jenks, Konigsmacher, Long, M'Sherry, Meredith, Merrill, Merkel, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Scott, Serrill, Sill, Snively, Stevens, Thomas, Todd, Weidman, Sergeant, President—42.

So the question was determined in the affirmative.
 And the section as amended was agreed to.
 A motion was made by Mr. M'DOWELL, of Bucks,
 That the convention do now adjourn ;
 Which was agreed to.
 Adjourned until half-past nine o'clock to-morrow morning.

WEDNESDAY, FEBRUARY 21, 1838.

The PRESIDENT laid before the convention a communication from Matthew Newkirk, chairman of a committee of arrangement, inviting the members of the convention to attend a temperance festival at the Arch street theatre, on the evening of 22d instant.

Which was read and laid on the table.

Mr. COCHRAN, from the committee to prepare and engross the amendments made to the constitution on second reading for final passage, reported the following resolution, viz :

Resolved, That the following be the title of the amended constitution, viz: "The constitution of the commonwealth of Pennsylvania, as amended by the convention."

And on motion,

The said resolution was read a second time.

And being under consideration,

Mr. SCOTT, Philadelphia, said, he did not know that we were to promulgate an entire constitution, or whether the duty presented to the convention was not to submit merely the amendments to the people. He would like a little more time to reflect on the subject.

Mr. COCHRAN suggested that the convention was required to deposit the constitution in the office of the secretary of the commonwealth, and that, therefore, it was necessary there should be a title to it. As a member of the committee, he had thought he would offer a title to the consideration of the convention. He saw no good cause for rejecting it. The amendments had been engrossed, and, according to the act of assembly, must be deposited in the office of the secretary of the commonwealth, and he suggested this as a title proper to be prefixed to them.

Mr. PORTER, of Northampton, took a similar view. It seemed from the act of assembly, that the amendments as engrossed are to be submitted to the people, and the amended constitution is to be filed in the secretary's office. A title therefore seems to be proper.

Mr. BROWN, of Philadelphia county, thought it should read "The constitution of 1790, as amended."

Mr. COCHRAN said the title, as it had been suggested, was easy to

be understood. He did not see that it was necessary to be more particular. The sixth section of the act of assembly says "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," &c.

Mr. AGNEW, of Beaver, said he was willing to agree to the motion with one small objection, as he was a little nice concerning the phraseology. He would prefer to say "the commonwealth of Pennsylvania, as amended in 1838," because the amendments will have to be made by the people and not by the convention. The language contained in the resolution does not exactly carry out the words of the act of assembly. The action of the convention on the amendments is not definitive. It will not be a constitution until it has been adopted by the people. He hoped that the gentleman from Lancaster would concur in these views and modify the resolution as suggested.

Mr. COCHRAN declined to accept the suggestion as a modification. It was true we might say the amendments must be adopted by the people, but eventually the constitution will be amended by the convention.

Mr. AGNEW then moved to amend the resolution by striking therefrom the words "by the convention of 1837," and inserting in lieu thereof the words "in the year."

The schedule (said Mr. A.) fixes the year 1839 for the constitution to go into effect, so that, in point of fact, it will be the constitution of 1839.

Mr. MEREDITH, of Philadelphia, suggested that in adopting the language of the amendment, we might be asserting what is not the fact. Perhaps the people will not adopt the amendments.

Mr. BIDDLE, of Philadelphia, said the amendment of the gentleman from Beaver placed the matter where it ought to be. If the people reject the constitution, why then all our work will go for nothing: on the other hand if they adopt it, it will stand just as it is.

The question was then taken on the motion of Mr. AGNEW, and decided in the negative—ayes 25.

Mr. BANKS, of Mifflin, did not wish to make any difficulty. Something was certainly wanting. There was a sort of interregnum between May 1837, and the time when this constitution will go into effect. He thought it should read the constitution 1837-1838.

Mr. COCHRAN accepted this modification, and modified it so as to read "of 1837-1838."

Mr. STERIGERE, of Montgomery, said the modification made the resolution worse than it was before, and moved to amend it, by striking therefrom the words "by the convention of 1837," and inserting in lieu thereof the words "in the year 1838."

Mr. AGNEW demanded the yeas and nays on this motion, and they were ordered accordingly.

Mr. COCHRAN hoped the report of the committee would be agreed to. We were required to deposit the constitution as amended in the office of the secretary of the commonwealth, with the signatures of the officers and

members. If the people reject the amendments, this formality will be nothing. If they adopt them, it will be evidence of the authenticity of document.

Mr. BIDDLE, of Philadelphia said, that he was very sorry to disagree with the gentleman who had offered this amendment. But, what were the facts? The people had chosen the members of this convention to prepare and submit amendments for their consideration; and if they were approved of in 1838, the act would be consummated by them. We were entirely beyond their consideration; and the people who were subsequently to be governed by that constitution, had shortly to decide whether or not they would adopt it. This convention having prepared it would give it no efficiency whatever. That fact would not weigh a feather with them; but the act of the people would make it obligatory. There was an analogy that would make this matter quite clear: Suppose a man to get a learned gentleman to prepare an instrument, and to express his desire that he should put his name on the back of it, would that gentleman write on it, "drawn by the learned Mr. A"? or, would he not write these words—"articles of agreement between A and B"? And, supposing the constitution to be adopted—what was the name? It was the instrument which was to live—to have a name. What name should we give it? Why—"The constitution of Pennsylvania as amended in 1838." Would not that, he asked, be state of the case as in accordance with the fact? Would it not be the constitution of Pennsylvania as amended in 1838? It was a small matter, but names were sometimes things. It was due from us that we should put things in their proper form, and right that we should call things by their right names. What signified—what importance was it, that we stated these amendments to be the result of our labors? If the people adopted it, it became their act, and therefore it should be called "The constitution of Pennsylvania as amended in 1838."

Mr. HIESTER, of Lancaster, said that when the proposed title was first reported, he saw no objection to it. Since, however, he had heard the different explanations given in respect to it by the gentleman from the city of Philadelphia, (Mr. Biddle) and others, he had been induced to change his mind. What, he inquired, was the language of the report of the committee? Why, it was "the constitution as amended in convention." Now, that was not the fact, because it required the concurrent action of the people before it could become so. Besides, the convention does not amend, it only proposes amendments. He most cordially agreed with the gentleman from Philadelphia, (Mr. Biddle) who said that names were sometimes things. There seemed to his (Mr. H's.) mind great propriety in the modification proposed by delegate from Montgomery, (Mr. Sterigere.) I met the case exactly—for, it was the constitution as amended in 1838. He hoped, therefore, that it would be adopted.

The question was taken on the adoption of the amendment, and it was negatived—yeas 41; nays 64.

YEAS—Messrs. Agnew, Biddle, Brown, of Northampton, Brown, of Philadelphia, Chandler, of Philadelphia, Cope, Cox, Crum, Darlington, Dickey, Dillinger, Doran, Earle, Fry, Gamble, Harris, Hastings, Hays, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Kennedy, Konigmacher, Long, M'Cahen, M'Dowell, Merrill, Merkel, Montgomery, Overfield, Porter, of Lancaster, Royer, Sellers, Serrill, Snively, Sterigere, Todd, White, Woodward, Young—41.

NAYS—Messrs. Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Clapp, Clarke, of Indiana, Cline, Coates, Cochran, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Dickerson, Donagan, Donnell, Dunlop, Farrelly, Fleming, Foulkrod, Fuller, Gearhart, Gilmore, Grenell, Hayhurst, High, Houpt, Hyde, Jenks, Keim, Krebs, Magee, M'Sherry, Meredith, Miller, Myers, Nevin, Porter, of Northampton, Reigart, Ritter, Russell, Scheetz, Scott, Seltzer, Shellito, Sill, Smyth, of Centre, Stevens, Taggart, Thomas, Weaver, Sergeant—64.

Mr. CURLL, of Armstrong, moved to amend the resolution by adding to it the following: "To be submitted to the people for their adoption or rejection."

Mr. C. would merely say that he was not at all anxious with respect to the amendment he had offered. It was immaterial to him what the title was—call it *loco foco*, or any thing else.

Mr. STERIGERE, of Montgomery, moved the previous question; which was sustained.

The main question was then ordered to be put.

And the resolution was agreed to.

Mr. CURLL, of Armstrong, from the committee on printing, made the following report accompanied by the annexed resolution:

"Whereas, the committee on printing, find it impracticable to have the German copies of the constitution and amendments translated and printed before the adjournment of the convention. They, therefore, present the following resolution to this body for its approbation:

Resolved, That John Ritter, Esq. procure to be translated and printed three thousand copies of the constitution and amendments in the German language, and have the same delivered to the secretary of the commonwealth on or before the thirty-first day of March next, to be under his direction forwarded without delay to the members of the convention in the several counties, by mail, or otherwise, at the expense of the state.

The resolution was then read a first and second time.

Mr. STEVENS, of Adams, moved to amend by inserting after the word "printed" the words "under his superintendence by the printer of the German Journal of the convention."

Mr. S. asked for the yeas and nays.

Mr. BONHAM, of York, moved the previous question; which was sustained.

The question was then taken on agreeing to the resolution, and it was decided in the affirmative—yeas 66; nays 31.

YEAS—Messrs. Agnew, Banks, Barnitz, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Chauncey, Clarke, of Indiana, Cochran, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Helfenstein, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Kiem, Kennedy, Krebs, Magee, Martin, M'Cahen, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Northampton, Rogers, Scheetz, Sellers, Shellito, Sill, Smyth, of Centre, Snively, Sterigere, Stickel, Weaver, White, Woodward—66.

NAYS—Messrs. Ayers, Baldwin, Barndollar, Brown, of Lancaster, Chambers, Chandler, of Chester, Clapp, Cline, Coates, Cox, Crum, Cunningham, Darlington, Denny, Harris, Hayhurst, Hays, Henderson, of Dauphin, Jenks, Konigsmacher, Long, MacLay, M'Sherry, Pennypacker, Porter, of Lancaster, Royer, Russell, Serrill, Stevens, Todd, Young—31.

The **PRESIDENT** announced that the hour appropriated to the consideration of petitions, resolutions and motions had expired.

Mr. COPE, of Philadelphia, moved that the convention now resume the second reading and consideration of the resolution attached to the report of the committee on accounts, read and postponed on the 17th instant, in the words as follows, viz :

Resolved, That the accounting officers of the commonwealth of Pennsylvania, be charged with the final settlement and payment respectively of the accounts of the stenographer, the printers of the English Debates, the German Debates, the English Journal, the German Journal; the binder of the English Debates, the binder of the German Debates, and of the secretary of this convention.

The motion having been agreed to, and the resolution being under consideration,

Mr. WOODWARD, of Luzerne, moved to amend the same, by inserting after the word "stenographer," the words as follow, viz: "including postage on the correspondence of the stenographer and printers with the members of the convention, in reference to the business of the convention."

The question being taken on the amendment, it was agreed to.

And the resolution, as amended, was agreed to.

SCHEDULE.

The convention resumed the second reading of the report of the committee appointed to prepare and report a schedule to the amended constitution.

The amendment to the amendment to the seventh section of said report being under consideration,

Mr. FLEMING, of Lycoming, moved that the further consideration of the same be postponed for the present, for the purpose of proceeding to the second reading and consideration of the report of the committee on accounts, postponed on yesterday, relative to the pay of the secretaries and sergeant at arms of this convention.

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

The question recurring;

Will the convention agree to the amendment offered by **Mr. BELL** to the amendment of **Mr. WOODWARD** to the seventh section of the report of the committee appointed to prepare and report a schedule to the amended constitution, in the words as they follow, viz :

"The president judges of the several judicial districts of this commonwealth and the associate judges of the first judicial district, shall continue to hold their respective offices for the term of ten years, and the other associate judges for the term of five years from and after the adoption of the amendments to the constitution, if they shall so long behave themselves well."

Mr. BELL said he did not introduce this proposition for the purpose of exciting a debate on this perplexed question. The battle had been fought and the principle of this amendment had been repudiated.

The motion to amend the amendment was then decided in the negative.

The amendment to the said section being under consideration, in the words as follow, viz .

"The commissions of the president judges of the eleventh and thirteenth judicial districts shall expire on the twenty-seventh day of February, Anno Domini one thousand eight hundred and thirty-nine;—of the ninth and fifteenth districts on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty:—of the sixth and first districts on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-one;—of the fourth and sixteen districts on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-two;—of the twelfth and seventh districts on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-three;—of the seventeenth and eighth districts on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-four;—of the nineteenth and fifth districts, and the commissions of the associate judges of the first district, shall expire on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-five;—the commissions of the president judges of the eighteenth and third districts shall expire on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-six;—of the second and tenth districts on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-seven;—and of the fourteenth district on the twenty-seventh day of February, Anno Domini one thousand eight hundred and forty-eight."

A motion was made Mr. STERIGERE,

To amend the said amendment by striking therefrom all after the word "the," where it occurs the third time in the first line, and inserting in lieu thereof the words as follow, viz:

"President judges of the several courts of common pleas, and associate judges of the court of common pleas of the city and county of Philadelphia, whose commissions bear date before the first day of April, one thousand eight hundred and twenty-five, shall hold their offices till the first day of April, one thousand eight hundred and thirty-nine; those whose commissions bear date on or after the said first day of April, one thousand eight hundred and twenty-five, and before the first day of April one thousand eight hundred and thirty-three, shall hold their offices till the first day of April, one thousand eight hundred and forty-three; and those whose commissions bear date on or after the said first day of April, one thousand eight hundred and thirty-three, shall hold their offices till the expiration of ten years from the date of their respective commissions, if they shall so long behave themselves well."

Mr. STERIGERE said, he had offered this amendment to the section under consideration, because he thought all the judges should be embraced in one section. He had examined most of the constitutions which had been amended, and found that was the course taken on this subject. There was no use in introducing two sections.

The amendment he had proposed divided the law judges of the inferior courts now in commission, into three classes nearly equal. By this, those who were appointed before April 1, 1825, five in number, were to go out of office the 1st of April, 1839;—those who were appointed after April 1, 1825, and before 1st April, 1834, being seven in number, were to go out of office on the 1st of April, 1843; and all who were appointed after April 1st, 1834, being eight in number, were to go out of office at

the expiration of ten years from the date of their respective commissions. This was as fair and judicious an arrangement as could, in his opinion, be made. He would not, at this late hour, take any more time than merely to read a statement showing the time each judge would hold his office from the time fixed for the amended constitution to go into operation, viz: January 1, 1839. Under this amendment

The president of the thirteenth district, appointed July 1, 1815, will hold three months.

The president of the eleventh district, appointed July 7, 1818, will hold three months.

The president of the ninth district, appointed July 10, 1820, will hold three months.

The president of the fifteenth district, appointed May 22, 1821, will hold five months.

The president of the sixth district, appointed January 24, 1825, will hold three months.

The president of the first district, appointed April 27, 1825, will hold four years and three months.

The president of the fourth district, appointed April 20, 1826, will hold four years and three months.

The president of the sixteenth district, appointed June 25, 1827, will hold four years and three months.

The president of the twelfth district, appointed February 1, 1830, will hold four years and three months.

The president of the seventh district, appointed April 16, 1830, will hold four years and three months.

The president of the seventeenth district, appointed April 18, 1831, will hold four years and three months.

The president of the eighth district, appointed October 14, 1833, will hold four years and three months.

The first associate of the first district, appointed January 23, 1834, will hold five years and twenty-three days.

The president of the nineteenth district, appointed May 4, 1835, will hold six years, four months and four days.

The president of the fifth district, appointed May 5, 1835, will hold six years, four months and five days.

The president of the eighteenth district, appointed November 10, 1835, will hold six years, ten months and eighteen days.

The second associate of the first district, appointed March 12, 1836, will hold seven years, two months and twelve days.

The president of the third district, appointed April 1, 1836, will hold seven years and three months.

The president of the second district, appointed August 8, 1836, will hold seven years, seven months and eight days.

The president of the tenth district, appointed December 13, 1836, will hold seven years, eleven months and thirteen days.

The president of the fourteenth district, (now vacant.)

Mr. WOODWARD remarked that, under this amendment one hundred and eight associate judges would have to go out in five years. Would not the effect of this be to increase patronage in the hands of the governor? There would then be a large number of appointments in the hands of the executive. As to the time when these appointments would have to be made, unless the senate was in session there would be no check on the executive action. He believed the constitution does not allow one house to sit without the other. The last days are the most important of the session.

Mr. BIDDLE said that the convention had put an end to all doubt as to the system of graduation, by the decided vote which had been given. That being the case, he was disposed to give to the incumbents as long a time as possible. He was, therefore, in favor of that plan which would give them the longest terms. Another reason which operated on his mind was this: We have in Philadelphia a gentleman who fills the office of president judge of the court of common pleas with distinguished ability. His term would expire in 1845, while in Luzerne the term of the judge would expire in 1841. He would, therefore, vote for the amendment of the gentleman from Montgomery, because it would extend the term, and because he believed the administration of justice would be benefited by it in the district in which he (Mr. B.) resided. As to the legislature being in session, he did not think that of any consequence, as it was not necessary that a commission should have expired before a nomination was made. Suppose there should be a certain period of time during which one was filling a judicial office. The governor in that case might make a nomination to take effect from the period at which that commission would expire. For these reasons, he should give his vote in favor of the amendment of the gentleman from Montgomery.

Mr. BROWN, of Philadelphia county, hoped the convention would vote down the proposition of the gentleman from Montgomery, in order to take an amendment which he had prepared. The object of his proposition was to consider all judges alike, and to regard offices as not bestowed on individuals for their benefit, but for the good of the community. He desired to divide the present judges into two classes—the first to go out in 1839, and the second in 1842. The others would have the benefit of ten years each. This plan would only give to the executive in 1839, seven of the judges to re-appoint, instead of six, as reported by the committee. No division could be made which would be exactly equal. This was founded on the principle of doing equal justice to all the judges during their terms at the same time, and carrying out the amended constitution.

Mr. STEVENS, of Adams, said, if the gentleman from the county would modify his amendment so as to say that the commissions of all these judges should expire on the 27th of February, after the expiration of ten years, he believed he should vote for it, because it would be carrying out the principle. The reason for fixing the day was that the governor might proceed to the making of his nominations at once. To be sure, this cutting up of *puisne* judges seemed to be a matter of too little moment to deserve much consideration.

Mr. PORTER asked whether the number of judges whose terms will expire at the time of the adoption of the amendments; was even or odd. If it was an odd number, what was to be done with the odd one?

Mr. BROWN replied. They happen to be even.

Mr. DUNLOP, of Franklin, had never expected to see the day when the gentleman from the county of Philadelphia would be engaged in the construction of the judiciary of this commonwealth, and he himself (Mr. D.) felt very little concern as to the result.

Mr. STERIGERE said a few words in the way of explanation of his object. He said he had made the classification of the judges in the manner which the gentleman from the county had embodied in his amendment. His proposition embraced the principle which the gentleman from Adams had expressed himself favorable to, and makes a better disposition of the judges. The gentleman from Luzerne doubted whether under the constitution the senate could hold sessions without the house. But the United States Senate acted on this principle. No one ever dreamed that it was necessary to call the house of representatives together, because the senate was about to act on executive nominations.

The question was then taken on the amendment offered by Mr. STERIGERE, and decided in the negative, as follows, viz :—

YEAS—Messrs. Barndollar, Barnitz, Biddle, Chambers, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cline, Cochran, Cox, Crum, Doran, Fry, Hays, Henderson, of Dauphin, Meredith, Morrill, Montgomery, Porter, of Northampton, Russell, Scott, Sterigere, White, Sergeant, *President*—24.

NAYS—Messrs. Ayres, Baldwin, Banks, Bedford, Bell, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chandler, of Chester, Clapp, Clarke, of Indiana, Coates, Crain, Crawford, Cummin, Cunningham, Curll, Darlington, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Fleming, Forward, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helfenstein, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Keim, Konigsmacher, Krebs, Long, Lyons, Maclay, Magee, Martin, M'Cahen, M'Dowell, M'Sherry, Merkel, Miller, Myers, Nevin, Overfield, Payne, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Read, Ritter, Rogers, Royer, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Sill, Smyth, of Centre, Snively, Stevens, Stickel, Taggart, Thomas, Todd, Weaver, Weidman, Woodward, Young—89.

Mr. BROWN, of Philadelphia county, moved to amend the amendment by striking out all after the word "the," where it occurs the last time in the first line, and inserting the following :

"Several judicial districts, and of the associate law judges of the first judicial district, shall expire as follows :—The commissions of one half of those who shall have held their offices ten years or more at the adoption of the amendments to the constitution, shall expire on the 27th of February, 1839 ; the commissions of the other half of those who shall have held their offices ten years or more at the adoption of the amendments to the constitution, shall expire on the 27th of February, 1842—the first half to embrace those whose commissions shall bear the oldest date. The commissions of all the remaining judges who shall not have held their offices for ten years at the adoption of the amendments to the constitution, shall expire on the 27th of February next after the end of ten years from the date of their commissions."

Mr. PURVIANCE, of Butler, moved the immediate question ; and then withdrew it.

Mr. STERIGERE said he hoped this amendment would be negatived—although it appeared fair on its face, it was founded on an iniquitous principle ; there was a covert design which deserved exposure, and showed

from what source it came. It is only necessary to advert one moment to the dates of the commissions of the present judges to show how unjustly it will operate.

By this the commissions of the president judges of the ninth, eleventh, thirteenth and fifteenth districts, being the oldest, will expire the 27th of February, 1839; and those of the president judges of the first, fourth, sixth and sixteenth, being the next oldest, and granted in the year 1825, 1826, and 1827, are to expire the 27th of February, 1842; and the commissions of the presidents of the seventh and twelfth districts are to expire in 1840. So that judges who were appointed in 1825 are to continue two years longer in office than those appointed in 1830. That is, the former are to continue till 1842, while the latter are to go out in 1840. This is too glaring to be sanctioned. It is too pointedly aimed at one judge to be for a moment tolerated. He hoped it would be negatived, and the report of the minority of the committee adopted.

Mr. S. read the following statement, showing the time each judge would continue in office after the adoption of the constitution, under Mr. Brown's amendment:

Judge Herrick, president of the thirteenth district, who was appointed July 1, 1818, would continue one month and twenty-seven days, and will go out the 27th of February, 1839.

Judge Scott, president of the eleventh district, who was appointed July 7, 1818, would continue one month and twenty-seven days, and will go out the 27th of February, 1839.

Judge Reed, president of the ninth district, who was appointed July 10, 1820, would continue one month and twenty-seven days, and will go out the 27th of February, 1839.

Judge Darlington, president of the fifteenth district, who was appointed May 22, 1821, would continue one month and twenty-seven days, and will go out the 27th of February, 1839.

Judge Shippen, president of the sixth district, who was appointed January 24th, 1825, would continue in office three years, one month and twenty-seven days, and will go out February 27th, 1842.

Judge King, president of the first district, who was appointed April 27th, 1825, would continue in office three years, one month and twenty-seven days, and will go out February 27th, 1842.

Judge Burnside, president of the fourth district, who was appointed April 20th, 1826, would continue in office three years, one month and twenty-seven days, and will go out February 27th, 1842.

Judge Thomson, president of the sixteenth district, who was appointed June 25th, 1827, would continue in office three years, one month and twenty-seven days, and will go out February 27th, 1842.

Judge Blythe, president of the twelfth district, who was appointed February 1st, 1830, would continue in office one year and twenty-seven days, and will go out February 27th, 1840.

Judge Fox, president of the seventh district, who was appointed April 16th, 1830, would continue in office two years, one month and twenty-seven days, and will go out February 27th, 1841.

Judge Bredin, president of the seventeenth district, who was appointed

April 18th, 1831, would continue in office three years one month and twenty-seven days, and will go out February 27th, 1843.

Judge Lewis, president of the eighth district, who was appointed October 14th, 1833, would continue in office five years, one month and twenty-seven days, and will go out February 27th, 1844.

Judge Randall, (associate,) of the first district, who was appointed January 23d, 1834, would continue in office five years, one month and twenty-seven days, and will go out February 27th, 1844.

Judge Durkee, president of the nineteenth district, who was appointed May 4th, 1835, would continue in office seven years, one month and twenty-seven days, and will go out February 27th, 1846.

Judge Dallas, president of the fifth district, who was appointed May 5th, 1835, would continue in office seven years, one month and twenty-seven days, and will go out February 27th, 1846.

Judge Eldred, president of the eighteenth district, who was appointed November 10th, 1835, would continue in office seven years, one month and twenty-seven days, and will go out February 27th, 1846.

Judge Jones, (associate,) of the first district, who was appointed March 12th, 1836, would continue in office eight years, one month and twenty-seven days, and will go out February 27th, 1847.

Judge Banks, president of the third district, who was appointed April 1st, 1836, would continue in office eight years, one month and twenty-seven days, and will go out February 27th, 1847.

Judge Collins, president of the second district, who was appointed August 8th, 1836, would continue in office eight years, one month and twenty-seven days, and will go out February 27, 1847.

Judge White, president of the tenth district, who was appointed December 13th, 1836, would continue in office eight years, one month and twenty-seven days, and will go out February 27th, 1847.

Mr. PORTER, of Northampton, said he could not vote for this amendment or any other. He had heard gentlemen talk about principle: he, however, could see no principle, neither in this nor the other amendments, but that of destruction. He disliked this amendment perhaps less than some others, but was not satisfied with it. He would, therefore, vote against all of them.

Mr. REIGART, of Lancaster, observed that he wished a graduating principle to be adopted. He was in favor of the amendment proposed by the delegate from the county of Philadelphia, (Mr. Brown.)

Mr. FLEMING, of Lycoming, said that he was opposed to the amendment of the delegate from Philadelphia county. He believed it to be the wish of a majority of the convention that the action of the governor and senate might be brought into exercise in reference to the judges as soon after the constitution should have gone into effect as the occasion required. Now, if it should happen that any of the judges should die or be removed, before the amendments went into operation, new appointments would, of course, be made in the mean time. And, thus would the principle of the amendment now under consideration be interfered with, as it was based upon the fact that the commissions of the present judges would expire at particular periods. Indeed, it did not follow, as

a matter of course, that all the judges would retain their offices to the end of their respective terms, after the constitution should have gone into effect. They might voluntarily resign, or might, perhaps, die. What he wanted then, was to have all vacancies filled up immediately by the concurrent action of the governor and senate.

Mr. DICKEY, of Beaver, regarded this as the same proposition that was before the convention on Saturday last, except that by this, four of the judges were to go out in the year 1842, several years earlier than by the former proposition. He really was astonished to hear the gentleman from the county of Philadelphia (Mr. Brown) contend that there was a principle in his amendment. To be sure it did contain a principle so far as respected Philadelphia county, and which would keep Judge King in office for seventeen years, while Randall, Blythe and others must go out at the end of ten. He would maintain that there was a principle of partiality about the amendment which had reference only to the county of Philadelphia, and showed attachment for a particular judge. It certainly was very ingeniously drawn up. The first class of judges, it appeared, who had held for more than ten years, were to go out in 1839. The principle would also apply to other judges whom certain gentlemen might be anxious to get rid of. Those, too, who had been already in office ten years must go out. He asked on what principle it was that one judge should be kept in for seventeen years, while others were to be disposed of in a much shorter time? The principle, he entertained no doubt, which actuated many members of the convention, was to get rid of certain judges who were obnoxious to them. While, on the other hand, there were those who had good judges (and this was the moving principle of the delegate from Philadelphia county,) who wished to retain their services as long as they possibly could. Yes, that was the principle of the gentleman's amendment. Now, he (Mr. D.) had contended all along, and so he maintained at this moment, that there was but one principle which ought to be observed, and that was, that the amended constitution should act on all alike,—that all the judges should have the benefit of this new tenure, or that all should be turned out. An intermediate principle was arbitrary and unjust. The principle, then, of the amendment of the delegate from the county of Philadelphia was unjust, for the reason that it would keep a judge in office for seventeen years, while others were to be retained but ten. He was convinced that if the amendment should be adopted that Judge King should be kept in office for seventeen years, the people would vote against the whole constitution.

Mr. BROWN, of Philadelphia county, said he did not dream that his motives would be impeached. He denied that he had any favorite judge, as had been insinuated; nor was Judge King an intimate friend of his, as seemed to be supposed by some gentlemen here. His connexions with that gentlemen were of a very different character. They were scarcely on speaking terms. He (Mr. B.) entertained no particular regard for him, except in so far as respected the manner in which he performed his duty, which he had understood gave great satisfaction. If the gentleman from Montgomery, (Mr. Sterigere) meant to attribute any wrong motives to him, (Mr. Brown) he would tell him that the insinuation was unfounded—that he had no friendship with the judge in question,—and

that he had nothing to do with the judiciary of Pennsylvania, except in one court, over which Judge King presided, and he would do anything here, consistent with his duty, to protect that officer. In all that he had said and done in this body, in relation to the judiciary, it had been with a disinterested view to the benefit of the people, and not the judges. He went on the principle that officers changed with the offices, that when the constitution was changed, they must change with it. We must change the officers under it for the best interests of the people of Pennsylvania.

This convention, he contended, had nothing to do with the officers, but the offices. The amendment, on its face, shewed that no injustice was done to any one, and therefore he felt anxious that it should be adopted. He had examined all the other amendments that had been proposed, and he thought this was fair and equitable towards all the judges. Mr. B. here briefly stated the terms of his amendment, and added that he cared not who went out and who came in. He had no doubt that if a good judge should go out, a good one would be appointed. The convention, it appeared to him, seemed to act on the presumption that we had now a better judiciary than we ever can have, and that all the good men are to die, and that not as good are to be had. This he could not believe. He was not for giving any judge a seventeen years' tenure; but, he asked, was it not a fact that some of our judges had held for twenty-one years, and their tenure could not be abridged under the existing constitution?

[Here Mr. STERIGERE rose and explained, that he had not expressed himself in the strong and personal terms stated by Mr. Brown, who had misapprehended him.]

Mr. BROWN resumed.

It was of no consequence how long the judges held their offices provided that they did not hold them for too long a period. He felt satisfied with his amendment, not on account of its being his own, but because it was honest and just in its principle, and would be perfectly well understood by the people of the commonwealth of Pennsylvania, at least as much as any that had yet been offered in this convention. As to how it might suit certain districts and lawyers, he knew not. He did not know whether they would like it or not; but in drawing it up, he had not taken them into his consideration.

Mr. CLARKE, of Indiana, said, he did not know whether the people of Pennsylvania would understand the amendment or not, but, he must confess that he did not, although he had striven very hard to discover what it meant. He hoped that the amendment of his friend from the county of Philadelphia would not prevail. And, he would give a few of his reasons, why he thought it ought not to be adopted.

There appeared to him to be three parties in this body, as had been observed by the gentleman from Philadelphia county. The first was for cutting off all the judges; the second, for allowing them to remain in office for the limited term fixed by the new constitution; and the third, the radical party, of which he might call himself a member, thought it better to adopt the principle that they should hold for the whole time of fifteen years. This term was finally adopted. Now the minority who voted for it, did not do so in order that the judges might go out at the end

of every three years, but that they might go out gradually, so that the several governors, hereafter to be elected, should have an opportunity of appointing, during their respective terms of service, one of the supreme judges.

With regard to the president judges, the minority report divides them into two classes—the first to go out in 1839, and the second in 1848. It was of no importance whether a judge was to hold his office for five, ten or fifteen years. He cared nothing about it; nor did he prefer one judge to another. It was a matter of no consideration as to who might be the individuals who should hereafter come into office, but the principle was what we were to regard, and that was not to put too much power into the hands of the governor.

He found, on looking at the amendment to the amendment, that it did not provide that the judges should retain their offices for periods varying according to the dates of their respective commissions. Now, by adopting the amendment, embracing that principle, it would shew that we entertained no partiality for Tom, Dick or Harry, and it would be perfectly fair in its operation. The principle would affect all equally alike; and the same principle had been already adopted in regard to the supreme court judges. But, if the amendment immediately before the convention should be adopted, it would give rise to Gerrymandering.

He felt quite sure that the gentleman from Philadelphia county, would not have offered his amendment had he conceived that this would be the effect of it. He certainly did not believe that he introduced the principle it contained out of any private pique towards any lawyer. He could not entertain so derogatory an opinion of the gentleman, as to suppose that he would allow any motives of a personal character to interfere with the high and important duties he had been sent here to discharge.

Mr. C. said he would vote against the amendment and the amendment to the amendment, and in favor of the report of the minority committee.

Mr. STERIGERE, of Montgomery, briefly explained, as he understood it, the operation of the amendment offered by Mr. Brown.

Mr. BROWN, of Philadelphia county, briefly explained the object of his amendment.

Mr. MEREDITH, of the city, did not know what principle the convention were going on in respect to the senate, unless it was an arithmetical principle.

The delegate from Indiana, (Mr. Clarke) had talked about principle, at the same time that he had shown but little of it in his own course of proceeding here. Now, if the gentleman wished us to go for principle, then he himself should vote to put the senators on the same tenure as the judges, then he would be upholding principle.

The principle now contended for, was, that the judges should go out every three years. Upon what ground, he asked, was the delegate able to say that they should go at four, or any other number of years? Let us vote upon this question, individually, in such a mode, that while it would preserve an arithmetical formula, it would not turn out judges who gave satisfaction. This was the principle he would vote for, and he would support the amendment because it allowed the judges to go out at

a later period than the proposition of the gentleman from Luzerne, (Mr. Woodward.)

Where, he inquired, was the injustice of it? He was sorry that the delegate from Beaver, (Mr. Dickey) should have taken up the matter as connected with Judge King, in such warmth. Why was it, that those who represented the district in which Judge King resided, should vote for putting that judge out at an earlier time than was desired by those who valued his services? If a gentleman from a particular county was to rise in his place and say—"if you do not put out such a judge, depend upon it, the people will vote against the whole constitution"—why might we not, with equally as good a grace, declare that we would vote to prolong the terms of those judges who do *not* give satisfaction? Perhaps the gentleman from Beaver, (Mr. Dickey) could inform him (Mr. M.) or, if not, the delegate from Montgomery, (Mr. Sterigere) could probable tell him, why that course should not be adopted. He should regret it if Judge Darlington were to go out at an earlier period than ten years,

While the amendment of the gentleman from Luzerne, (Mr. Woodward) would prevent the indulgence of the private piques spoken of by the gentleman from Indiana, (Mr. Clarke) it would operate harshly and unjustly on the district. He did not mean the judges, for he did not wish to pass any eulogium on them. It was sufficient to know that many of them were appointed in high party times, and although the party to which they were attached, was in the minority, yet they had given satisfaction. There could be no better commentary than this single and solitary fact, and it went far to prove the propriety and policy of extending the terms of the judges. He did not like the principle—for so it had been called—set up by the mere *dictum* of an individual. He denied that there was any principle in a provision which should require one judge to go out of office at the expiration of one year, and another at two years, &c. It might, perhaps, be expedient that the judges should go out at certain periods, so that the governor should not have the appointment of more than a certain number of judges.

So far, then, as there was any principle in the proposition, the effect of it would be to give the senate a large share in the appointments. They would have, in the language of the gentleman from Montgomery, (Mr. Sterigere) to exercise their prerogative. No doubt they would have a selection of their own, and that the functions of that body would be much promoted by having an opportunity of exercising that duty.

Mr. BANKS, of Mifflin, said, if the members of the convention had reflected on this matter as he had done, with a desire to come to a right conclusion, as the minority of the committee did, they would not do any thing wrong, or which they could not answer for, when they came before their constituents. The duties of the committee had been onerous, and they had arranged the judiciary part so as that no injustice should be manifest.

He had no doubt that the gentleman from the county had submitted his project from the best motives, but he feared that its tendency would be to embarrass. It would be impossible to go into all the explanations of the reasons which operated on the committee in making the classification, without taking up too much time. The report of the minority did not throw too much patronage into the hands of any one governor, but

made such provision that the nominations would be successive, and few at a time. Thus there would be a preventive against the system of log-rolling, which was to be especially guarded against. By throwing too many nominations before the senate at one time, as the amendment of the gentleman from the county (Mr. Brown) would do, that body would be converted from one of deliberation, into mere logrollers, and against such a danger, the report of the minority of the committee had provided guards.

Mr. BIDDLE, of Philadelphia, regarded the whole subject as one exceedingly painful to his own feelings. But it had become necessary to make some provision, since the decision of the convention had been made. It had been determined that the judges should go out at different periods—some remaining for a longer, and some for a shorter time.

The fact being so, he thought the amendment submitted by the gentleman from the county (Mr. Brown) as fair as any that could be offered. It was that those who had held their offices longest should go out first. He had divided the judges into two classes, selecting in the first place, those who have held their office ten years. This was the term which was appointed by the convention for them to hold their commissions. Was there any thing wrong in this? The amendment went on to say that "the commissions of all the remaining judges who shall not have held their offices for ten years at the adoption of the amendments of the constitution, shall expire on the 27th of February next, after the end of ten years from the date of their commissions." Could it be possible that the gentleman from Indiana, or the gentleman from Mifflin, or any other gentleman, could be perplexed by a matter so simple and plain? Could any gentleman assign a cause against one or the other of the divisions of this proposition? By adopting this, the convention would be freed from the imputation of having acted from any partiality or any unworthy motive of any kind. This plan was as equitable as any other. He did not attach much weight to the argument founded on the distraction of the time of the senate from deliberative duties, because he thought there was as little danger of this under this amendment as under any other proposition that could be offered. There was another reason which induced him to support this amendment. It would continue to the inhabitants of the city and county of Philadelphia, a president judge who has given satisfaction to all.

Mr. HIESTER, of Lancaster, objected to the frequent assertions that there was no principle in this scheme of graduation. He maintained that there was. There was the principle of rotation in office. Gentlemen had asserted that there was no principle, while the contrary was the fact. Yesterday a new rule was adopted which he hoped would be carried through. What was it? That the oldest judge should go out first, giving to each governor one appointment—that the oldest commission should expire first. That formed a principle.

Mr. H. then went on to explain the operation of this principle on the different judges, and stated that he knew no individual, but acted exclusive of all personal considerations. He knew that under the rule the judges would go out according to seniority of appointment, and that, he thought, was equitable. As the representatives of the people, who had desired to limit the term of the judicial tenure, it had become necessary for them to

change the system, by working into it in one way or the other. He wished to work into the system gradually, to do as little injustice as possible; and to prevent the too great accumulation of patronage in the hands of any one governor. He hoped the convention would agree to apply one rule to all, so that there might be uniformity in the operation of the principle.

Mr. HAYHURST, of Columbia, moved the immediate question; which was sustained; and,

The question was then ordered to be put.

Mr. DICKEY, of Beaver, asked for the yeas and nays on agreeing to the amendment to the amendment: which being taken, the question was decided in the affirmative—yeas 60, nays 52.

YEAS.—Messrs. Ayres, Baldwin, Biddle, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Butler, Carey, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Cline, Coates, Cochran, Cox, Crum, Cunningham, Curll, Darlington, Dickerson, Doran, Dunlop, Earle, Forward, Gamble, Harris, Hastings, Helffenstein, Hopkinson, Houpt, Ingersoll, Kennedy, Konigsmacher, Long, M'Dowell, M'Sherry, Meredith, Merrill, Miller, Montgomery, Overfield, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Saeger, Scott, Serrill, Snively, Stevens, Taggart, Thomas, Todd, Weaver, White, Young, Sergeant, *President*—60.

NAYS.—Messrs. Agnew, Banks, Barndollar, Bedford, Bell, Bigelow, Brown, of Northampton, Chambers, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Cummin, Darrah, Dickey, Dillinger, Donagan, Donnell, Fleming Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Hayhurst, Hays, Henderson, of Dauphin, Hiester, High, Hyde, Keim, Krebs, Lyons, Magee, Martin, Merkel, Myers, Nevin, Payne, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smyth, of Centre, Sterigere, Stickel, Weidman, Woodward—52.

Mr. DARLINGTON, of Chester, moved the immediate question on the amendment as amended; which was sustained, and the question ordered to be put.

Mr. STERIGERE, of Montgomery, asked for the yeas and nays.

And the question being taken, the amendment as amended was agreed to—yeas 62, nays 50.

YEAS.—Messrs. Ayres, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Chester, Clapp, Clark, of Beaver, Cline, Coates, Cope, Cox, Crain, Crum, Cunningham, Curll, Darlington, Darrah, Dickerson, Doran, Dunlop, Foulkrod, Fuller, Gamble, Gearhart, Grenell, Hastings, Hayhurst, Hays, Helffenstein, Houpt, Ingersoll, Kennedy, Konigsmacher, Long, M'Dowell, Merrill, Miller, Montgomery, Myers, Nevin, Payne, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Royer, Russell, Saeger, Scheetz, Seltzer, Serrill, Shellito, Snively, Stevens, Thomas, Todd, Weaver, White, Woodward—62.

NAYS.—Messrs. Agnew, Baldwin, Banks, Barndollar, Bedford, Bell, Biddle, Bigelow, Bonham, Chandler, of Philadelphia, Chauncey, Clarke, of Indiana, Cochran, Cummin, Denny, Dickey, Dillinger, Donagan, Donnell, Fleming, Forward, Fry, Gilmore, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Keim, Krebs, Lyons, Magee, Martin, M'Cahen, M'Sherry, Meredith, Merkel, Read, Ritter, Rogers, Scott, Sellers, Sill, Smyth, of Centre, Sterigere, Stickel, Taggart, Weidman, Young, Sergeant, *President*—50.

The question next recurred on agreeing to the section as amended.

Mr. STERIGERE asked for the yeas and nays, which being taken, the question was decided in the affirmative—yeas 53, nays 50.

YEAS.—Messrs. Ayres, Biddle, Brown, of Northampton, Butler, Carey, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Coates, Cox, Crain, Crum, Cunningham, Curll, Darlington, Darrah, Doran, Foulkrod, Fry, Gamble, Grenell, Harris,

Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Dauphin, Heupf, Hyde, Ingersoll, Kennedy, Konigsmacher, Long, M'Dowell, Merrill, Miller, Montgomery, Myers, Overfield, Pennypacker, Porter, of Lancaster, Purviance, Reigart, Saeger, Schoetz, Serrill, Shellito, Snively, Stevens, Thomas, Weaver, White, Young—53.

NAYS—Messrs. Agnew, Baldwin, Banks, Barndollar, Bedford, Bell, Bigelow, Bonham, Chauncey, Clarke, of Indiana, Cline, Cochran, Cope, Cummin, Denny, Dickey, Dillinger, Donagan, Donnell, Dunlop, Earle, Fleming, Fuller, Gilmore, Hiesler, High, Hopkinson, Keim, Krebs, Lyons, Magee, Martin, M'Cahen, M'Sherry, Merkel, Read, Ritter, Rogers, Russell, Scott, Sellers, Sill, Smyth, of Centre, Sterigera, Stickel, Taggart, Todd, Weidman, Woodward, Sergeant, *President*—50.

So the question was determined in the affirmative.

A motion was made by Mr. Fry,

That the convention do now adjourn.

Which was agreed to.

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

WEDNESDAY AFTERNOON, FEBRUARY 21, 1838.

SCHEDULE.

The eighth section of the report of the committee appointed to prepare and report a schedule to the amended constitution, being under consideration, as follows, viz :

VIII. The legislature, at its first session under the amended constitution, shall divide the other associate judges of the state into four classes. The commissions of those of the first class shall expire on the twenty-seventh day of February, eighteen hundred and forty ; of those of the second class on the twenty-seventh day of February, eighteen hundred and forty-one ; of those of the third class on the twenty-seventh day of February, eighteen hundred and forty-two ; and, of those of the fourth class, on the twenty-seventh day of February, eighteen hundred and forty-three.

Mr. HIESTER, of Lancaster, moved to amend the said section, by striking therefrom all after the word "the," where it occurs in the beginning of the section, and inserting in lieu thereof the words as follow, viz : "commissions of one fifth of the associate judges in office on the twenty-seventh day of February, one thousand eight hundred and thirty-nine, and bearing the earliest date, shall expire on that day. The commissions of another fifth of the said judges, bearing the next oldest date, shall expire on the twenty-seventh day of February, eighteen hundred and forty ; the commissions of another fifth, next oldest in date, shall expire on the twenty-seventh day of February, eighteen hundred and forty-one ; the commissions of another fifth, of those next oldest in date, shall expire on the twenty-seventh day of February, eighteen hundred and forty-two ; and the commissions of the last fifth of them, shall expire on the twenty-seventh day of February, eighteen hundred and forty-three."

Mr. **HIESTER** briefly explained, that by the report of the committee the termination of the commissions would not commence until 1840, and that they should continue to terminate annually till 1843. He proposed a different classification, by which the termination would commence in 1839, and that one fifth, instead of one fourth, should expire each year. This would lessen the number of appointments to be annually made by the senate. According to the report of the committee, the judges of the latest dates go out first. He wished the oldest commissions to expire first. He concluded by asking that the question on his motion may be taken by yeas and nays.

Mr. **M'SHERRY**, of Adams, on behalf of the minority, had reported an amendment, which, he said, he thought it right at this time to bring forward.

He hoped the gentleman from Lancaster would withdraw his amendment, or he (Mr. S.) would move his proposition as an amendment to the amendment of the gentleman from Lancaster.

Mr. **HIESTER** said, he would prefer that the gentleman would adopt the latter course.

Mr. **M'SHERRY** then moved to amend the amendment of the gentleman from Lancaster, by striking therefrom all after the word "commissions," in the first line, and inserting in lieu thereof the words as follow, viz: "of the associate judges of the several courts of common pleas of this commonwealth, (as well as of those of the first judicial districts,) now in commission, shall not be effected by the said second section of the said fifth article. Their successors shall hold according to the tenure therein prescribed."

Mr. **WOODWARD** said, it could not be possible that the amendment to the amendment would be adopted. It was in conflict with a decision of the supreme court. He had nothing to say to it. The proposition of the gentleman from Lancaster divided the associate judges into five classes; those commissions which were of the oldest dates to be the first class, and those of the first class were to expire in February, 1839. Who was to ascertain which were the commissions of the oldest date?

Mr. **HIESTER**, in reply, said it would be the duty of the governor to ascertain them.

Mr. **WOODWARD**. Undoubtedly the governor might ascertain. But there was nothing in this amendment which made it the duty of the governor. Would the judges themselves, on the right day, go in a body of one fifth, and deliver up their commissions? Or, while the schedule itself is altogether silent on the subject, will the governor go to the judges and make the inquiry?

How were the judges themselves to know it, if their commissions chanced to expire while they were engaged in the midst of some official duty. Suppose they were passing sentence on a criminal, and that their term expired in the midst of this duty, and the whole judgment should be wrong in consequence of the expiration of the term. This would be the operation.

The legislature should create the different classes, classifying these judges, who should go out at stated periods. The judges, being thus designated by the legislature, would be bound to take notice of the fact.

On the whole, he much preferred this mode to that of the gentleman from Lancaster.

Mr. **HIESTER** briefly answered, that he saw no difficulty which could arise in carrying his amendment into effect. The proposition of the gentleman from Luzerne contained no provision concerning the termination of the commissions. Nor did he think it necessary that there should be such provision, as it was made the duty of the governor to nominate those who are to be appointed by and with the advice and consent of the senate, to fill the vacancies. He did not therefore think that any new provision was necessary to point out their duty to the governor. The system he had proposed, he regarded as the most likely to be satisfactory.

Mr. **M'SHERRY** said, it seemed there were considerable objections to the plans proposed by the gentlemen from Luzerne and Lancaster. The minority of the committee were not satisfied with the propositions which had been offered, and therefore he had reported his amendment.

Mr. **READ**, of Susquehanna, demanded the previous question, and the demand being seconded by the number required by the rule,

And the question being,

Shall the main question be now put?

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

YEAS—Messrs. Brown, of Northampton, Clapp, Clark, of Dauphin, Crain, Crum, Darlington, Darrah, Dickerson, Dillinger, Donagan, Earle, Farrelly, Fleming, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, M'Cahen, Merkel, Miller, Myers, Overfield, Payne, Pennypacker, Reigart, Read, Ritter, Rogers, Saeger, Scheetz, Shellito, Smyth, of Centre, Stevens, Taggart, Thomas, Weaver, White—49.

NAYS—Messrs. Agnew, Baldwin, Banks, Barndollar, Bedford, Biddle, Bigelow, Bonham, Butler, Carey, Chambers, Chandler, of Chester, Chauncey, Clarke, of Beaver, Clarke, of Indiana, Cochran, Cope, Cox, Crawford, Cunningham, Curll, Denny, Dickey, Dunlop, Foulkrod, Harris, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Long, MacLay, M'Dowell, M'Sherry, Meredith, Merrill, Montgomery, Porter, of Lancaster, Purviance, Russell, Scott, Sellers, Snively, Sterigere, Stickel, Woodward, Sergeant, *President*—48.

So the question was determined in the affirmative.

And on the question,

Will the convention agree to the section as reported by the said committee?

Mr. **DICKEY** asked for the yeas and nays on this question, and they were ordered.

The question was then taken, and decided as follows, viz:

YEAS—Messrs. Brown, of Northampton, Brown, of Philadelphia, Butler, Cox, Crain, Crawford, Crum, Cunningham, Curll, Darrah, Dillinger, Doran, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Hastings, Hayhurst, Hays, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Martin, M'Cahen, M'Dowell, Merkel, Montgomery, Myers, Nevin, Overfield, Payne, Pennypacker, Purviance, Reigart, Read, Ritter, Rogers, Saeger, Scheetz, Shellito, Smyth, of Centre, Snively, Stevens, Taggart, Weaver, White, Woodward, Young—59.

NAYS—Messrs. Agnew, Banks, Barndollar, Barnitz, Bedford, Bell, Biddle, Bonham, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cochran, Cope, Cummin, Darlington, Denny, Dickey, Donagan, Donnell, Earle, Grenell, Henderson, of Da-

phin, Hiester, Hopkinson, Jenks, M'Sherry, Meredith, Merrill, Miller, Porter, of Lancaster, Porter, of Northampton, Russell, Scott, Sellers, Sill, Sterigere, Stickel, Thomas, Sergeant, *President*—44.

So the question was decided in the affirmative.

Mr. REIGART, of Lancaster, moved to postpone the further consideration of the ninth section, for the purpose of inserting the following new section, viz :

"IX. The recorders of the several mayors' courts in this commonwealth, shall be appointed for the same term and in the same manner as the president judges of the several judicial districts; their commissions shall severally expire on the twenty-seventh day of February, 1841, and in every two years thereafter, according to the seniority of commission."

Which was disagreed to.

The ninth section of the report being under consideration, as follows, viz :

"IX. Prothonotaries, clerks of the several courts, (except of the supreme court,) recorders of deeds, and registers of wills, shall be first elected under the amended constitution, at the election of representatives, in the year eighteen hundred and thirty-nine, in such manner as may be prescribed by law."

Mr. PORTER, of Northampton, moved to amend the section by striking therefrom all after the words "section 9," and inserting in lieu thereof the following, viz : "Until otherwise directed by law, the county officers shall be as follows :

"In the city of Philadelphia, the clerkship of the mayor's court shall be filled by one person.

"In the city and county of Philadelphia, the respective offices of prothonotary of the common pleas, the prothonotary of the district court, the clerk of the court of quarter sessions, the clerk of the orphans' court, the register of wills, the recorder of deeds, shall each be filled by one person, and the clerk of the quarter sessions shall be *ex officio* clerk of theoyer and terminer.

In Adams county,
In Allegheny county,
In Armstrong county,
In Beaver county,
In Bedford county,
In Berks county,
In Bradford county,
In Bucks county,
In Butler county,
In Cambria county,
In Centre county,
In Chester county,
In Clearfield county,
In Columbia county,
In Crawford county,
In Cumberland county,
In Dauphin county,
In Delaware county,

In Erie county,
In Fayette county,
In Franklin county,
In Greene county,
In Huntingdon county,
In Indiana county,
In Jefferson county,
In Juniata county,
In Lancaster county,
In Lebanon county,
In Lehigh county,
In Luzerne county,
In Lycoming county,
In M'Kean county,
In Mercer county,
In Mifflin county,
In Monroe county,
In Montgomery county,

In Northampton county,	In Tioga county,
In Northumberland county,	In Union county,
In Perry county,	In Venango county,
In Pike county,	In Warren county,
In Potter county,	In Washington county,
In Schuylkill county,	In Wayne county,
In Somerset county,	In Westmoreland county,
In Susquehanna county,	In York county.

Mr. PORTER said, he thought our legislature would be barded with a great deal of legislation under the new constitution. And some difficulty would probably be found, in providing officers to carry out all the purposes—all the duties required to be performed under the constitution, as amended. The object he had in view was, to introduce a provision into the constitution, by which each county shall carry out the principle of electing the county officers required by the constitution, until the legislature shall be able to agree about the matter.

The members of this convention would find in volume first of the journal, a return of the emoluments of the various officers of the state, and they could turn their attention to that document, and say what number of offices in each county should be consolidated in one person. In the city of Philadelphia, most of the offices have been held by a single individual. In other counties, you sometimes find offices held by one person, and sometimes by two. He felt satisfied that no difficulty would be found according to the plan he had proposed, in going through the counties alphabetically, and of declaring which offices shall be held separately and which together. It would not take an hour to go through them; and he believed that such an arrangement might, in cases of disagreement between the two branches of the legislature and the executive, in these fashionable days of the exercise of the veto power, prevent much difficulty. He regarded it as of great importance, that some provision should be made, in relation to the manner in which officers shall be elected by the people.

The question being taken on the amendment, it was negatived.

And the ninth section, as amended, was then agreed to.

The following section was read, considered, and agreed to :

“X. The appointing power shall remain as heretofore, and all officers in the appointment of the executive department shall continue in the exercise of the duties of their respective offices, until the legislature shall pass such laws as may be required by the eighth section of the sixth article of the amended constitution, and until appointments shall be made under such laws; unless their commissions shall be superseded by new appointments, or shall sooner expire by their own limitations, or the said offices shall become vacant by death or resignation, and such laws shall be enacted by the first legislature under the amended constitution.”

The eleventh section being under consideration, in the words as follow, viz :

“XI. The first election for aldermen and justices of the peace shall be held in March, eighteen hundred and forty, at the time fixed for the election of constables. The legislature, at its first session under the amended constitution, shall provide for the said election, and for subsequent

similar elections. The aldermen and justices of the peace now in commission, or who may in the interim be appointed, shall continue to discharge the duties of their respective offices, until new commissions shall be issued under said election: at which time all previous commissions shall be held to expire."

Mr. DICKEY, of Beaver, moved to amend, by striking out the words "eighteen hundred and forty," and inserting "eighteen hundred and thirty-nine."

Mr. D. said, he moved this amendment, because the constitution would go into operation in 1839, and the legislature would have sufficient time to pass the necessary laws for carrying into effect the provisions of the constitution, by the people, before 1840. He saw no reason why the people should be deprived of the opportunity of electing their justices of the peace next year. He asked for the yeas and nays.

Mr. WOODWARD, of Luzerne, said, he believed the convention were anxious to give the people the election of their justices of the peace at the earliest moment from the adoption of the constitution. The committee would have reported in favor of 1839, but there were very solid objections against fixing upon that time. The justices must be elected either in March, 1839, or 1840. Now, it was to be recollected that the legislature would have a great deal of business on hand, at the first session after the constitution goes into effect. The constitution says, "They shall be elected in such number as shall be directed by law." So that the legislature would have to pass a general law on the subject.

The committee apprehended that any law the legislature might pass with regard to the election of justices of the peace, could not become generally known throughout the commonwealth in time to elect the justices in March, 1839, as was the desire of the delegate from Beaver, that they should be. Besides, the shortness of the time would probably lead to some irregularity in carrying the law into effect in reference to the elections, which would only disgust the people, and render them dissatisfied with the operation of the law. The committee taking into consideration all these circumstances, thought it best to put off the election till March, 1840.

Mr. DICKEY thought the legislature would have ample time to pass the law, so that the first election would be held under it in 1839. There was no necessity for their being two months and a half in passing a law, when it might be done in two weeks.

He believed that if any one reason more than another operated on the minds of the people, and induced them to call this convention together, it was that they might have the electing of their justices of the peace. Now, he was particularly anxious that the wish of the people should be carried into effect, at as early a period as possible. And, he believed, that they might elect their justices in March, 1839. He had heard and seen no good reason why the law should not be passed in sufficient time to effect that desirable object. He trusted that his amendment would be adopted.

Mr. CURELL, of Armstrong, observed, that as to these poor unfortunate justices of the peace, who had been so much abused and villified, any thing he could say in their behalf would avail them nothing. As far as he could learn the views of his constituents, in regard to the justices of the peace, they

were as anxious to have them elected as any other part of the community, and as himself. But they wished them to continue long enough in office to settle up their dockets. If the amendment reported should be adopted, it would provide that opportunity. But now, he scarcely knew what to do. We had listened, for many days past, to the glowing eulogies that had been pronounced on the characters of the judges, whilst not a word was said in favor of the justices of the peace—no feeling was manifested in favor of them. They were to be swept away by the besom of destruction.

He would assert that he knew many men, justices of the peace, who were as honest and honorable as those who poured out their bitter denunciations against them. He (Mr. C.) wished to do nothing here which would tend to hazard the fate of the labors of this convention. He warned gentlemen that they might, by persecution, enlist some twenty to forty thousand to vote against the amendments. He meant to do all he could here to promote the wishes of the people. But, he would call on members to pause, and not be too precipitate in sweeping away that which, perhaps, ought not to be disturbed.

Mr. PORTER, of Northampton, said that he was glad to find his friend from Armstrong coming to the rescue. He (Mr. P.) had endeavored to spare the feelings of the gentleman as much as he could, in the remarks that he had made, and had not touched the justices of the peace. But, now, it seemed, the thing was brought home to the gentleman. He (Mr. P.) hoped we should not be so hard on the justices of the peace, as we had been on the judges of the supreme court, for he feared the poor house would not hold them all. He did hope that we would have some mercy on the justices, if we had none on the judges. He trusted that the three thousand six hundred justices was a much larger number than the judges consisted of. He felt for them; yes, he felt for them from the bottom of his heart. He hoped they would not be swept away with the besom of destruction. If you do not save the judges, at least save the justices, if but to accommodate his (Mr. P.'s) friend, the squire, from Armstrong. He had intended to offer an amendment to the amendment proposed by the gentleman from Beaver, but he was afraid that it would not carry, and therefore he would not offer it now. This was the amendment:

To strike out all after the word "constables," and to insert these words: "And until otherwise directed by law, two justices of the peace shall be elected in each borough or township, and one alderman in each ward of the cities and incorporated districts."

As he had already said, he would not offer it now. If, however, the amendment of the gentleman from Beaver, which did not appear to be in very good odour, should be negatived, he (Mr. P.) would then offer his.

Mr. CURLL replied, that he felt happy to have been the humble means of affording to the convention some mirth and merriment, by having drawn out his (Mr. C.'s) facetious friend from Northampton. He would merely say, that the caustic remarks of the gentleman fell harmless at his (Mr. Curll's) feet. He was somewhat astonished that the gentleman did not cite some anecdote in illustration of his subject.

Mr. PAYNE, of M'Kean, suggested that it would be as well to strike out the word "March," because, in some counties the election of constables is not held in that month, but in February.

Mr. READ, of Susquehanna, would state a fact, for the information of the convention, and that was, that in several counties of the commonwealth, the election of constables is held by a special act, he thought, about the middle of February. Were this not the fact, he would give his vote for the amendment of the gentleman from Beaver. But the time fixed by the gentleman would then be rather short.

Mr. DICKEY said, that he was not aware the election was held before March. He had no wish to hurry the election. From what had been said, he was induced to withdraw his amendment.

Mr. D. accordingly withdrew it.

Mr. DORAN, of Philadelphia county, moved to amend the section by striking therefrom the word "March," in the second line, and inserting in lieu thereof the words "in the year."

Which was agreed to.

Mr. PORTER, moved to amend the section as amended, by inserting after the word "constables," the words as follow, viz :

"And until otherwise directed by law, two justices of the peace shall be elected in each borough or township, and one alderman in each ward of the cities and incorporated districts."

Mr. P. remarked, that he hoped he would be more successful with this amendment than he had been with the last he had offered. The reason why he offered it, was, because he conceived it to be highly necessary that there should be some rule for the guidance of the legislature in passing laws on this subject.

Mr. WOODWARD said, he hoped the amendment would not be agreed to. Such legislation was entirely unnecessary, as the legislature would have ample time to make the requisite laws before 1840.

Mr. BELL, of Chester, observed that it was the object of the schedule to say when it would be proper to introduce a special act of the legislature.

Mr. PORTER said, he knew it was impossible to get all mankind to think alike. Gentlemen would find on referring to the schedule attached to the constitution of 1790, a precedent for what he (Mr. P.) proposed to do. The convention that formed that constitution deemed it necessary to insert provisions in the schedule, granting full power to the legislature to act so as to carry into effect the provisions of the constitution.

He would refer to the schedule, and then gentlemen would see that the view he had taken of the subject—whether right or wrong, had received, at least, the sanction of precedent; and the sanction of precedent with him had a great deal of weight, and he knew it had with gentlemen who differed from him.

Now, the schedule attached to the constitution of 1790 provides :

"That the president and supreme executive council shall continue to exercise the executive authority of this commonwealth as heretofore, until the third Tuesday of December next; but no intermediate vacancies in the council shall be supplied by new elections."

Then the sixth section provides :

"That until the first enumeration shall be made, as directed in the fourth section of the first article of the constitution established by this con-

vention, the city of Philadelphia and the several counties shall be respectively entitled to elect the same number of representative as is now prescribed by law."

The seventh section describes the districts and the manner in which the senators shall be elected. And the ninth section provides how the election of the governor shall be conducted, the returns made, &c.

The only reason he had for offering this provision, was, that in the event of any difference happening between the senate and house of representatives—as was the case in 1835—in reference to these matters, then there would be something for the people to go by till the legislature agree. It was not improbable that such an event might occur, as a disagreement between the two houses. It was to prevent the failure of these provisions of the constitution from going into effect, that he had brought forward his amendment.

Mr. SMYTH, of Centre, said, he thought we might do as well without the amendment as with it, and a little better. The gentleman from Northampton had said that his object in offering the amendment, was to guard against any collision that might take place between the two houses.

Now, he (Mr. S.) hoped that there would be more desire felt in the legislature to carry out the provisions of the constitution than to differ in regard to the electing of the justices of the peace.

He thought the amendment unnecessary, at least, for he knew there are boroughs and townships that do not wish to have two justices. The report of the committee, in his opinion, was about as good as we could get. He would say leave well enough alone.

Mr. BELL, of Chester, expressed himself as entirely opposed to the amendment. It was well known to every member of the convention that he had, from the first, expressed his entire dissent to any alteration of the constitution in reference to the justices of the peace.

Mr. CURLL said, that at first, he was inclined to take the amendment of the gentleman from Northampton, thinking it was necessary. But since he had examined the seventh section of the sixth article, which is in the following language, he had changed his mind in regard to it:

"Justices of the peace or aldermen shall be elected in the several wards, boroughs, and townships, at the time of the election of constables by the qualified voters thereof, in such number as shall be directed by law, and shall be commissioned by the governor for a term of five years. But no township, ward or borough shall elect more than two justices of the peace or aldermen, without the consent of a majority of the qualified electors within such township, ward or borough."

The question being taken on the amendment, it was negatived.

Mr. KONIGMACHER, of Lancaster, asked for the yeas and nays on the section.

Mr. PAYNE, of M Kean, moved to amend the said section as amended, by striking therefrom, in the seventh line, the words "new commissions shall be issued," and inserting in lieu thereof the words "others shall be commissioned."

Mr. EARLE, of Philadelphia county, hoped some amendment would be made to the section. The governor must send the commission to the

magistrate. The public may not know the day when the commissions expire or the magistrates may not know the day, and may be acting when they are not magistrates. Thus the acknowledgments of deeds may be rendered illegal. It appeared to him that this amendment would answer the purpose. The governor might issue a proclamation stating on what day the commissions would expire.

The question was then taken, and the amendment was negatived.

Mr. BELL, of Chester, said, he did not like to suggest amendments, but he supposed that the convention desired to have the language square with the rules of grammar. He therefore moved to amend the section as amended, by striking therefrom the word "under" in the third line, and inserting in lieu thereof the word "after."

The question was then taken and was decided in the negative.

And on the question,

"Will the convention agree to the said section as amended?"

The yeas and nays were required by Mr. KONIGMACHER, and Mr. COATES, and are as follow, viz :

YEAS—Messrs. Banks, Barndollar, Bedford, Bell, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cox, Crain, Crawford, Crum, Cummin, Cunningham, Curls, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Dauphin, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Krebs, Lyons, Magee, Martin, M'Cahen, Merrill, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Lancaster, Purviance, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smyth, of Centre, Snively, Sterigere, Stevens, Stickel, Taggart, Weaver, White, Woodward—79.

NAYS—Messrs. Agnew, Barnitz, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cline, Coates, Cochran, Darlington, Denny, Dickey, Hiester, Hopkinson, Konigmacher, M'Sherry, Meredith, Pennypacker, Porter, of Northampton, Reigart, Royer, Russell, Saeger, Scott, Thomas, Young, Sergeant, President—28.

The question was therefore decided in the affirmative.

A motion was made by Mr. REIGART,

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

"SECTION 12. The recorders of the several mayors' courts and other criminal courts in this commonwealth, shall be appointed for the same term and in the same manner as the president judges of the several judicial districts ; and the commissions of those now in office shall severally expire on the twenty-seventh day of February one thousand eight hundred and forty-one, and every two years thereafter, according to the seniority of their several commissions."

Mr. BELL, of Chester, remarked, that in the case of Dallas, it was decided that a recorder was not a judicial officer. Whether it be so or not, it appeared to him to be too late, now that we had passed the amendments to their third reading and were now employed on the schedule which is merely intended to direct the operation of the amendments, to agitate this matter.

He was sorry that the gentleman from Lancaster, if he had this thing at heart, did not introduce it at an earlier period, unless it was his object

to unravel what we had been so long employed in weaving—very imperfectly, doubtless—but so strong—so many looms having been at work, and so many able weavers engaged, that we cannot undo it. We cannot now do this—we cannot now introduce into the constitution a new principle, while employed on the schedule which is no part of the constitution, and without knowing too, how it could be carried into effect. He would desire symmetry, and if the gentleman could change the doubts on his (Mr. B's.) mind on all these points, he might be induced to vote for the amendment.

Mr. DORAN, of Philadelphia county, suggested the propriety of making the amendment more general, so as to apply to the recorders of all criminal courts.

Mr. REIGART had no objection to modify his amendment. But the gentleman from Chester said the schedule was not a part of the constitution. It was, in his opinion, as much so as the tenth section. The people must pass on the amendments, and it required no stretch of thought to shew this was a part. It contained material and important constitutional provisions. He admitted that the legislature had the power to do what was here provided, but as we had introduced a provision limiting the judicial tenure to ten years, he thought it might be as well to include recorders. He would further say, that the reason why he had not sooner introduced the amendment, was because it had slipped his memory.

Mr. BROWN, of Philadelphia county, thought there was some misapprehension of the matter. He had inquired into the operation of the clause. The legislature could not legislate these officers out of their offices, except by taking away the courts from under them. There could no evil result from the proposition, though it might please some gentlemen to leave these offices still under the control of the legislature. He hoped it would prevail.

Mr. DARLINGTON, of Chester, thought there was no misapprehension on any mind on the subject, and he hoped there would be no difficulty about the matter.

Mr. BIDDLE, of Philadelphia, suggested that as the recorder had been decided to be no judicial officer, the remarks of the gentleman from Chester, and of the gentleman from the county, could have no reference to the question.

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

YEAS—Messrs. Banks, Barnollar, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Chandler, of Chester, Clarke, of Beaver, Clarke, of Indiana, Coates, Crain, Cummin, Curll, Darrah, Dickerson, Dillinger, Donnell, Doran, Earle, Foulkrod, Fry, Fuller, Gamble, Grenell, Harris, Hastings, Hiester, High, Ingersoll, Keim, Kennedy, Krebs, Long, Lyons, Magee, Martin, M'Cahen, M'Dowell, Merkel, Miller, Montgomery, Myers, Overfield, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Sill, Smyth, of Centre, Snively, Sterigere, Stevens, Stickel, Taggart, Weaver, White—65.

NAYS—Messrs. Agnew, Baldwin, Barnitz, Bell, Biddle, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Cline, Cochran, Cope, Cox, Crum, Darlington, Denny, Donagan, Farrelly, Fleming, Gearhart, Gilmore, Hayhurst, Hays, Henderson, of Dauphin, Hopkinson, Houpt, Hyde, Jenks, Konigsmacher, M'Sherry, Meredith, Merrill, Nevin, Payne, Pennypacker, Royer, Russell, Saeger, Scott, Seltzer, Thomas, Todd, Weidman, Woodward, Young, Sergeant, *President*—49.

Mr. GAMBLE, of Lycoming, moved to reconsider section eleven.

Mr. EARLE, of Philadelphia county, said, he thought he could satisfy gentlemen that a great evil would arise from adopting the section as it now stood. The effect of allowing an alderman or justice of the peace to discharge the duties of their respective offices until the issuing of new commissions, would, in his (Mr. E's.) opinion, be found extremely bad. A new commission might be a long while on its way before it reaches the individual for whom it was intended, or it might be lying in the post office, and thus would the old magistrates be acting for two or three weeks, and all their decisions might be set aside. Marriage contracts, and other acts of theirs might then be declared illegal. Again, there was another difficulty in the way in reference to this new section. It was this—the number of justices of the peace would not be the same. There were districts which embrace many townships, and now a justice may not belong to one particular township, but to several.

A difficulty might arise in the county of Philadelphia, with respect to the election of constables, who are not all elected in March—some being elected in May. The operation of the section would be to turn men out of office. It would be impossible to ascertain whose office was vacated by the issuing of a new commission. There would be an interregnum of several days, during which there would be no justices of the peace legally authorized to act.

He would propose to amend, by saying that the commission shall terminate on a particular day. It should be made notorious to every person in the state when the justices shall go out of office. He conceived it to be highly desirable that the magistrates to be elected under the new constitution should be elected on one day, then the whole commonwealth would know the fact. He intended to offer an amendment, the object of which, was to fix a day when the new commissions shall go into effect.

Mr. E. then moved to amend the section by striking therefrom all after the word "offices," in the seventh line, and inserting in lieu thereof the words as follow, viz :

"Until fifteen days after the day which shall be fixed by law for the issuing of new commissions ; at the expiration of which time their commissions shall expire."

Mr. PORTER said, he confessed that he could not see the force of the argument of the gentleman from the county of Philadelphia. He did not believe the evils pointed out by the gentleman as at all likely to occur. He thought that he had some recollection of what was said to be the description of justices of the peace in the county of Philadelphia—how much they oppressed the people—what a money making business it was; and how anxious the people were to get rid of them. He avowed that he had not yielded his full assent to all that he heard concerning the justices. But now that he had heard a lamentation from the same source, as to what would happen, if the section should not be modified in the manner suggested by the gentleman from the county of Philadelphia, he did not feel disposed to give more credit to what he had heard respecting the county, at this time, than before. He thought the people would not suffer any great harm from this saturnalina, as some gentlemen regarded it.

He did not believe that the people of the city and county would be quite so ignorant as not to know that in a given time after the election, new commissions would have to be issued and forwarded to the persons for whom they were intended.

He (Mr. P.) did not apprehend any difficulty would arise. But even if some parts of the state should be left without a justice of the peace for a day or two, it would be of no very great consequence, if true that they were such bad fellows as was represented. He believed that there were one or two townships in the counties of Chester and Lehigh, where there are no justices of the peace. And the people there, had got along very well, at least for the fifteen years that he had known the fact. They had once a justice commissioned, but he did not think it worth while to be sworn in.

But he (Mr. Porter) did not think that the wheels of government would be stopped, if there should happen to be a delay of a day or two, and because that some litigious persons were disappointed in not being able to gratify their litigious dispositions, and of which we heard so much from the great leader of reform at Harrisburg. He was sorry to hear from the gentleman a word so offensive to ears republican—for there was no kingdom about it—as “interregnum.” It was the last word he should have expected to hear from that gentleman. He (Mr. P.) thought it better to let well enough alone.

Mr. BELL, of Chester, replied to the arguments of the gentleman from Northampton, (Mr. Porter) and reviewed the amendments then before the convention,) but in a tone of voice that, owing to the great noise which prevailed in the hall, rendered it impossible for the reporter to hear one-third of what he said.

After a few words from Mr. EARLE, and Mr. PORTER,

The question was taken on the motion to reconsider; and,

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

YEAS.—Messrs. Agnew, Banks, Bedford, Bell, Bonham, Brown, of Philadelphia, Carey, Chambers, Clarke, of Indiana, Cline, Coates, Cox, Cunningham, Curll, Dickey, Donnell, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Hastings, Hiester, High, Jenks, Keim, Krebs, Lyons, Mag e, Martin, M'Cahen, Meredith, Miller, Montgomery, Myers, Payne, Reigart, Read, Ritter, Rogers, Russell, Scott, Sellers, Seltzer, Shellito, Smyth, of Centre, Stickel, Taggart, Woodward—53.

NAYS.—Messrs Baldwin, Barnitz, Bigelow, Brown, of Northampton, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Crain, Crawford, Darlington, Darrah, Denny, Dillinger, Donagan, Doran, Gearhart, Harris, Hayhurst, Hays, Henderson, of Dauphin, Hopkinson, Hout, Hyde, Ingersoll, Kennedy, Konigsmacher, M'Dowell, M'Sherry, Merkel, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Royer, Scheetz, Snively, Stevens, Thomas, Todd, Weaver, Weidman, White, Young, Sergeant, President—49.

So the question was determined in the affirmative.

The said section being again under consideration,

A motion was made by Mr. EARLE,

To amend the said section by striking therefrom all ~~after the word~~ “offices,” in the seventh line, and inserting in lieu thereof the words as follow, viz:

“ Until fifteen days after the day which shall be fixed by law for the issuing of new commissions; at the expiration of which time their commissions shall expire.”

Which was agreed to.

And the section as amended was agreed to.

A motion was made by Mr. STERIGERE.

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

“ XIII. That notwithstanding the provisions of the seventh section of the schedule, the commission of the president judge of the twelfth judicial district shall continue till the first of February, 1843; that of the president judge of the seventh judicial district shall continue till the 16th of April, 1843; and that of the president judge of the seventeenth judicial district till the 16th of April, 1843.”

A motion was made by Mr. THOMAS,

To amend the said amendment by inserting after the word “ district,” where it last occurs, the words “ and the president judge of the fifteenth judicial district.”

The previous question was then called for by Messrs. REIGART, OVERFIELD, BIGELOW, KREBS, SMYTH, of Centre, DARRAH, HIGH, FULLER, CAREY, WHITE, CLARKE, of Beaver, CRUM, AGNEW, CHANDLER, of Philadelphia, CLAPP, DARLINGTON, THOMAS and COATES.

And on the question,

Shall the main question be now put?

It was determined in the affirmative; and,

Ordered, That the schedule, as amended, be referred to the committee appointed to prepare and engross the same for the third reading,

On leave given,

A motion was made by Mr. PORTER, of Northampton,

That the convention proceed to the second reading and consideration of the resolution read on yesterday, in the words as follow, viz :

Resolved. That the engrossed constitution as amended by this convention, shall be signed in alphabetical order by the members and officers thereof, on the twenty-second day of February instant at eleven o'clock A. M. in convention.

Which was agreed to.

And the said resolution being under consideration, the same was modified to read as follows, viz :

Resolved, That the engrossed constitution as amended by this convention, shall be signed by the members of the convention in the order of the senatorial and representative districts they respectively represent, and by the officers thereof, on the 22d day of February instant, at eleven o'clock, A. M. in convention, and that the following certificate precede the signatures :—“ We, the undersigned, members of the convention to propose amendments to the constitution of the commonwealth of Pennsylvania, to be submitted to the people thereof for their adoption or rejection, do hereby certify that the foregoing is the amended constitution as agreed to by the convention. In testimony whereof, according to the act of Assembly in that case made and provided, we have hereunto set our hands at Philadelphia, this 22d day of February, A. D. 1838.”

Mr. DICKEY, inquired of the chairman of the committee on the schedule, whether it was intended that the schedule should be considered part

of the constitution and to be signed and submitted to the people with the amendments?

Mr. WOODWARD, said his own opinion was that the schedule was to be regarded as a part of the constitution, for all the purposes of construction so far as any of its provisions regulated the action of the constitution, and that the courts were fully as much bound by the schedule, as by the constitution itself. It may be a right or a wrong opinion. He believed the schedule ought to go to the people as part of the amendment for their adoption or rejection. We had made a provision as to the manner in which the amendments shall be submitted, without details, or any thing more on the subject. When the people shall vote in the negative, they will vote against the schedule, as well as against the amendments, and so also, when they vote in the affirmative, they will vote for the one as well as the other. Otherwise, we might have the schedule alone adopted, and thus be compelled to attach it to the old constitution. The committee were ordered to prepare a schedule to the amended constitution. This was his answer as to the particular opinion of his own mind. He stated it with diffidence because he had around him others of the committee who were more able.

Mr. STERRE, of Montgomery, said that he was about to call the attention of the convention to a matter which required some consideration. He presumed that this order, or resolution would not be imperative. He did not know, however, that those who are against the amendments, would refuse to sign them. In looking over the book of constitutions, he found that the constitution of North Carolina and of several other states was signed with a certificate. He thought that would be the proper course here, whatever gentlemen on the other side of the hall might think.

Mr. CUMMIN, of Juniata, was of opinion that the members of the convention ought to sign the constitution alphabetically, as was done by the framers of the constitution of 1790. We should sign as we have voted. The rule proposed for adoption by the delegate from Luzerne, (Mr. Woodward) presented the appearance of giving a preference to one set of members over another. It was to be recollected that they were all on an equal footing here. He (Mr. C.) hoped it would be signed alphabetically; and if gentlemen had any objections to make, they could state them, when each of their names were called.

Mr. DORAN, of Philadelphia county, said that he was sorry the gentleman from Northampton, accepted the amendment of the gentleman from Luzerne. He (Mr. D.) was afraid it would lead to much difficulty. Now there were counties which have no senatorial delegates. How he asked, were we to ascertain who were senatorial and who representative delegates? He thought that decidedly the best course was, to sign in alphabetical order, then we should all stand on the same footing.

Mr. WOODWARD, briefly replied, and contended that the course of proceeding which he advocated was the proper one.

Mr. CHAMBERS, of Franklin, said that he was indifferent as to the manner in which the names of delegates should be called, but was not in regard to the form of the certificate to which they were to be appended. He considered the signing of it, merely an attestation of the record—that it was what it purported to be. And the more simple the form

was, the better. It would be found that the constitutions of more than one-third of the states of the Union, were signed only by the president, and attested by the secretary or secretaries. The names of the delegates were not attached to them.

The act of assembly requires that we should sign our names to the constitution. He had no objection to comply with the requirement, in attestation of the amendments that have been adopted: but he did not consider the signing as evidence of our adoption—of our approbation of the amendments. That was quite another matter. It was an evidence only of the work having been done by the signers thereunto. To that extent, as he had already said, he was willing to go. He thought it immaterial as to how the names should be recorded—whether according to senatorial and representative districts, or not. But still he conceived the most preferable mode to be, (and certainly it was the most expeditious,) to call the names of members alphabetically, as was done every day in taking the yeas and nays.

The gentlemen here acting as delegates, were recognized as such by the people of the state, and therefore, in that point of view, it was not of the least consequence how the constitution was signed. As to the mode of doing it, that which was most convenient ought to be adopted. With respect to calling the districts—that might be regarded as rather an arbitrary course of proceeding; and a gentleman might except to it, and say why should such and such a district be called first? Under every view of the matter, he thought the convention had better adopt the usual legislative course of proceeding, and that was—to call the names alphabetically. He trusted that the convention would agree to sign alphabetically.

Mr. DORAN, of Philadelphia county, said he would move to amend the resolution as modified, by striking therefrom the words "the order of the senatorial and representative districts they respectively represent," and inserting in lieu thereof the words "in alphabetical order."

Mr. STEVENS, of Adams, said that he discovered from what had been said by gentlemen that it was all a question of who shall sign first. The gentleman from Luzerne, (Mr. Woodward) was for a senatorial district, and should sign last, and his (Mr. S's) friend from Franklin, ought to sign first. He moved to amend the amendment by inserting the delegates shall sign according to seniority of age.

The PRESIDENT said the motion was not in order.

Mr. STEVENS then withdrew his motion.

Mr. BILL, of Chester, did not regard the question as a very important one. He would vote in favor of the amendment.

Mr. BANKS, of Mifflin, said it was perfectly immaterial to him, whether he signed first, or last. On looking at the signatures to the constitution of 1790, he perceived that there was no particular order observed in signing the names of the delegates. Mr. B. then moved to amend the resolution as amended, by striking out all after the word "signatures," and inserting in lieu thereof the words as follow, viz: "Done in convention at Philadelphia, the 22d day of February, A. D. 1838, and of the independence of the United States of America the sixty-second."

The PRESIDENT, said the motion was not in order.

Mr. WOODWARD remarked, that he liked the suggestion of the gentle-

man from Adams. He preferred his amendment to the one suggested by the gentleman from the county of Philadelphia.

Mr. STEVENS, said the better way would be either to sign according to age, or according to counties. But if neither course should be agreed to, why it would be as well, as had been suggested to him, that the father of the convention, (Mr. Earle) over the way, should first sign, and then direct how the others should sign.

Mr. CLARKE, of Indiana, thought it would be better to have no order about signing:

After a word or two from Mr. DENNY and Mr. SMYTH, of Centre,

Mr. PORTER, modified his amendment so as to require that the delegates should sign the constitution to-morrow at 11 o'clock.

Mr. DORAN moved to amend the resolution as modified, by striking out the words "the order of the senatorial and representative districts they respectively represent," and inserting the words "in alphabetical order."

Mr. WOODWARD, moved to strike out the amendment.

The PRESIDENT, said that the motion was not in order.

Mr. PORTER, moved the previous question, and withdrew the call.

Mr. DARLINGTON, of Chester, moved that the further consideration of the amendment, together with the resolution be postponed for the present ;

Which was disagreed to.

The question on the amendment was then called for by Mr. MEREDITH 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 amendment ?

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

YEAS—Messrs. Agnew, Baldwin, Banks, Barndollar, Biddle, Bigelow, Brown, of Lancaster, Butler, Carey, Clarke, of Beaver, Cline, Cope, Cox, Crain, Crawford, Crum, Cummin, Darlington, Darrah, Dickey, Dillinger, Donnell, Doran, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Hastings, Hayhurst, Henderson of Dauphin, Hiester, High, Hopkinson, Hout, Hyde, Ingersoll, Jenks, Keim, Kennedy, Konigsmacher, Kreba, Lyons, Magee, Martin, M'Cahen, Meredith, Merrill, Merkel, Miller, Myers, Overfield, Payne, Ritter, Seager, Scheetz, Scott, Sellers, Shellito, Smyth, of Centre, Snively, Stückel, Taggart, Weidman, Young, Sergeant, *President*—67. §

NAYS—Messrs. Bell, Brown, of Philadelphia, Clarke, of Indiana, Porter, of Northampton, Russell, Woodward—6.

So the question was determined in the affirmative.

Mr. FULLER, of Fayette, moved to amend the said resolution as amended, by adding to the end thereof the words as follow, viz :

"And that the secretary of the commonwealth be directed to receive the signatures of all the members of this convention to the amended constitution, after it shall have been deposited in his office, who may not have previously signed it."

Which was agreed to.

Mr. DARLINGTON, moved to amend the resolution as amended, by striking therefrom the words, "at eleven o'clock A. M."

Which was agreed to.

Mr. BANKS, moved to amend the resolution as amended, by striking therefrom all after the word "signatures," and inserting in lieu thereof the words as follow, viz: "Done in convention at Philadelphia, the 22d day of February, A. D. 1838, and of the independence of the United States of America the sixty-second."

Mr. BELL, 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. BANKS, and Mr. CLARKE, of Indiana, and are as follow, viz:

YEAS—Messrs. Agnew, Bigelow, Bell, Biddle, Brown, of Lancaster, Carey, Clarke, of Beaver, Cope, Crum, Darlington, Denny, Dickey, Dillinger, Doran, Fry, Hastings, Hayhurst, Henderson, of Dauphin, Hiestier, Houpt, Ingersoll, Jenks, Kennedy, Konigsmacher, Meredith, Merrill, Merkel, Overfield, Porter, of Northampton, Reigart, Russell, Saeger, Scott, Todd, Young—35.

NAYS—Messrs. Banks, Bedford, Brown, of Philadelphia, Butler, Clarke, of Indiana, Crawford, Cummin, Darrah, Donnell, Foulkrod, Fuller, Gilmore, Grenell, High, Hyde, Keim, Krebs, Lyons, Magee, Martin, M'Cahen, Miller, Myers, Payne, Ritter, Rogers, Scheetz, Sellers, Shellito, Smyth, of Centre, Stickel, Taggart, Weidman, Woodward—34.

So the question was determined in the affirmative.

And on the question,

Will the convention agree to the said resolution as amended?

The yeas and nays were required by Mr. BROWN, of Philadelphia county, and Mr. M'CAHEN, and are as follow, viz:

YEAS—Messrs. Agnew, Baldwin, Barndollar, Biddle, Brown, of Lancaster, Carey, Clarke, of Beaver, Cope, Crum, Darlington, Denny, Dickey, Dillinger, Doran, Hastings, Hayhurst, Henderson, of Dauphin, Hiestier, High, Hopkinson, Houpt, Jenks, Konigsmacher, Krebs, Meredith, Merrill, Merkel, Porter, of Northampton, Reigart, Russell, Seager, Scheetz, Scott, Weidman, Young, Sergeant, *President*—36.

NAYS—Messrs. Banks, Bedford, Butler, Clarke, of Indiana, Crain, Crawford, Cummin, Donnell, Foulkrod, Fry, Fuller, Gilmore, Grenell, Hyde, Keim, Kennedy, Lyons, Magee, Martin, M'Cahen, Overfield, Payne, Ritter, Sellers, Shellito, Smyth, of Centre, Stickel, Woodward—28.

So a quorum of members not voting on said resolution,

Mr. DORAN, moved for a call of the convention.

And on the question,

Will the convention agree to the motion?

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

YEAS—Messrs. Agnew, Baldwin, Banks, Barndollar, Bedford, Biddle, Brown, of Lancaster, Carey, Clarke, of Beaver, Cope, Crain, Crum, Darlington, Denny, Dickey, Donnell, Doran, Foulkrod, Fuller, Hastings, Henderson, of Dauphin, Hiestier, High, Hopkinson, Houpt, Hyde, Jenks, Keim, Konigsmacher, Krebs, Lyons, Magee, Meredith, Merrill, Merkel, Porter, of Northampton, Purviance, Reigart, Ritter, Seager, Scott, Sellers, Shellito, Smith, of Columbia, Weidman, Young, Sergeant, *President*—47.

NAYS—Messrs. Butler, Crawford, Cummin, Fry, Gilmore, Grenell, Hayhurst, Ingersoll, Kennedy, Martin, M'Cahen, Overfield, Payne, Russell, Smyth, of Centre, Stickel, Taggart, Woodward—18.

So a quorum of members not voting on said motion,

The secretary proceeded to call the absent members.

Mr. REIGART, of Lancaster, moved that the further call of the convention be dispensed with ;

Which was agreed to.

And the question recurring.

Will the convention agree to the resolution ?

The yeas and nays were required by Mr. PORTER, of Northampton, and Mr. FULLER, and are as follow, viz ;

YEAS—Messrs. Agnew, Baldwin, Barndollar, Bell, Biddle, Brown, of Lancaster, Carey Clarke, of Beaver, Cope, Crum, Darlington, Denny, Dickey, Donagan, Doran, Hastings, Hayhurst, Henderson, of Dauphin, Hiester, Hopkinson, Jenks, Konigmacher, Krebs, Long, MacLay, Meredith, Merrill, Merkel, Porter, of Northampton, Reigart, Russell, Saeger, Scott, Weidman, Young, Sergeant, *President*—36.

NAYS—Messrs. Banks, Bedford, Bigelow, Brown, of Philadelphia, Butler, Crain, Crawford, Cummin, Donnell, Foulkrod, Fry, Fuller, Gilmore, Grenell, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Lyons, Magee, Martin, M'Cahen, Overfield, Payne, Ritter, Rogers Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Stuckel, Taggart, Woodward—36.

So the question was determined in the negative.

Mr. BANKS, moved that the convention do now adjourn ;

Which was agreed to.

Adjourned until half past nine o'clock to-morrow morning.

THURSDAY, FEBRUARY, 22 1838.

Mr. EARLE, of Philadelphia county, asked leave of the convention to insert on the Journal his reasons for a vote which he had given, and, on obtaining the leave,

Mr. EARLE read in his place, and presented to the chair the following reasons for the vote given by him on the 12th of January, 1838, in favor of the amendment to the first article of the constitution, numbered twenty-six, and having reference to banking corporations hereafter to be chartered, which were ordered to be inserted in the Journal, and are as follow, viz :

First—Because, although the undersigned believes in the general right to dissolve charters upon equitable terms, when their dissolution is required by the public good, a right existing without any constitutional provision to that effect, yet, as this right has been disputed, he thought it expedient to avoid embarrassment by express limitations of the periods of banking corporations and express reservations of the right to repeal their charters.

Second—Because he did not understand the said amendment as denying or impairing, or intended to deny or impair the general right of the sovereign power to repeal or modify, upon equitable terms, charters for other purposes than banking.

Third—Because the amendment in question was not understood by the undersigned as preventing or intended to prevent the legislature from passing general laws, if required by public opinion, for the purpose of extending equal rights and privileges to all citizens of this commonwealth, in relation to banking and the formation of banking associations; and the mover and advocates of the amendment expressly declared that it was not so intended and understood by them.

THOMAS EARLE.

February 21, 1838.

The PRESIDENT laid before the convention the following communication:—

PHILADELPHIA, February, 21, 1838.

TO JOHN SERGEANT, Esq.
President of the Convention to amend the Constitution of Pennsylvania.

DEAR SIR,—Being obliged to leave the city before the signatures of the members can be affixed to the amended constitution, I take this opportunity to say I would sign it if present, and wish to do so hereafter, if an opportunity shall be afforded me; or I hereby authorize the secretary of the convention to place my name to it. I would further request that this may go on the Journal.

I am, respectfully,

DANIEL SAEGER.

The PRESIDENT laid before the convention the following communication:—

PHILADELPHIA, February 21, 1838.

DEAR SIR—Being obliged to leave the city to-morrow morning, I hereby authorize James M. Porter to subscribe my name to the amended constitution of Pennsylvania, as adopted by the convention.

JOHN Y. BARCLAY.

Hon. JOHN SERGEANT, *President.*

And the said communications were severally read, and ordered to be entered on the Journal of the convention.

A motion was made by Mr. SELLERS, and read as follows, viz:

Resolved, That the secretary of this convention be directed to carry the engrossed constitution to those delegates who are sick in this city, for their signatures.

And on motion,

The said resolution was read the second time, considered and adopted.

A motion was made by Mr. SILL, and read as follows, viz:

Whereas, James Pollock, Esq., a member of this convention, is detained in this city by sickness, incurred while in the discharge of his duty as a member of this body; therefore be it

Resolved, That he shall be entitled to receive his daily pay as long as his sickness continues, and he is thereby prevented from leaving this city on his return home.

And on motion,

The said resolution was read the second time, considered and adopted.

A motion was made by Mr. HIESTER, and read as follows, viz:

Resolved, That the secretary of the convention be hereby directed to deposit in the office of the secretary of the commonwealth at Harrisburg, the amended constitution, the engrossed amendments to the constitution, and all petitions, memorials, manuscript jour-

nals and manuscript minutes of the committee of the whole, and all other records of the convention.

And on motion,

The said resolution was read the second time, considered and adopted,

Mr. CHANDLER, of Philadelphia, submitted the following resolution.
viz :

Resolved, That the price of printing the Journals of this convention shall be as follows, viz: To Thompson and Clark printers of the English Journal thirty dollars per sheet, and to Joseph Ehrenfried printer of the German Journal, thirty dollars.

Mr. CHANDLER moved that this resolution be now read a second time, and the motion was agreed to—ayes 54.

The resolution was then read a second time.

Mr. SMYTH, of Centre, asked for the yeas and nays.

Mr. WOODWARD, of Luzerne, moved to postpone the further consideration of the resolution, for the purpose of proceeding to the third reading of the report of the committee appointed to prepare and report a schedule to the amended constitution.

Which was agreed to.

On leave given,

Mr. COCHRAN, from the committee to whom were referred the amendments made in the schedule on second reading, reported the same as amended on second reading, except the twelfth section, in which they recommend the following alteration, in order to make the same more explicit, viz: Strike out all that follows the word "districts," and insert the following, viz: "Of those now in office, the commission oldest in date shall expire on the twenty seventh day of February, one thousand eight hundred and forty-one, and the others every two years thereafter, according to their respective dates, those oldest in date expiring first."

The committee also recommend that the section be transposed and numbered section eighth, and that a corresponding change be made in the numbers of the succeeding sections.

Which was read and laid on the table.

On motion of Mr. WOODWARD,

The amendments made in the schedule on second reading, were read the third time, considered and agreed to, after having been,

On motion of Mr. COCHRAN,

Amended by unanimous consent by striking from the twelfth section all after the word "districts," and inserting in lieu thereof the following, viz: "Of those now in office, the commission oldest in date shall expire on the twenty-seventh day of February, one thousand eight hundred and forty-one, and the others every two years thereafter, according to their respective dates, those oldest in date expiring first." and numbering the said twelfth section "section eighth," and numbering the remaining sections accordingly.

A motion was made by Mr. WOODWARD,

That the convention resolve itself into a committee of the whole for the purpose of amending the ninth section of the report of the committee appointed to prepare and report a schedule to the amended constitution by

adding to the end thereof the following, viz : "The said classes from the first to the fourth, shall be arranged according to the seniority of the commissions of the several judges."

Which was agreed to.

The convention then resolved itself into a committee of the whole, Mr. DENNY in the chair for the purpose of making the said amendments.

On motion of Mr. WOODWARD the committee rose and reported the amendments in conformity with the instructions of the convention.

The report of the committee of the whole was agreed to, and the section, as thus amended, was also agreed to.

A motion was made by Mr. M'CAHEN,

That the convention resolve itself into a committee of the whole, for the purpose of amending the seventh section by inserting after the words "oldest date," the following, viz : "The commissions of the president judges of the seventeenth, twelfth and seventh judicial districts shall continue until the twenty-seventh day of February, anno domini one thousand eight hundred and forty-two."

Mr. STERIGERE asked for the yeas and nays on this motion.

Mr. INGERSOLL said he should go for calling the yeas and nays, and should change his vote, as there was something of principle involved in this amendment. Yesterday, we had, contrary to the principle adopted, prolonged the existence of certain judges, and he should now vote in a different way. If instances of palpable wrong could be brought before the people it would destroy all the amendments.

Mr. HIESTER was equally in favor of equality among the judges. He wished to see all alike. The gentleman from the county wished this, and so (said Mr. H.) do I. We had now arranged the highest and lowest classes of judges on a systematic plan, as to their going out of office. Therefore, he was in favor of the change. As we had a very short time to settle this and other business, he would call the immediate question.

Mr. H. afterwards withdrew this call.

Mr. BROWN said he was not wedded to any particular plan, so that the principle of equality was carried out and that the provision was so plain as to prevent the danger of any misapprehension.

Mr. SCOTT did not see why we were to go on the last day into committee of the whole to do partial justice. It was of very little difference whether we lengthened the time by a year or two or not. We had abrogated by a stroke of the pen the commissions of nineteen president judges, which they had received from the commonwealth of Pennsylvania on a pledge and under a promise that they should hold their commissions so long as they should behave well. We had now taken away the commissions of these judges. We have done that which the people gave us no power to do. We had abrogated commissions which we were not required or authorized to do. Therefore having, with one bold sweep gone so far, and assumed these powers and authorities not committed to us, it was now too late to pause in our career and endeavor to weigh out justice in scales more nice than were ever made by mechanic art, or that moral science ever imagined. Having done this let us adhere to what we have done. Great injustice has been committed. Let us see what the people will say. There still remained one course open, and that was to go back

into the committee of the whole, and adopt the report of the majority of the judiciary committee, and thus retrace our steps. For this purpose he was willing to go back. Let us go back to that report and adopt it, and wait till death does its work. And in order to ascertain if the convention would do this—on the day which gave birth to the father of his country, who never did injustice—he would move to amend the said motion by striking therefrom all after the word “the,” where it occurs the second time in the first line, and inserting in lieu thereof the following, viz :

“Judges of the supreme court, now in commission, shall not be affected by the second section of the fifth article of the amended constitution; their successors shall hold according to the tenure therein prescribed. The commissions of the president judges of the several judicial districts of this commonwealth and of the “legal associate judges” of the first judicial district, now in commission, shall not be affected by the said second section of the said fifth article; their successors shall hold according to the tenure therein prescribed. The commissions of the associate judges of the several courts of common pleas of this commonwealth—as well as of those of the first judicial district—now in commission, shall not be affected by the said second section of the said fifth article. Their successors shall hold according to the tenure therein prescribed. All aldermen and justices of the peace, now in commission shall continue to hold their offices according to the terms of their present commissions. Whenever the number of these officers in any ward, borough or township, shall be reduced by death, resignation or otherwise, below the number which may be prescribed by law, the vacancies shall be filled in the manner and upon the tenure prescribed by the seventh section of the sixth article of the amended constitution.”

Mr. AGNEW, of Beaver, expressed regret that his friend from Philadelphia should have opposed the amendment. It was true, we had done the rankest injustice; but now that we had an opportunity of repairing it in part, why should we not embrace it?

Mr. SCOTT disclaimed any design to oppose the motion. He had moved his amendment in order to do justice to all. If that should not carry, the original motion would still be open, and might have his vote.

Mr. AGNEW was gratified to hear this, but this motion had a tendency to embarrass the question. It was true the Goths and Vandals had entered Rome, and cut off the heads of some individuals, but it was to be hoped that the era of good feelings would return. He hoped the convention would go into committee of the whole to make the amendment of the gentleman from the county of Philadelphia.

Mr. BONHAM demanded the previous question, which was sustained by the requisite number.

And the question being,

“Shall the main question be now put?”

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

YEAS—Messrs. Agnew, Banks, Barnitz, Bedford, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Clarke, of Beaver, Clarke, of Indiana, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helfenstein, Henderson, of Dauphin, Hiester, High, Houpt, Ingersoll, Jenks, Keim, Kennedy, Kerr, Krebs, Long, Lyons, Martin, M’Cahen, M’Dowell, Merkel, Miller, Montgomery, Myers, Nevin, Overfield, Payne, Porter, of Northampton

Purviance, Reigart, Read, Riter, Ritter, Rogers, Royer, Scheetz, Sellers, Seltzer, Shellito, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Weaver, White, Woodward—83.

YAYS—Messrs. Ayres, Baldwin, Barndollar, Bell, Biddle, Carey, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Darlington, Denny, Hays, Hopkinson, Konigmacher, M'Sherry, Meredith, Merrill, Porter, of Lancaster, Russell, Scott, Serrill, Sill, Thomas, Todd, Weidman, Young—33.

So the question was determined in the affirmative.

And on the question,

Will the convention resolve itself into a committee of the whole, for the purpose of amending the seventh section by inserting after the words "oldest date," the words "the commissions of the president judges of the seventeenth, twelfth and seventh judicial districts shall continue until the twenty-seventh day of February, anno domini one thousand eight hundred and forty-two?"

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

YEAS—Messrs. Agnew, Banks, Bedford, Bell, Biddle, Bonham, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cline, Crain, Crawford, Cummin, Curll, Darrah, Dickey, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fuller, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helfenstein, Hiester, High, Houp, Ingersoll, Keim, Kennedy, Kerr, Krebs, Lyons, Magee, Martin, M'Cahen, Meredith, Miller, Montgomery, Myers, Nevin, Payne, Read, Riter, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Sterigere, Stickel, Taggart, Weaver, Woodward—61.

NAYS—Messrs. Ayres, Baldwin, Barndollar, Barnitz, Brown, of Lancaster, Brown, of Northampton, Carey, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Coates, Cope, Cox, Craig, Crum, Cunningham, Darlington, Denny, Dickerson, Dillinger, Dunlop, Farrelly, Fry, Harris, Hays, Henderson, of Dauphin, Hopkinson, Hyde, Konigmacher, Long, M'Dowell, M'Sherry, Merrill, Merkel, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Serrill, Smyth, of Centre, Snively, Sturdevant, Thomas, Todd, Weidman, White, Young—54.

So the question was determined in the affirmative.

On motion of Mr. WOODWARD.

The convention resolved itself into a committee of the whole, Mr. DENNY in the chair, for the purpose of amending the ninth section of the schedule agreeably to the instructions of the convention.

Mr. DUNLOP, of Franklin, said that he had risen for the purpose of calling the attention of the convention, for a moment, to this subject, because it appeared to him not to have been fully understood. According to the amendment of the gentleman from the county of Philadelphia, those judges who have served ten years, are to go out of office in two classes—the oldest in February, 1839. The second class who have a shorter commission are to go out in 1842. The class, the oldest, or first class, are to go out on the 27th of February, 1839. The judges are, Mr. Scott and Mr. Herrick, appointed in 1818, and Mr. Reed and Mr. Darlington, appointed in 1820 and 1821. Judges Shippen, King, Burnside and Thompson, are the second class, and they go out in 1843—4. The two first were appointed in 1825, and the two last in 1826 and 1827. According to the gentleman's amendment, those judges of the third class, who have not served out their ten years, shall do so. Who are they? Judge Blythe, Judge Fox and Judge Bredin. The two first would go out in 1840, having been appointed in 1830, the other in 1841,

as he was appointed in 1831. And Judges Lewis, Durkee, Dallas, Eldred, Banks and Collins, would go out in 1842-3. The fourteenth district is vacant. He contended that nothing could be more unjust than the principle which was proposed to be adopted. If the principle was to be carried out with regard to some, it must be with regard to all. The effect of the amendment would be to give Judges Blythe, Fox and Briden twelve or thirteen years each, while it would limit the tenure of all those judges appointed since 1831. What could be more unjust?

The chair (Mr. DENNY) called the gentleman to order, and apprized him that as the committee were under instructions, debate was not to be entertained.

Mr. DUNLOP. I am only shewing the injustice ———

Mr. DICKEY, of Beaver, contended that the gentleman was not in order.

Mr. DUNLOP maintained that he was, and that he had a right to show the injustice of the principle of the amendment proposed.

The CHAIR said that the proper time to have discussed the subject was before the convention resolved itself into a committee of the whole.

After a few words from Mr. READ and Mr. DUNLOP,

Mr. WOODWARD, of Luzerne, moved that the committee rise.

The motion was agreed to.

The PRESIDENT then resumed the chair, and the chairman reported the amendment agreeably to instructions.

Mr. DUNLOP resumed his remarks.

He contended that the report of the committee ought not to be adopted—that the amendment was flagrantly unjust in principle. He expressed his hope that when the amendments should be laid before the people, they would see that there was something extraordinary about this one—that it had grown out of some peculiar influence. We know that Judge Blythe is a prominent candidate for the gubernatorial chair. He could not see why that judge and two others should be selected from among the rest, and have favors done them, while the most manifest injustice was done to others. If some of the judges were to hold their offices for twelve or thirteen years, the principle ought to be carried out in regard to all, and say that no judge shall hold for a shorter term. Would not Mr. Lewis, Mr. Durkee, Mr. Dallas, Mr. Eldred, Mr. Banks, Mr. Collins and the gentleman who was to fill the fourteenth district, feel the manifest injustice of this attempt to place Mr. Blythe, Mr. Fox and Mr. Bredin on a different footing from themselves?

Why are these judges to be placed before all others? There must be some feeling in this matter not deserving the name of justice. He desired to have equal and exact justice. What difference was it as a matter of principle, whether the term of Judge Blythe expired in 1840 or 1842? Why give him an addition to his time? The persons who are in office must be got rid of. All the other judges are intended to hold their commissions for ten years. Now there are three selected from the mass for some particular reason, and their terms are to be extended from ten to twelve or thirteen years. He begged to ask these gentlemen who talked so much about honor and principle and justice, what honor and principle and justice there was in this? He suspected gentlemen

would not have been so keen, if only honor, principle and justice had been concerned. He believed some interest had been operating here to produce this result. Gentlemen might call him to order—but there are strong reasons to believe that there had been some calculations of political chances. He did not suppose that the mover of the proposition had any design for his own benefit; but it was strange that a candidate for the office of governor should be selected for this act of special favor. Why was it that gentlemen who were so anxious to get the immediate question, and were going the other way, are now giving their votes cheerfully for Blythe? They who wished to serve political aspirants might find themselves mistaken.

Mr. BEDFORD demanded the previous question, which was sustained by a sufficient number.

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 report of the committee of the whole?

The yeas and nays were required by Mr. DARLINGTON and Mr. COX, and are as follows, viz :

YEAS—Messrs. Agnew, Banks, Bedford, Bell, Biddle, Butler, Clarke, of Indiana, Cline, Crain, Cummin, Curl, Dickey, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Hastings, Hayhurst, Hiester, Ingersoll, Kennedy, Krebs, Lyons, Martin, M'Cahen, Miller, Montgomery, Read, Riter, Rogers, Sellers, Shellito, Sill, Smyth, of Centre, Sterigere, Stickel, Woodward—40.

NAYS—Messrs. Ayres, Baldwin, Barndollar, Barnitz, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Chester, Chauncey, Clapp, Clark, of Dauphin, Coates, Cochran, Cope, Cox, Crum, Cunningham, Darlington, Darrah, Denny, Dickerson, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hays, Helffenstein, High, Hopkinson, Houtt, Hyde, Keim, Kerr, Konigsmacher, Long, Magee, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Myers, Nevin, Overfield, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Ritter, Royer, Russell, Scheetz, Scott, Seltzer, Serrill, Snively, Sturdevant, Taggart, Thomas, Todd, Weaver, Weidman, White, Young—72.

So the question was determined in the negative.

A motion was made by Mr. DARLINGTON,

That the amendments made in the schedule on third reading, be referred to the committee to prepare and engross the same for the question of final passage.

A motion was made by Mr. BEDDLE,

To amend the said motion by striking therefrom all after the word "the," where it first occurs, and inserting in lieu thereof the following, viz :

"Convention resolve itself into a committee of the whole, for the purpose of amending the sixth section by striking therefrom all preceding the word 'commission,' in the sixth line, and inserting in lieu thereof the words 'the two commissions bearing the earliest date, of the judges of the supreme court who may be in office on the first day of January, next, shall expire on the first day of January, anno domini, one thousand eight hundred and forty-five.'"

Mr. BIDDLE said, it was his object to place Judges Houston and Rogers on the same footing. He had always voted for giving the longest term. But now that every thing had been stricken down, he wished to put these two judges on an equality.

Mr. REIGART said, he hoped then that the motion would not be agreed to. And he would move to rescind the rule under which it becomes necessary to send the schedule again to the committee.

The CHAIR decided the motion to be out of order.

The motion of Mr. BIDDLE was then rejected.

And on the question,

Will the convention agree to the motion, viz : That the amendments made in the schedule on third reading, be referred to the committee to prepare and engross the same for the question of final passage ?

It was determined in the affirmative.

The question recurring on the resolution submitted by Mr. CHANDLER, relative to the printing of the journals.

Mr. BANKS moved to postpone its further consideration for the purpose of now considering the form of the attestation of the amendments.

The motion having been decided in the affirmative,

A motion was made by Mr. BANKS, and read as follows, viz :

Resolved, That in conformity with the provisions of the act of assembly which provides for the call of a convention, and that the constitution as amended be signed by the officers and members of the convention, the form of the attestation shall be as follows, and that the said signing shall be in alphabetical order: "In testimony that the foregoing is the amended constitution of Pennsylvania as agreed to in convention, we, the officers and members of the convention, have hereunto signed our names at Philadelphia, the twenty-second day of February, anno domini, one thousand eight hundred and thirty-eight, and of the independence of the United States of America the sixty-second."

Ordered to a second reading.

Mr. DORAN, of Philadelphia, moved to amend by adding "and resolved that the members sign the constitution in alphabetical order."

Mr. PORTER, of Northampton, said he was glad to hear that the gentleman from Mifflin, (Mr. Banks) had come to the conclusion that his (Mr. P's.) proposition was correct. He supposed it would now be adopted.

Mr. DUNLOP would suggest whether it would not be better to follow the language of the act of assembly, and say "amendments to the constitution." It seemed to him that the convention would submit amendments to the constitution, and not an amended constitution.

Mr. BELL, of Chester, hoped the language would be modified.

Mr. BANKS explained the act of assembly, and accepted the modification proposed by Mr. DORAN.

Mr. SCOTT, of Philadelphia said he would suggest a modification, if the gentleman from Mifflin would accept it.

Mr. BANKS replied that he was sorry he could not.

Mr. EARLE, of Philadelphia county remarked that if any one had any conscientious scruples to signing the constitution in the manner proposed by the gentleman from Mifflin, he would like to hear his objections.

A motion was made by Mr. SCOTT,

To amend the said resolution by striking therefrom all after the word "order," and inserting in lieu thereof the following, viz: "In testimony that the foregoing is the amended constitution of the commonwealth of Pennsylvania, which has been agreed upon by the convention assembled under the act of the general assembly of the said commonwealth, passed on the twenty-ninth day of March, anno domini one thousand eight hundred and thirty-six, we, the delegates to and officers of the said convention, in obedience to the requisitions of the said act, have thereto affixed our names at the hall of the said convention, in the city of Philadelphia, this twenty-second day of February, in the year of our Lord one thousand eight hundred and thirty-eight."

Which was disagreed to.

And the resolution was agreed to.

On motion of Mr. CHANDLER, of Philadelphia,

The convention resumed the consideration of the resolution read this morning, as follows, viz:

Resolved, That the price of printing the journals of this convention shall be as follows, viz: To Thompson and Clark, printers of the English Journal, thirty dollars per sheet, and to Joseph Ehrenfried, printer of the German Journal, thirty dollars.

And on the question,

Will the convention agree to the resolution?

The yeas and nays were required by Mr. SMYTH, of Centre, and Mr. CURLL, and are as follows, viz:

YEAS.—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cope, Cox, Crum, Cunningham, Darlington, Denny, Dickey, Dickerson, Forward, Hays, Henderson, of Dauphin, Hopkinson, Hout, Jenks, Ker, Konigsmacher, Long, M'Dowell, M'Sherry, Meredith, Merrill, Montgomery, Porter, of Lancaster, Purviance, Reigart, Russell, Serrill, Sill, Sturdevant, Todd, Weidman, White, Young, Sergeant, *President*—49.

NAYS.—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Butler, Clarke of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donnell, Dunlop, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Grenell, Harris, Hastings, Hayhurst, Helffenstein, Hiester, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Martin, M'Cahen, Merkel, Miller, Myers, Nevin, Overfield, Porter, of Northampton, Read, Ritter, Rogers, Scheetz, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Taggart, Weaver, Woodward.—58.

So the question was determined in the negative.

A motion was made by Mr. M'SHERRY, and read as follows, viz:

Resolved, That the thanks of this convention are due to the Hon. John Sergeant, for the able manner in which he has discharged the difficult duties which devolved on him as the president of this convention.

Laid on the table.

On motion of Mr. DORAN, [ayes 45, noes 48,]

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

THURSDAY AFTERNOON, FEBRUARY 22.

A motion was made by Mr. M'SHERRY,

That the convention proceed to the second reading and consideration of the resolution read this morning, as follows, viz :

Resolved, That the thanks of this convention are due to the Hon. JOHN SERGEANT for the able manner in which he has discharged the difficult duties which devolved on him as the president of this convention.

Which was agreed to.

The said resolution being under consideration,

After some debate, in which Messrs. BROWN, M'CAHEN, BELL, BIDDLE, DORAN, PORTER, FULLER, CUMMIN, SCOTT, MARTIN, CUNNINGHAM, and STERIGERE, took part,

Mr. BELL, of Chester, moved 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 resolution ?

The yeas and nays were required by Mr. MILLER and Mr. CURLL, and are as follow, viz :

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Bell, Biddle, Butler, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Craig, Crawford, Crum, Cummin, Cunningham, Darlington, Denny, Dickey, Dickerson, Donagan, Doran, Dunlop, Farrelly, Fleming, Forward, Harris, Hays, Helfenstein, Henderson, of Allgheeny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Lyons, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Nevin, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Scott, Seltzer, Serrill, Sill, Snively, Sturdevant, Thomas, Todd, Weidman, White, Young—75.

NAYS—Messrs. Bigelow, Brown, of Northampton, Brown, of Philadelphia, Curll, Darrah, Dillinger, Donne l, Gilmore, Hayhurst, High, Keim, Kennedy, Krebs, Martin, M'Cahen, Miller, Myers, Overfield, Read, Ritter, Sellers, Shellito, Smyth, of Centre, Weaver—24.

So the question was determined in the affirmative.

A motion was made by Mr. FULLER, and read as follows, viz :

Resolved, That the secretary of the commonwealth be directed to receive the signatures of the absent members of this convention to the amended constitution, who may not have signed their names thereto.

And on motion,

The resolution was read a second time, considered and adopted.

A motion was made by Mr. REIGART, and read as follows, viz :

Resolved, That the thanks of this convention are due to the corporation of the city of Philadelphia, for the superior accommodations afforded to this body.

And on motion,

The resolution was read the second time, considered, and adopted.

Mr. COCHRAN, from the committee appointed to prepare the amendments to the constitution, for the question of final passage, reported the amendments made in the schedule as engrossed.

Mr. COCHRAN moved that the amendments made in the schedule be authenticated by the president and secretary, in like manner, as the amendments to the constitution were authenticated.

Which was agreed to.

On motion of Mr. WOODWARD,

The schedule was read the third time and agreed to.

A motion was made by Mr. CHANDLER, of Philadelphia, and read as follows, viz :

Resolved, That the thanks of this convention be tendered to the reverend clergymen, who have opened the sittings of this convention with prayer, during its session in this city.

And on motion,

The said resolution was read the second time, considered, and adopted.

A motion was made by Mr. PORTER, of Northampton, and read as follows, viz :

Resolved, That the secretary be ordered to forward to the members of this convention, the remaining sheets of the Journal, and that the postage thereof be paid as part of the contingent expenses.

And on motion,

The said resolution was read the second time, considered, and adopted.

A motion was made by Mr. CURLL, and read as follows, viz :

WHEREAS, There appears to be no specific provision made for the purpose of paying for the printing of the constitution of 1790, and the amendments made thereto by this convention, to be forwarded equally to each of the members, for distribution among their constituents. Therefore,

Resolved, That the secretary of the convention be, and he is hereby required to pay the accompanying bill, together with all the reasonable incidental expenses attending the putting up and forwarding to the post offices designated to be nearest to each delegate, and render his bill to the accounting officers of this commonwealth for final settlement and payment.

PHILADELPHIA, February 22, 1838.

Convention to amend the Constitution of State of Pennsylvania, (per order of committee on printing Constitution.)

To JOHN C. CLARK, Dr.

For printing 12,000 copies of old and new constitution, in parallel columns, twelve forms super-royal octavo, including paper, folding, &c. - - - - - \$258 00

And on motion,

The said resolution was read the second time, considered, and adopted.

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 Samuel Shoch, for the sum of twelve hundred dollars, to be accounted for in the settlement of his accounts.

And on motion,

The said resolution was read the second time.

And being under consideration,

A motion was made by Mr. DARLINGTON,

To amend the said resolution by striking therefrom the word "twelve," and inserting in lieu thereof the word "seventeen."

Which was agreed to.

And the resolution, as amended, was agreed to

A motion was made by Mr. FLEMING, and read as follows, viz :

Resolved, That the thanks of this convention are due to Samuel Shoch, Esq., secretary, and George L. Fauss and Joseph Williams, assistant secretaries, for the efficient and faithful manner in which they have performed the duties of their offices.

And on motion,

The said resolution was read the second time, considered, and unanimously adopted.

On leave given,

Mr. CUMMIN read in his place, and presented to the chair, the following, which was read and ordered to be inserted on the journal, viz :

The undersigned desires to place upon the journal the reasons why he voted against retaining the following words in the third section of the ninth article : " And that no preference shall ever be given by law to any religious establishment or mode of worship." The record of the said vote will be found upon page 456 of the journal of this convention.

First—I believe that the government, under which we live, is founded upon principles of equal rights, equal privileges, and an equal support of the laws of the land.

Second—The convention having refused to strike out of the second section of the sixth article, the words " Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal services," page 380 of the journal, and refused, when in committee of the whole, page 162 of the journal, to agree to an amendment offered by Mr. Russell, of Bedford county, in the words following : " But no freemen of this state shall be compelled to bear arms, provided he will pay an equivalent to be ascertained by law."

Third—He believed that the first reason set forth as a principle was abandoned in the vote thus reviewed, that evident inconsistency was most clearly manifested, by which one religious society had special privileges granted to them, which was denied to all other societies within this commonwealth.

Fourth—For the aforementioned reasons, and from the fact that members of a religious society, some of which occupy seats in this convention, have all the political privileges which any citizen of this state can enjoy, while they are exempted for conscience sake from performing certain duties required by law, and to the end that no improper reasons may be given, or that his vote standing singly and alone, may not be misrepresented, and that it may not be inferred that he was in favor of the constitution establishing a separate religion, but that he recorded his vote to render his course consistent with his opposition to those *special privileges*, which he believes were retained in the second section of the sixth article. And,

Fifth—That he is opposed to the charge of having his name recorded as an anti-christian, or in other words, an infidel, as set forth in all the memorials and petitions presented to this convention, by the society called Friends, praying to be exempt from all military duty, and also from paying an equivalent for personal services.

For the above, and other important reasons that are to be found on the journal of this convention, I desire, as an act of justice, that this protest may be recorded on the journal of this convention.

JOHN CUMMIN.

FEBRUARY 22, 1338.

Laid on the table.

A motion was made by Mr. Cox, and read as follows, viz :

Resolved, That the sum of twenty-five dollars per sheet, sixteen pages, twelve hundred and fifty copies, be paid to the printers of the English Journal, and that the sum of twenty-five dollars per sheet, sixteen pages, twelve hundred and fifty copies, be paid to the printer of the German Journal.

And on motion,

The said resolution was read the second time, considered, and adopted.

Mr. COPE, from the committee on accounts, made the following report, viz :

That they have settled and adjusted the accounts of the secretary of the convention, compared them with the vouchers, and find them as follows, viz :

During the first session of the convention at Harrisburg, commencing the second day of May last, and ending the 14th day of July, Samuel Shoch and Samuel A. Gilmore, Esqrs., made disbursements (as per vouchers produced) for postage, stenography, books, stationary, and sundry other incidental expenses, to the amount of - - \$10,282 78

The same secretaries, received from the state treasury, by virtue of six warrants drawn by the president, during the same time, the full sum of - - - - - \$10,282 78

Samuel Shoch, Esq., made disbursements between the 14th day of July last, and the 20th of October, inclusive, (as per vouchers produced) for postage, stenography, newspapers, stationary, and other incidental expenses, to the amount of - - - - - \$5,788 09

And he received, during the same time, by virtue of two warrants drawn by the president on the state treasurer, the sum of - - - \$5,788 09

And Samuel Shoch, Esq., has disbursed between the 20th of October last, and the 16th instant, inclusive, (as per vouchers) for postage, stenography, newspapers, stationary, and other incidental expenses, including the daily pay of the door-keeper and his assistants, and the assistant sergeant-at-arms and messengers, since the convention assembled in Philadelphia, including also his own claim of five hundred and fifty dollars for making out the indexes to the journal and minutes of the committee of the whole, including also a payment of three hundred and fifty dollars to P. Hazard, for vacating the hall in which the convention now sits, and a payment of fifty dollars to Gleason & Griffith, for rent of sundry stoves, amounting in the whole to - - - - - \$16,995 06

And he has drawn from the state treasury, during the same time, by virtue of eleven warrants drawn by the president, the sum of \$16,995 06

The committee beg leave further to report: That Daniel Barnes, binder of the English and German Journals, has received from the state treasury, by virtue of two warrants drawn by the president, the sum of - - - - - \$1,330 00

The binding of said journals, in the manner directed, will, when completed, amount to the same sum, viz: - - - - - \$1,330 00

And, therefore, the account of said Barnes, is fully closed.

The committee offer the following resolution, viz:

Resolved, That the forgoing statement be placed upon the journal.

And on motion,

The said resolution was read the second time, considered, and adopted.

Agreeably to order,

The convention resumed the second reading of the following report, viz:

The committee on accounts have settled the salaries of the secretary, assistant secretaries and sergeant-at-arms of this convention, as follows, viz:

Samuel Shoch, secretary, 90 days, at \$8 dollars per day,	\$720 00	
Mileage, 106 miles, at fifteen cents per mile,	15 90	
		<hr/> \$735 90
George L. Fauss, assistant secretary, 90 days, at \$7 per day,	630 00	
Mileage, 108 miles, at fifteen cents per mile,	16 20	
		<hr/> 646 20
Joseph Williams, assistant secretary. 90 days, at \$7 per day,	630 00	
Mileage, 15 miles, at fifteen cents per mile,	2 25	
		<hr/> 632 25
James E. Mitchell, sergeant-at-arms, 90 days, at \$3 per day,	\$270 00	
Mileage, 306 miles, at fifteen cents per mile,	45 90	
		<hr/> \$315 90

Resolved, That the president draw his warrant on the state treasurer, in favor of the above named persons, for the sums set opposite to their respective names.

The question recurring,

Will the convention agree to the amendment to the amendment, viz:

“To James E. Mitchell, sergeant-at-arms, the sum of fifty dollars?”

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

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barnitz, Bedford, Bell, Biddle, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Clark, of Indiana, Cochran, Cope, Crain, Crawford, Cummin, Cunningham, Curll, Denny, Dickey, Dickerson, Donagan, Donnell, Doran, Earle, Farrelly, Fleming, Forward, Fuller, Gamble, Gilmore, Grenell, Hays, Helffenstein, Henderson, of Dauphin, Hopkinson, Hyde, Ingersoll, Kennedy, Kerr, Krebs, Lyons, Martin, M'Cahen, M'Dowell, Meredith, Merrill, Miller, Myers, Nevin, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Read, Riter, Rogers, Scheetz, Scott, Sellers, Serrill, Snively, Sturdevant, Taggart, Todd, Weaver, Weidman, White, Sergeant, *President*—78.

NAYS—Messrs. Barndollar, Chandler, of Chester, Cline, Coates, Cox, Crum, Darlington, Darrah, Dillinger, Foulkrod, Fry, Harris, Hastings, Kayhurst, Hender-

son, of Allegheny, Hiester, Houpt, Jenks, Konigsmacher, M'Sherry, Merkel, Montgomery, Ritter, Russell, Seltzer, Smith, of Columbia, Smyth, of Centre, Thomas, Woodward—29.

So the question was determined in the affirmative.

The amendment as amended being under consideration,

A motion was made by Mr. STERIGERE,

To amend the same by adding thereto the following, viz :

"To Jacob Bowman,	- - - - -	\$25 00
To John Murphy,	- - - - -	25 00
To William Moore,	- - - - -	25 00
To John Bosler,	- - - - -	25 00
To William M'Intyre,	- - - - -	25 00
William Bausman,	- - - - -	25 00"

And on the question,

Will the convention agree so to amend the amendment ?

The yeas and nays were required by Mr. DARLINGTON and MILLER, and are as follow, viz :

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barnitz, Bedford, Bell, Biddle, Brown, of Philadelphia, Butler, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cochran, Cope, Craig, Denny, Dickey, Dickerson, Donnell, Doran, Fleming, Forward, Grenell, Hays, Helffenstein, Henderson, of Dauphin, Hopkinson, Hyde, Ingersoll, Long, Magee, Meredith, Merrill, Miller, Myers, Nevin, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Ritter, Rogers, Scheetz, Scott, Serrill, Sterigere, Sturdevant, Taggart, Todd, Weaver, White, Young, Sergeant, *President*—58.

NAYS—Messrs. Barndollar, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Chandler, of Chester, Cline, Coates, Crum, Curll, Darlington, Darrah, Dillinger, Foulkrod, Fry, Fuller, Gilmore, Harris, Hayhurst, Henderson, of Allegheny, Hiester, Houpt, Jenks, Kennedy, Krebs, Lyons, M'Cahen, M'Sherry, Merkel, Montgomery, Ritter, Royer, Russell, Sellers, Shellito, Smyth, of Centre, Snively, Stickel, Thomas, Woodward—41.

So the question was determined in the affirmative.

And on the question,

Will the convention agree to the amendment as amended ?

The yeas and nays were required by Mr. SMYTH, of Centre, and Mr. THOMAS, and are as follow, viz :

YEAS—Messrs. Agnew, Baldwin, Banks, Barnitz, Bedford, Bell, Biddle, Butler, Chambers, Chandler, of Philadelphia, Chauncey Clapp, Clark, of Dauphin, Clarke, of Indiana, Cochran, Cope, Cox, Cummin, Cunningham, Curll, Denny, Dickey, Donnell, Doran, Fleming, Forward, Grenell, Hays, Helffenstein, Henderson, of Dauphin, Hopkinson, Ingersoll, Long, M'Cahen, Meredith, Merrill, Nevin, Overfield, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Ritter, Rogers, Scott, Serrill, Sturdevant, Taggart, Weidman, White, Young, Sergeant, *President*—52.

NAYS—Messrs. Barndollar, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Carey, Chandler, of Chester, Clarke, of Beaver, Cline, Coates, Crain, Crawford, Crum, Darlington, Darrah, Dillinger, Earle, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hiester, Houpt, Hyde, Jenks, Kennedy, Kerr, Krebs, Lyons, Martin, M'Sherry, Merkel, Miller, Myers, Ritter, Russell, Sellers, Seltzer, Shellito, Smith, of Columbia, Smyth, of Centre, Snively, Stickel, Thomas, Weaver, Woodward—50.

So the question was determined in the affirmative.

And the resolution, as amended, was agreed to.

A motion was made by Mr. Cox,

That the convention proceed to the second reading and consideration of the resolution read on the 19th instant, as follows, viz :

Resolved, That so much of the debates only as have been delivered in committee of the whole be prepared by the stenographer for publication, and that the preparing and printing of those delivered subsequently, be dispensed with.

Which was disagreed to.

Mr. Cox asked leave to offer an explanation to the convention, in relation to certain remarks made by him at Harrisburg, in regard to a certain individual.

And on the question,

Will the convention grant leave ?

It was determined in the negative.

A motion was made by Mr. WOODWARD,

That the members and officers of the convention proceed to affix their signatures to the constitution as amended.

Which was agreed to.

Whereupon,

The members and officers proceeded to sign accordingly.

On motion, it was

Ordered, That Mr. PORTER, of Northampton, have leave to sign for Mr. BARCLAY, and that Mr. SHOCK have leave to sign for Mr. SEAGER, under the authorities to them respectively given, and laid before the convention this morning.

And they signed accordingly.

A motion was made by Mr. BANKS,

That the constitution as amended be authenticated by the president and secretary in the same manner as the amendments were authenticated.

Which was agreed to.

And the members present then signed the constitution in the annexed form.

AMENDMENTS

TO THE

CONSTITUTION OF PENNSYLVANIA,

PROPOSED BY A CONVENTION

TO

A VOTE OF THE PEOPLE,

FOR THEIR RATIFICATION OR REJECTION ON THE SECOND TUESDAY OF OCTOBER, 1838.

TOGETHER WITH THE EXISTING CONSTITUTION.

CONSTITUTION OF 1790.

Parts stricken out in italics.

ARTICLE I.

SECT. I. The Legislative power of this commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

SECT. II. The Representatives shall be chosen annually by the citizens of the city of Philadelphia, and of each county, respectively, on the second Tuesday of October.

SECT. III. 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 preceding his election, and the last year thereof an inhabitant of the *city or county* in which he shall be chosen, unless he shall have been absent on the public business of the United State, or of this State. *No person residing within any city, town, or borough*

CONSTITUTION OF 1838.

Amendments in italics.

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SECT. II. The Representatives shall be chosen annually by the citizens of the city of Philadelphia, and of each county, respectively, on the second Tuesday of October.

SECT. III. 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 preceding 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.

CONSTITUTION OF 1790.

Parts stricken out in italics.

which shall be entitled to a separate representation, shall be elected a member for any county, nor shall any person residing without the limits of any such city, town, or borough, be elected a member thereof.

SECT. IV. Within three years after the first meeting of the General Assembly, and within every subsequent term of seven years, an enumeration of the taxable inhabitants shall be made in such manner as shall be directed by law. 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.

SECT. V. The Senators shall be chosen for *four* 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.

SECT. VI. The number of Senators shall, at the several periods of making the enumeration before mentioned, be fixed by the Legislature, and apportioned among the districts formed as hereinafter directed, according to the number of taxable inhabitants in each: and shall never be less than one-fourth, nor

CONSTITUTION OF 1838.

Amendments in italics.

SECT. IV. Within three years after the first meeting of the General Assembly, and within every subsequent term of seven years, an enumeration of the taxable inhabitants shall be made in such manner as shall be directed by law. 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.

SECT. V. 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.

SECT. VI. The number of Senators shall, at the several periods of making the enumeration before mentioned, be fixed by the Legislature, and apportioned among the districts formed as hereinafter directed, according to the number of taxable inhabitants in each: and shall never be less than one-fourth, nor

CONSTITUTION OF 1790.

Parts stricken out in italics.

greater than one-third of the number of Representatives.

SECT. VII. The Senators shall be chosen in districts, to be formed by the Legislature; *each district containing such a number of taxable inhabitants as shall be entitled to elect not 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.

SECT. VIII. 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.

SECT. IX. *Immediately after the Senators shall be assembled in consequence of the first election, subsequent to the first enumeration, they shall be divided by lot, as equally as may be into four 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; of the third class, at the expiration of the third year; and of the fourth class, at the expiration of the fourth year; so that one-fourth may be chosen every year.*

CONSTITUTION OF 1838.

Amendments in italics.

greater than one-third of the number of Representatives.

SECT. VII. 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 other county shall be divided in forming a district.

SECT. VIII. 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.*

SECT. IX. *The Senators who may be elected at the first General Election after the adoption of 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, thereafter, one-third of the whole number of Senators may be chosen every year. The Senators elected before the amendments to the Constitution shall be*

CONSTITUTION OF 1790.

Parts stricken out in italics.

SECT. X. The General Assembly shall meet on the first Tuesday of *December*, in every year, unless sooner convened by the Governor.

SECT. XI. Each House shall choose its Speaker and other officers; and the Senate shall also choose a Speaker pro tempore, when the Speaker shall exercise the office of Governor.

SECT. XII. Each House shall judge of the qualifications of its members. Contested elections shall be determined by a committee to be selected, formed, and regulated in such manner as shall be directed by law. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members, in such manner and under such penalties as may be provided.

SECT. XIII. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free State.

SECT. XIV. Each House shall keep a journal of its proceedings, and publish them weekly, except such parts as may require secrecy; and the yeas and nays of the mem-

CONSTITUTION OF 1838.

Amendments in italics.

adopted, shall hold their offices during the terms for which they shall respectively have been elected.

SECT. X. The General Assembly shall meet on the first Tuesday of *January*, in every year, unless sooner convened by the Governor.

SECT. XI. Each House shall choose its Speaker and other officers; and the Senate shall also choose a Speaker pro tempore, when the Speaker shall exercise the office of Governor.

SECT. XII. Each House shall judge of the qualifications of its members. Contested elections shall be determined by a committee to be selected, formed, and regulated in such manner as shall be directed by law. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members, in such manner, and under such penalties, as may be provided.

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SECT. XIV. *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.*

SECT. XV. Each House shall keep a journal of its proceedings, and publish them weekly, except such parts as may require secrecy; and the yeas and nays of the mem-

CONSTITUTION OF 1790.

Parts stricken out in italics.

bers on any question shall, at the desire of any two of them, be entered on the journals.

SECT. XV. The doors of each House, and of Committees of the Whole, shall be open, unless when the business shall be such as ought to be kept secret.

SECT. XVI. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECT. XVII. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the Commonwealth. They shall in all cases, except treason, felony, and breach of surety of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from the same. And for any speech or debate in either House, they shall not be questioned in any other place.

SECT. XVIII. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth which shall have been created, or the emoluments of which shall have been increased during such time; and no member of Congress, or other person holding any office, (except of attorney at law, and in the militia,) under the United States or this Commonwealth, shall be a member of either House during his continuance in Congress, or in office.

SECT. XIX. When vacancies happen in either House, the Speaker shall issue writs of election to fill such vacancies.

CONSTITUTION OF 1839.

Amendments in italics.

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SECT. XX. When vacancies happen in either House, the Speaker shall issue writs of election to fill such vacancies.

CONSTITUTION OF 1790.

Parts stricken out in italics.

SECT. XX. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

SECT. XXI. No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

SECT. XXII. Every bill which shall have passed both Houses, shall be presented to the Governor. If he approve, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which, likewise, it shall be re-considered; and if approved by two-thirds of that House, it shall be a law. But in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill, shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor within ten days (Sunday's excepted) after it shall have been presented to him, it shall be a law, in like manner, as if he had signed it, unless the General Assembly, by their adjournment, prevented its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SECT. XXIII. Every order, resolution, or vote, to which the concurrence of both Houses may be necessary, (except on a question of adjournment,) shall be presented to

CONSTITUTION OF 1838.

Amendments in italics.

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SECT. XXIV. Every order, resolution, or vote, to which the concurrence of both Houses may be necessary, (except on a question of adjournment,) shall be presented to

CONSTITUTION OF 1790.

Parts stricken out in italics.

the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

CONSTITUTION OF 1838.

Amendments in italics.

the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

SECT. XXV. *No corporate body shall be hereafter created, renewed, or extended with banking or discounting privileges, without six months' previous 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, 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.*

ARTICLE II.

SECT. I. The Supreme Executive power of this Commonwealth shall be vested in a Governor.

SECT. II. The Governor shall be chosen on the second Tuesday of October, by the citizens of the Commonwealth, at the places where they shall respectively vote for Representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Senate, who shall open and publish them in the presence of the members of both Houses of the Legislature. The person having

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CONSTITUTION OF 1790.

CONSTITUTION OF 1838.

*Parts stricken out in italics.**Amendments in italics.*

the highest number of votes shall be Governor. But if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law.

SECT. III. The Governor shall hold his office during three years from the third Tuesday of *December* next ensuing his election, and shall not be capable of holding it longer than *nine* in any term of *twelve* years.

SECT. IV. He shall be at least thirty years of age, and have been a citizen and an inhabitant of this State seven years next before his election, unless he shall have been absent on the public business of the United States, or of this State.

SECT. V. No member of Congress, or person holding office under the United States, or of this State, shall exercise the office of Governor.

SECT. VI. The Governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during the period for which he shall have been elected.

SECT. VII. He shall be commander-in-chief of the army and navy of this Commonwealth, and of the militia, except when they shall be called into the actual service of the United States.

SECT. VIII. *He shall appoint all officers, whose offices are established by this Constitution. or shall be established by law, and whose appointments are not herein otherwise provided for; but no person shall be appointed to an office within any*

the highest number of votes shall be Governor. But if two or more shall be equal, and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law.

SECT. III. The Governor shall hold his office during three years from the third Tuesday of *January* next ensuing his election, and shall not be capable of holding it longer than *six* in any term of *nine* years.

SECT. IV. He shall be at least thirty years of age, and have been a citizen and an inhabitant of this State seven years next before his election, unless he shall have been absent on the public business of the United States, or of this State.

SECT. V. No member of Congress, or person holding any office under the United States, or of this State, shall exercise the office of Governor.

SECT. VI. The Governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during the period for which he shall have been elected.

SECT. VII. He shall be commander-in-chief of the army and navy of this Commonwealth, and of the militia, except when they shall be called into the actual service of the United States.

SECT. VIII. *He shall appoint a Secretary of the Commonwealth during pleasure, and he shall nominate and by and with the advice and consent of the Senate, appoint all judicial officers of the Courts of Record, unless otherwise provided*

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Parts stricken out in italics.

county, who shall not have been a citizen and an inhabitant therein one year next before his appointment, *if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.* No member of Congress from this State, nor any person holding or exercising any office of trust or profit under the United States, shall at the same time hold or exercise the office of judge, secretary, treasurer, prothonotary, register of wills and recorder of deeds, sheriff or any office in this state, to which a salary is by law annexed, or any other office which future Legislatures shall declare incompatible with offices or appointments under the United States.

SECT. IX. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment.

SECT. X. He may require information in writing, from the officers in the executive department, on any subject relating to the duties of their respective offices.

SECT. XI. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he shall judge expedient.

SECT. XII. He may, on extraordinary occasions, convene the General Assembly; and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

SECT. XIII. He shall take care that the laws be faithfully executed.

SECT. XIV. In case of the death or resignation of the Governor, or

CONSTITUTION OF 1836.

Amendments in italics.

for in this Constitution. He shall have power to fill all vacancies that may happen in such judicial offices during the recess of the Senate, by granting commissions which shall expire at the end of their next session: Provided, That in acting on executive nominations the Senate shall sit with open doors, and in confirming or rejecting the nominations of the Governor, the vote shall be taken by yeas and nays.

SECT. IX. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment.

SECT. X. He may require information in writing, from the officers in the executive department, on any subject relating to the duties of their respective offices.

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SECT. XIV. In case of the death or resignation of the Governor, or

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Parts stricken out in italics.

his removal from office, the Speaker of the Senate shall exercise the office of Governor, until another Governor shall be duly qualified. And if the trial of a contested election shall continue longer than until *the third Tuesday in December* next ensuing the election of Governor, the Governor of the last year or the Speaker of the Senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a Governor shall be qualified as aforesaid.

SECT. XV. *A Secretary shall be appointed and commissioned during the Governor's continuance in office, if he shall so long behave himself well. He shall keep a fair register of all the official acts and proceedings of the Governor, and shall when required, lay the same and all papers, minutes and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be enjoined him by law.*

ARTICLE. III.

SECT. I. *In all elections by the citizens, every freeman of the age of twenty-one years, having resided in the State two years, next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election,*

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Amendments in italics.

his removal from office, the Speaker of the Senate shall exercise the office of Governor, until another Governor shall be duly qualified; *but in such case another Governor shall be chosen at the next annual election of Representatives, unless such death, resignation, or removal shall occur within three calendar months immediately preceding such next annual election, in which case a Governor shall be chosen at the second succeeding annual election of Representatives.* And if the trial of a contested election shall continue longer than until *the third Monday of January* next ensuing the election of Governor, the Governor of the last year, or the Speaker of the Senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a Governor shall be *duly* qualified as aforesaid.

SECT. XV. *The Secretary of the Commonwealth shall keep a fair register of all the official acts and proceedings of the Governor, and shall when required, lay the same and all papers, minutes and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be enjoined him by law.*

ARTICLE III.

SECT. I. *In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election district where he offers to vote, ten days immediately preceding such election, and within two years paid a state or county*

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Parts stricken out in italics.

shall enjoy the rights of an elector: Provided, That the sons of persons qualified as aforesaid, between the ages of twenty-one and twenty-two years, shall be entitled to vote, although they shall not have paid taxes.

SECT. II. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote viva voce.

SECT. III. Electors shall in all cases, except treason, felony, and breach of surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning from them.

ARTICLE IV.

SECT. I. The House of Representatives shall have the sole power of impeaching.

SECT. II. All impeachments shall be tried by the Senate: When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted, without the concurrence of two-thirds of the members present.

SECT. III. The Governor, and all other civil officers under this Commonwealth, shall be liable to impeachment for any misdemeanor in office; but judgment, in such cases, shall not extend further than

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Amendments in italics.

tax, which shall have been assessed at least ten days 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 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.

SECT. II. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote viva voce.

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to removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth: the party, whether convicted or acquitted, shall nevertheless, be liable to indictment, trial, judgment and punishment, according to law.

to removal from office, and disqualification to hold any office of honor, trust, or profit, under this Commonwealth: the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment, according to law.

ARTICLE V.

ARTICLE V.

SECT. I. The judicial power of this Commonwealth shall be vested in a supreme court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, register's court, and a court of quarter sessions of the peace, for each county; in justices of the peace, and in such other courts as the Legislature may, from time to time, establish.

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SECT. II. *The judges of the supreme court and of the several courts of common pleas, shall hold their offices during good behaviour: But for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature. The judges of the supreme court, and the presidents of the several courts of common pleas, shall at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth.*

SECT. II. *The judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the Governor, and by and with the consent of the Senate, appointed and commissioned by him. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. But for any reasonable cause, which shall not*

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Parts stricken out in italics.

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Amendments in italics.

SECT. III. The jurisdiction of the supreme court shall extend over the State; and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery, in the several counties.

SECT. IV. *Until it shall be otherwise directed by law, the several courts of common pleas shall be established in the following manner: The Governor shall appoint in each county, not fewer than three, nor more than four judges, who, during their continuance in office, shall reside in such county. The State shall be, by law, divided into circuits, none of which shall include more than six, nor fewer than three counties. A president shall be appointed of the courts in each circuit, who during his continuance in office, shall reside therein. The president and judges, any two of whom shall be a quo-*

be sufficient ground of impeachment, the Governor may remove any of them on the address of two thirds of each branch of the Legislature. The judges of the supreme court, and the presidents of the several courts of common pleas, shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth.

SECT. III. *Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.*

SECT. IV. The jurisdiction of the supreme court shall extend over the State; and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery, in the several counties.

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rum, shall compose the respective courts of common pleas.

SECT. V. The judges of the court of common pleas, in each county, shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery, for the trial of capital and other offenders therein; any two of said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer, or jail delivery, in any county, when the judges of the supreme court, or any of them shall be sitting in the same county. The party accused, as well as the Commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court.

SECT. VI. The supreme court, and the several courts of common pleas, shall beside the powers heretofore usually exercised by them, have the powers of a court of chancery, so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the State, and the care of the persons and estates of those who are non compotes mentis. And the Legislature shall vest in the said courts such other powers to grant relief in equity, as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper, for the due administration of justice.

SECT. VII. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace and orphans' court thereof; and the register of wills, together with the said judges, or any two of them,

SECT. V. The judges of the court of common pleas, in each county, shall by virtue of their offices, be justices of oyer and terminer and general jail delivery, for the trial of capital and other offenders therein; any two of said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer or jail delivery, in any county, when the judges of the supreme court, or any of them shall be sitting in the same county. The party accused, as well as the Commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court.

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SECT. VII. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace and orphans' court thereof; and the register of wills, together with the said judges, or any two of them,

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Parts stricken out in italics.

shall compose the register's court of each county.

SECT. VIII. The judges of the courts of common pleas shall, within their respective counties, have like powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

SECT. IX. The president of the court in each circuit within such circuit, and the judges of the court of common pleas within their respective counties, shall be justices of the peace, so far as relates to criminal matters

SECT. X. *The Governor shall appoint a competent number of justices of the peace in such convenient districts in each county, as are or shall be directed by law. They shall be commissioned during good behaviour; but may be removed on conviction of misbehaviour in office, or of any infamous crime, on the address of both houses of the Legislature.*

SECT. XI. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

SECT. XII. The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude, "against the peace and dignity of the same."

ARTICLE VI.

SECT. 1. Sheriffs and coroners shall, at the times and places of election of representatives, be chosen

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shall compose the register's court of each county.

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SECT. X. A register's office, for the probate of wills, and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

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ARTICLE VI.

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*Parts stricken out in italics.**Amendments in italics.*

by the citizens of each county.—*Two persons shall be chosen for each office, one of whom for each respectively,* shall be appointed by the Governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of the said offices shall be filled by *a new* appointment, to be made by the Governor, to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid.

SECT. II. The freemen of this Commonwealth shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service. *The militia officers shall be appointed in such manner, and for such time, as shall be directed by law.*

the citizens of each county. *One person shall be chosen for each office, who shall be commissioned by the Governor.* They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff in any term of six years. Vacancies in either of the said offices shall be filled by *an* appointment, to be made by the Governor to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid.

SECT. II. The freemen of this Commonwealth shall be armed, *organized,* and disciplined for its defence, *when and in such manner as may be directed by law.* Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

SECT. III. *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,*

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Parts stricken out in italics.

SECT. III. Prothonotaries, clerks of the peace and orphans' courts, recorders of deeds, registers of wills and sheriffs, shall keep their offices in the county town of the county, in which they, respectively shall be officers, unless when the Governor shall, for special reasons, dispense therewith, for any term not exceeding five years after the county shall have been erected.

SECT. IV. All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be sealed with the State seal, and signed by the Governor.

SECT. V. *The State Treasurer shall be appointed annually, by the joint vote of the members of both Houses. All other officers in the treasury department, attorneys at law, election officers, officers relating to taxes, to the poor and highways, constables and other township officers, shall be appointed in such manner as is or shall be directed by law.*

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Amendments in italics.

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.

SECT. IV. Prothonotaries, clerks of the peace and orphans' courts, recorders of deeds, registers of wills and sheriffs, shall keep their offices in the county town of the county in which they, respectively, shall be officers, unless when the Governor shall, for special reasons, dispense therewith, for any term not exceeding five years after the county shall have been erected.

SECT. V. All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be sealed with the State seal and signed by the Governor.

SECT. VI. *A State Treasurer shall be elected annually, by joint vote of both branches of the Legislature.*

SECT. VII. *Justices of the peace or aldermen shall be elected in the several wards, boroughs, and townships, at the time of the election of constables by the qualified voters thereof, in such number as shall be directed by law, and shall be commissioned by the Governor for a term of five years. But no township, ward or borough shall elect more than two justices of the peace or aldermen without the consent of*

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*Parts stricken out in italics.**Amendments in italics.*

a majority of the qualified electors within such townships, ward or borough.

SECT. VIII. All officers whose election or appointment is not provided for in this Constitution, shall be elected or appointed as shall be directed by law. No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. No member of Congress from this state or any person holding or exercising any office or appointment of trust or profit under the United States shall at the same time hold or exercise any office in this state to which a salary is, or fees or perquisites are by law annexed, and the Legislature may by law declare what State offices are incompatible. No member of the Senate or of House of Representatives shall be appointed by the Governor to any office during the term for which he shall have been elected.

SECT. IX. All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well and shall be removed on conviction of misbehaviour in office or of any infamous crime.

SECT. X. Any person who shall, after the adoption of the amendments proposed by this Convention to the Constitution, fight a duel or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived

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Parts stricken out in italics.

ARTICLE VII.

SECT. I. The Legislature shall as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state in such manner that the poor may be taught gratis.

SECT. II. The arts and sciences shall be promoted in one or more seminaries of learning.

SECT. III. The rights, privileges, immunities and estates of religious societies and corporate bodies shall remain as if the Constitution of this state had not been altered or amended.

ARTICLE VIII.

Members of the General Assembly, and all officers, executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity.

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Amendments in italics.

ARTICLE VII.

of the right of holding any office of honor or profit in this State, and shall be punished otherwise in such manner as is, or may be prescribed by law; but the executive may remit the said offence and all its disqualifications.

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SECT. III. The rights, privileges, immunities and estates of religious societies and corporate bodies shall remain as if the Constitution of this State had not been altered or amended.

SECT. IV. *The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken.*

ARTICLE VIII.

Members of the General Assembly, and all officers, executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity.

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ARTICLE IX.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE:

SECT. I. That all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

SECT. II. 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.

SECT. III. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishments or modes of worship.

SECT. IV. That no person who acknowledges the being of a God and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

CONSTITUTION OF 1838.

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Parts stricken out in italics.

SECT. V. That elections shall be free and equal.

SECT. VI. That trial by jury shall be as heretofore, and the right thereof remain inviolate.

SECT. VII. 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.

SECT. VIII. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures; and that no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

SECT. IX. 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 infor-

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Amendments in italics.

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SECT. VI. That trial by jury shall be as heretofore, and the right thereof remain inviolate.

SECT. VII. 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.

SECT. VIII. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

SECT. IX. 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

CONSTITUTION OF 1790.

Parts stricken out in italics.

mation, a speedy trial by an impartial jury of the vicinage: That he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

SECT. X. 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.

SECT. XI. 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.

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

SECT. XIII. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

SECT. XIV. That all prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or presumption great: and the privilege of the writ of habeas corpus shall

CONSTITUTION OF 1838.

Amendments in italics.

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CONSTITUTION OF 1790.

Parts stricken out in Italics.

not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

SECT. XV. That no commission of oyer and terminer or jail delivery shall be issued.

SECT. XVI. 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.

SECT. XVII. That no *ex post facto* law, nor any law impairing contracts, shall be made.

SECT. XVIII. That no person shall be attainted of treason or felony by the Legislature.

SECT. XIX. That no attainder shall work corruption of blood; nor except during the life of the offender, forfeiture of estate to the Commonwealth: that the estates of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SECT. XX. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, redress, or remonstrance.

SECT. XXI. That the right of the citizens to bear arms, in defence of themselves and the State, shall not be questioned.

SECT. XXII. That no standing army shall, in time of peace, be kept up, without the consent of the Legislature; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

CONSTITUTION OF 1838.

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CONSTITUTION OF 1790.

CONSTITUTION OF 1838.

*Parts stricken out in italics.**Amendments in italics.*

SECT. XXIII. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

SECT. XXIV. That the Legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment to which shall be for a longer term than during good behaviour.

SECT. XXV. That emigration from the State shall not be prohibited.

SECT. XXVI. To guard against transgressions of the high powers which we have delegated, WE DECLARE, That every thing in this article is excepted out of the general powers of government, and shall for ever remain inviolate.

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ARTICLE X.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next election, in at least 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 the members elected to each House, the Secretary of the commonwealth shall cause the same again to be published in manner

CONSTITUTION OF 1790.

Parts stricken out in italics.

CONSTITUTION OF 1838.

Amendments in italics.

aforsaid, and such proposed amendment or amendments shall be submitted to the people in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this State voting thereon, such amendment or amendments shall become a part of the Constitution, but no amendment or amendments shall be submitted to the people oftener than once in five years: Provided, That if more than one amendment be submitted, they shall be submitted in such manner and form, that the people may vote for or against each amendment separately and distinctly.

SCHEDULE.—CONSTITUTION 1838.

That no inconvenience may arise from the alterations and amendments in the Constitution of this Commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained, that

I. All laws of this Commonwealth in force at the time when the said alterations and amendments in the said Constitution shall take effect, and not inconsistent therewith, and all rights, prosecutions, actions, claim and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

II. The alterations and amendments in the said Constitution shall take effect from the first day of January, eighteen hundred and thirty-nine.

III. The clauses, sections, and articles of the said Constitution which remain unaltered, shall continue to be construed and have effect, as if the said Constitution had not been amended.

IV. The General Assembly which shall convene in December, eighteen hundred and thirty-eight, shall continue its session, as heretofore, notwithstanding the provision in the eleventh section of the first article, and shall at all times be regarded as the first General Assembly under the amended Constitution.

V. The Governor who shall be elected in October, eighteen hundred and thirty-eight, shall be inaugurated on the third Tuesday in January, eighteen hundred and thirty-nine; to which time the present Executive term is hereby extended.

VI. The commissions of the Judges of the Supreme Court, who may

be in office on the first day of January next, shall expire in the following manner:—The commission which bears the earliest date shall expire on the first day of January, Anno Domini, one thousand eight hundred and forty-two; the commission next dated shall expire on the first day of January, Anno Domini, one thousand eight hundred and forty-five; the commission next dated shall expire on the first day of January, Anno Domini, one thousand eight hundred and forty-eight; the commission next dated shall expire on the first day of January, Anno Domini, one thousand eight hundred and fifty-one; and the commission last dated shall expire on the first day of January, Anno Domini, one thousand eight hundred and fifty-four.

VII. The commissions of the President Judges of the several judicial districts, and of the associate law Judges, of the first judicial district, shall expire as follows:—The commissions of one-half of those who shall have held their offices ten years or more, at the adoption of the amendments to the Constitution, shall expire on the twenty-seventh day of February, one thousand eight hundred and thirty-nine; the commissions of the other half of those who shall have held their offices ten years or more, at the adoption of the amendments to the Constitution, shall expire on the twenty-seventh day of February, one thousand eight hundred and forty-two; the first half to embrace those whose commissions shall bear the oldest date. The commissions of all the remaining Judges who shall not have held their offices ten years at the adoption of the amendments to the Constitution, shall expire on the twenty-seventh day of February next after the end of ten years from the date of their commissions.

VIII. The Recorders' of the several Mayors' Courts, and other Criminal Courts in this Commonwealth, shall be appointed for the same time, and in the same manner, as the President Judges of the several judicial districts; of those now in office, the commission oldest in date shall expire on the twenty-seventh day of February, one thousand eight hundred and forty-one, and the others every two years thereafter, according to their respective dates; those oldest in dates expiring first.

IX. The Legislature, at its first session under the amended Constitution, shall divide the other Associate Judges of the State into four classes. The commission of those of the first class shall expire on the twenty-seventh day of February, eighteen hundred and forty; of those of the second class on the twenty-seventh day of February, eighteen hundred and forty-one; of those of the third class on the twenty seventh day of February, eighteen hundred and forty-two; and of the fourth class on the twenty-seventh day of February, eighteen hundred and forty-three. The said classes, from the first to the fourth, shall be arranged according to the seniority of the commissions of the several Judges.

X. Prothonotaries, Clerks of the several Courts, (except of the Supreme Court,) Recorders of Deeds, and Registers of Wills, shall be first elected under the amended Constitution, at the election of Representatives, in the year eighteen hundred and thirty-nine, in such manner as may be prescribed by law.

XI. The appointing power shall remain as heretofore, and all officers in the appointment of the Executive Department shall continue in the exercise of the duties of their respective offices, until the Legislature shall pass such laws as may be required by the eighth section of the sixth

article of the amended Constitution, and until appointments shall be made under such laws, unless their commissions shall be superseded by new appointments, or shall sooner expire by their own limitations, or the said offices shall become vacant by death or resignation, and such laws shall be enacted by the first Legislature under the amended Constitution.

XII. The first election for Aldermen and Justices of the Peace shall be held in the year eighteen hundred and forty, at the time fixed for the election of Constables. The Legislature, at its first session under the amended Constitution, shall provide for the said election, and for subsequent similar elections. The Aldermen and Justices of the Peace now in commission, or who may in the interim be appointed, shall continue to discharge the duties of their respective offices, until fifteen days after the day which shall be fixed by law for the issuing of new commissions, at the expiration of which time their commissions shall expire.

In testimony that the foregoing is the amended Constitution of Pennsylvania, as agreed to in Convention, WE, the Officers and Members of the Convention, have hereunto signed our names, at Philadelphia, the twenty-second day of February, Anno Domini, one thousand eight hundred and thirty-eight, and of the Independence of the United States of America, the sixty-second.

JOHN SERGEANT, *President.*

(Attest)—S. SHOCK, *Secretary.*

GEORGE L. FAUSS, }
J. WILLIAMS, } *Assistant Secretaries.*

DANIEL AGNEW,
WM. AYRES,
M. W. BALDWIN,
EPHRAIM BANKS,
JOHN Y. BARCLAY,
JACOB BARNDOLLAR,
CHAS. A. BARNITZ,
ANDREW BEDFORD,
THOS. S. BELL,
JAMES CORNELL BIDDLE,
LEBBEUS J. BIGELOW,
SAML. C. BONHAM,
CHAS. BROWN,
JEREMIAH BROWN,
WILLIAM BROWN,
PIERCE BUTLER,
SAMUEL CAREY,
JOHN CUMMIN,
T. S. CUNNINGHAM,
WILLIAM CURLL,
WM. DARLINGTON,
GEORGE CHAMBERS,
JOHN CHANDLER,
JOS. R. CHANDLER,

CHAS. CHAUNCEY,
 NATHANIEL CLAPP,
 JAMES CLARKE,
 JOHN CLARKE,
 WM. CLARK,
 A. J. CLINE,
 LINDLEY COATES,
 R. E. COCHRAN,
 THOS. P. COPE,
 JOSHUA F. COX,
 WALTER CRAIG,
 RICHARD CRAIN,
 GEO. T. CRAWFORD,
 CORNELIUS CRUM,
 BENJAMIN MARTIN,
 JOHN J. M'CAHEN,
 E. T. M'DOWELL,
 JAMES M'SHERRY,
 MARK DARRAH,
 HARMAR DENNY,
 JOHN DICKEY,
 JOSHUA DICKERSON,
 JACOB DILLINGER,
 JAMES DONAGAN,
 J. R. DONNELLY,
 JOS. M. DORAN,
 JAS. DUNLOP,
 THOMAS EARLE,
 D. M. FARRELLY,
 ROBERT FLEMING,
 WALTER FORWARD,
 JOHN FOULKROD,
 JOSEPH FRY, Jr.
 JOHN FULLER,
 JOHN A. GAMBLE,
 WILLIAM GEARHART,
 DAVID GILMORE,
 VIRGIL GRENFELL,
 WILLIAM L. HARRIS,
 THOMAS HASTINGS,
 EZRA S. HAYHURST,
 WILLIAM HAYES,
 A. HELFFENSTEIN,
 M. HENDERSON,
 WM. HENDERSON,
 WM. HIESTER,
 WILLIAM HIGH,
 JOS. HOPKINSON,
 JOHN HOUP,
 JABEZ HYDE,
 CHAS. J. INGERSOLL,
 PHINEAS JENKS,

GEORGE M. KBIM,
 JAMES KENNEDY,
 AARON KERR,
 JOS. KONIGWACHER,
 JACOB KREBS,
 H. G. LONG,
 DAVID LYONS,
 ALEX. MAGEE,
 JOEL K. MANN,
 WM. M. MEREDITH,
 JAS. MERRILL,
 LEVI MERKEL,
 WM. L. MILLER,
 JAS. MONTGOMERY,
 CHRISTIAN MYERS,
 D. NEVIN,
 WM. OVERFIELD,
 HIRAM PAYNE,
 M. PENNYPACKER,
 JAMES PORTER,
 J. M. PORTER,
 S. A. PURVIANCE,
 JAMES POLLOCK,
 E. C. REIGART,
 A. H. READ,
 G. W. RITER,
 JOHN RITTER,
 H. G. ROGERS,
 S. ROYER,
 J. M. RUSSELL,
 DANIEL SEAGER,
 JOHN M. SCOTT,
 TOBIAS SELLERS,
 G. SELTZER,
 GEO. SERRILL,
 HENRY SCHEETZ,
 GEO. SHELLITO,
 THOMAS H. SILL,
 GEO. SMITH,
 WM. SMYTH,
 JOSEPH SNIVELY,
 JOHN B. STERIGERE,
 JACOB STICKEL,
 E. M. STURDEVANT,
 THOMAS TAGGART,
 M. J. THOMAS,
 JAMES TODD,
 T. WEAVER,
 J. B. WEIDMAN,
 R. G. WHITE,
 GEO. W. WOODWARD,
 R. YOUNG.

A motion was made by Mr. CLARKE, of Indiana,

That the convention do now adjourn *sine die*.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. CLARKE, of Indiana, and Mr. PORTER, of Northampton, and are as follow, viz :

YEAS—Messrs. Agnew, Baldwin, Banks, Bedford, Bell, Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cox, Crain, Crawford, Crum, Cummin, Darlington, Darrah, Denny, Dickey, Donnell, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Helfenstein, Hiester, Houpt, Hyde, Ingersoll, Jenks, Konigmacher, Krebs, Lyons, Magee, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merkel, Miller, Montgomery, Myers, Overfield, Payne, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Ritter, Rogers, Royer, Russell, Scott, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, of Columbia, Smyth, of Centre, Snively, Sterigere, Stickel, Sturdevant, Taggart, Todd, Weaver Weidman, White, Woodward, Young, Sergeant, *President*.

So the question was determined in the affirmative; and,

The convention adjourned.

SAMUEL SHOCH, *Secretary*.

VOTE OF THE PEOPLE

ON THE

CONSTITUTION AND AMENDMENTS.

The amendments to the constitution, adopted by this convention, having been published in the form and manner prescribed, were submitted to the people for their acceptance or rejection, at the ensuing general election, throughout the commonwealth, on the second Tuesday of October, 1838. On Tuesday, December eleven, the returns from the different counties, were opened by the speaker, in the presence of the senate, as appears in the following extract from the journal of that body.

Agreeable to order,

The speaker and members of the senate and house of representatives met in the senate chamber, for the purpose of opening and publishing the returns of the votes given, at the late election, for and against the amendments proposed by the convention to amend the constitution—Messrs. FRALEY (city) and KINGSBURY being appointed tellers.

The returns having been opened, read, and summed up,

Messrs. FRALEY (city) and KINGSBURY, the tellers aforesaid, made a report, which was read as follows, viz :

In pursuance of an act of the general assembly of the commonwealth of Pennsylvania, 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," passed the twenty-ninth day of March, A. D. 1836, the speaker of the senate and the members of the senate and house of representatives of the said commonwealth, assembled in the senate chamber, at Harrisburg, on Tuesday the eleventh day of December, in the year one thousand eight hundred and thirty-eight; and the speaker of the senate, in the presence of the members aforesaid, did open and publish the returns of the election held on the ninth day of October, in the year last aforesaid, for and against the amendments proposed by the said convention, in the several counties of this commonwealth, as follows, viz :

Counties.		For the Amendments.	Against the Amendments.
Adams,	- -	300	4420
Allegheny,	- -	4460	5049
Armstrong,	- -	2597	949
Beaver,	- -	2525	1612
Bedford,	- -	1072	2786

VOTE OF THE PEOPLE.

361

Counties.	For the Amendments.	Against the Amendments.
Berks, - -	5823	3883
Bradford, - -	4116	188
Bucks, - -	4095	3362
Butler, - -	2383	712
Cambria, - -	616	938
Centre, - -	2082	1565
Chester, - -	3879	5085
Columbia, - -	1556	1506
Clearfield, - -	987	199
Crawford, - -	3344	517
Cumberland, - -	2562	2419
Dauphin, - -	1032	3383
Delaware, - -	1299	1459
Erie, - -	3175	454
Fayette, - -	3022	1145
Franklin, - -	1728	3215
Greene, - -	2399	74
Huntingdon, - -	2640	3348
Indiana, - -	1248	1471
Jefferson, - -	953	356
Juniata, - -	657	1249
Lancaster, - -	2355	10,059
Lebanon, - -	807	2573
Lehigh, - -	1392	2244
Luzerne, - -	2603	1141
Lycoming, - -	1913	1477
M'Kean, - -	301	2
Mercer, - -	3364	1475
Mifflin, - -	1069	1153
Monroe, - -	1241	209
Montgomery, - -	3690	4079
Northampton, - -	1041	3577
Northumberland, - -	867	2144
Perry, - -	1216	1418
Philadelphia city & co. - -	8347	12,429
Pike, - -	586	3
Potter, - -	358	0
Schuylkill, - -	1460	1812
Somerset, - -	556	2029
Susquehanna, - -	2085	412
Tioga, - -	1974	16
Union, - -	452	3185
Venango, - -	1887	448
Warren, - -	1128	31
Washington, - -	4394	1576
Wayne, - -	1380	98
Westmoreland, - -	4105	2234
York, - -	1233	5500
	<hr/> 113,971	<hr/> 112,750

Whereupon, the speaker signed a certificate, as follows:

I, Charles B. Penrose, speaker of the senate of the commonwealth of Pennsylvania, do certify that the returns of the election aforesaid, for and against the amendments, proposed by the convention aforesaid, were delivered to me by the secretary of the commonwealth, on the first Thursday of the next session of the Legislature, after said returns were received by him, and that I did open and publish the same in the presence of the members of the senate and house of representatives on the next Tuesday thereafter, being the eleventh day of December, in the year one thousand eight hundred and thirty-eight; and did sum up and ascertain the numbers of votes given for, and the number of votes given against the said amendments, and having so summed up and ascertained the same, I do certify, that at the said election, one hundred and thirteen thousand nine hundred and seventy-one votes were given for, and one hundred and twelve thousand seven hundred and fifty-nine votes, were given against the said amendments, in the said several counties of this commonwealth. In witness whereof, I have hereunto set my hand, this eleventh day of December, in the year of our Lord, one thousand eight hundred and thirty-eight.

CHARLES B. PENROSE,
Speaker of the Senate.

Attest,

F. FRALEY.

E. KINGSBURY, Jr. } *Tellers.*

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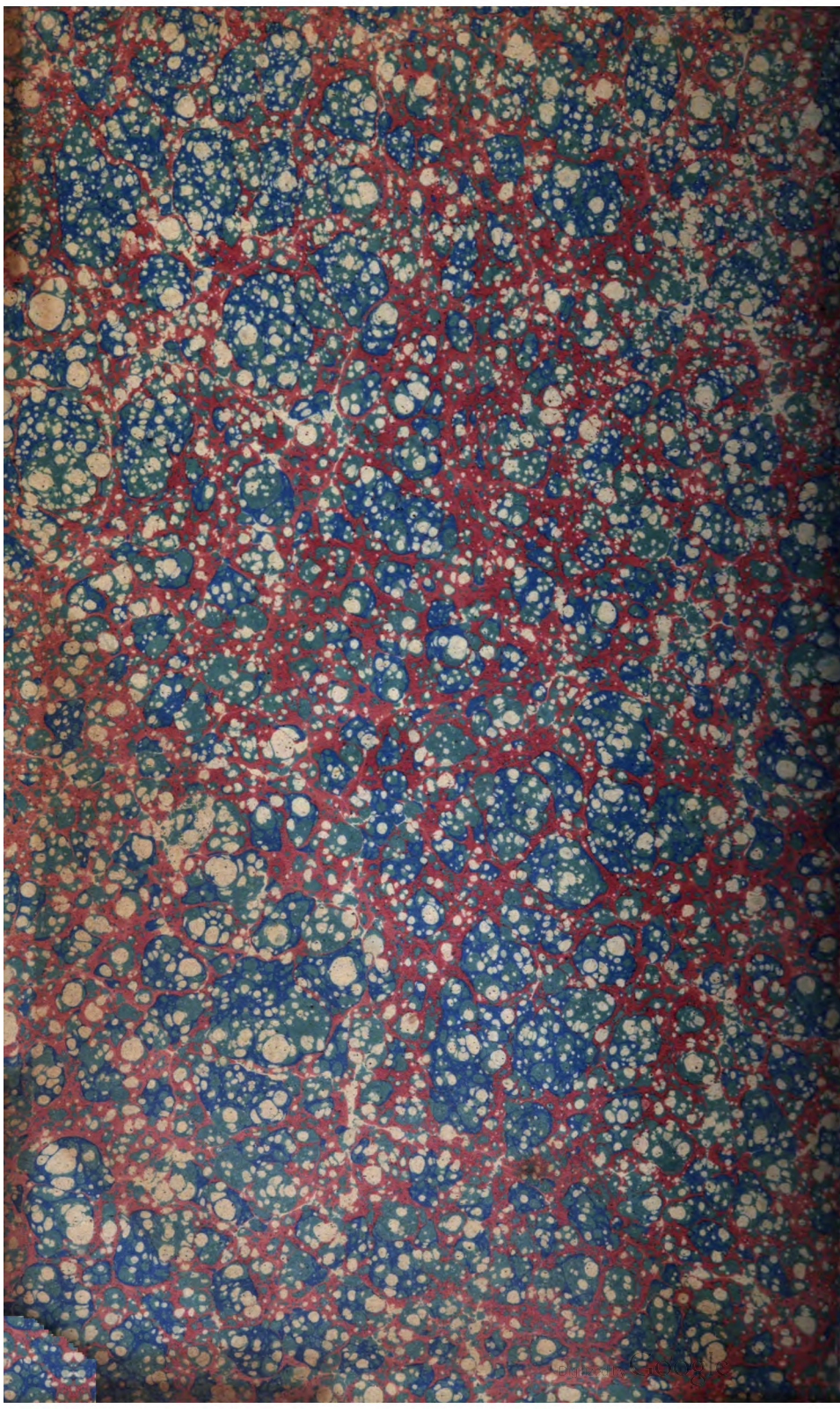
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